

SOAH DOCKET NO. 582-06-2596
TCEQ DOCKET NO. 2006-0688-MWD

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APPLICATION OF LAZY NINE
MUNICIPAL UTILITY DISTRICT AND
FOREST CITY SWEETWATER
LIMITED PARTNERSHIP FOR
PROPOSED PERMIT WQ0014629001

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BEFORE THE STATE OFFICE
OF CHIEF CLERKS OFFICE
ADMINISTRATIVE HEARINGS

PROTESTANTS' EXCEPTIONS
TO THE ALJ'S PROPOSAL FOR DECISION AND ORDER
ISSUED ON APRIL 23, 2007

COMES NOW, the Protestants, Hazel A. Sanchez, in proper person, William H. Cahill,
John Hatchet, in proper person,
through undersigned counsel, and the Travis Settlement Home Owners Association, through
its authorized officer, (hereinafter collectively sometimes referred to as "Homeowners"), and
present this the Protestants' Exceptions.

SUMMARY OF EXCEPTIONS

Homeowners except to the proposal for Decision and Order issued by Administrative
Law Judge William G. Newchurch on April 23, 2007, on the following grounds:

I. Draft Permit in Violation of Finality Rule:

The proposed permit – especially with regard to the preliminary irrigation plan, lack of
planning for the second and final phases of the proposed permit, the lack of an
emergency plan, and the conflicting evidence regarding the number of acres to be
irrigated - is so vague as to make it impossible to assess whether the activities
proposed in the permit application would pose an unreasonable risk of contamination of
surface and ground waters and therefore in violation of 30 TAC 309.12 - rendering the
permit non-final.

II. Need, Capacity and Regionalization.

**III. The Judge Improperly Relied on Testimony of the Executive Director's staff to
Carry Applicants' Burden of Proof.**

- IV. **The Change in Applicant Name is a Major Amendment to the Permit.**
- V. **The Record Reflects Only Contradictory Evidence Regarding the Alleged Authority of William Gunn to Apply for the Permit on Behalf of Lazy 9 or Forest City Sweetwater Limited Partnership.**
- VI. **The ALJ Errs in Determining that the Applicants Sufficiently Investigated the Geology of the Proposed Sewerage Treatment Plant (STP):**

The proposed STP site is next to or underlain with a fault that poses unreasonable risks of contamination to ground and surface waters contrary to 30 TAC 309.12.

- VII. **Improper Apportionment of Transcript Costs.**

The Judge's proposal that Protestant's pay one-half of the transcript costs was made without any discussion, argument or evidence taken concerning the obligation of payment of these costs, and the Judge's proposal is in the nature of a penalty against Protestants for which there is no legal authority.

FACTS CONCERNING PROPOSED STP FACILITY

On June 8, 2005, Lazy Nine Municipal Utility District ("Lazy 9") and the co-permittee, Forest City Sweetwater Limited Partnership (hereinafter sometimes referred to as "Forest City LP") (hereinafter sometimes collectively referred to as "Applicants") applied for a Texas Land Application permit, proposed Permit Number WQ0014629001 (the "Proposed Permit") for the construction and operation of a sewage treatment plant ("STP") facility.

The application was declared administratively complete on July 29, 2005, although additional information was received concerning the application on July 21, 2005, July 22, 2005, January 23, 2006, January 25, 2006 and February 28, 2006.

Public meeting was held on July 25, 2006.

Issuance of current draft permit did not occur until August 1, 2006

Applicants requested a direct referral of the Proposed Permit application to SOAH under

30 TAC 55.210. Preliminary hearing in this cause was held on August 7, 2006. The contested case hearing was held on December 11, 12 and 13, 2006.

Administrative Law Judge William G. Newchurch submitted his Proposal for Decision and Order on April 23, 2007.

Lazy 9 does not own the land on which the STP is to be located or the land on which the sewage effluent is to be applied.

According to the current draft permit, the Lazy 9 STP will be located approximately 6.2 miles west of the Village of Bee Caves near State Highway 71, Travis County, Texas.

The irrigation site is to be located on the south side of State Highway 71 approximately 3 miles west of the Village of Bee Cave, Travis County, Texas, and on the Edwards Aquifer Contributing Zone.

The proposed STP is located on the bank of Bee Creek, just south of Highway 71.

The nearest watercourse to the effluent disposal or irrigation site to which rainfall runoff might flow is Little Barton Creek.

According to the Proposed Permit, Sweetwater is projected to have 2,250 connections at full build-out - at completion of the final phase, which is not projected to be completed until August 2012 (assuming the first phase was completed by December of 2006).¹ The flow assumed by Applicants is 300 gpd per connection, and an average daily flow rate upon buildout (through the third phase) of 700,000 gpd, for an estimated 2550 LUE's. The total wastewater volume projected by Lazy 9, if such volume is ever needed, is not projected to be

¹ Supplemental Technical Report for Wastewater Treatment Plant prepared by James Miertschin & Associates, Inc. on June 3, 2005.

needed until well over five years after the first phase.

The first phase is projected to have 550 connections with an average daily flow rate of only 180,000 gpd. Sewage disposal was estimated to commence in December of 2006.

The second phase is projected to have 1400 connections with an average daily flow rate of 440,000 gpd. Sewage disposal was estimated to commence about two years after the first phase, by August, 2008.²

There are other wastewater treatment plants within three to five miles of the areas to be serviced by the proposed STP facility. One plant is the Lake Pointe WWTP (now owned and operated by LCRA), which recently obtained a permit for increased capacity, likely to a capacity of 1,000,000 gallons per day, leaving approximately 800,000 gallons per day of available capacity.

Other wastewater treatment plants within three to five miles of the proposed STP service areas are Barton Creek West Water Supply Corporation WWTP, and Hurst Creek MUD - Hills of Lakeway. The Hurst Creek MUD now has two plants, one of which is called Rough Hollow.³

II. EXCEPTIONS

Because Applicants requested a direct referral of the permit application to SOAH under 30 TAC 55.210, all issues are being tried in this proceeding. The Applicants have the burden of proof by a preponderance of the evidence. 30 TAC 80.17(a). The permit can only be issued if "the applicant demonstrates that the quality of ground or surface waters in the state

² See the current draft permit, with cover letter from L'Oreal W. Stepney, Director, Water Quality Division, addressed to Mike Willatt, Miertschin Exhibit No. 3 to Applicants' Exhibit 3, Prefiled Testimony of Dr. James Miertschin; and as Exhibit 6 to Applicants Exhibit No. 8, Oral Deposition of Firoj Vahora.

³ Transcript, Pages 495 – 502.

will not be adversely affected.” 30 TAC 309.3(f). Furthermore, any issued permit must ensure that such wastewater disposal systems are designed and operated to prevent discharges. 30 TAC 309.20(b)(2)(A).

Applicants have failed to sustain their burden. The proposed permit and application are deficient in the following ways:

I. Draft Permit in Violation of Finality Rule:

The Application Lacks Critical Detail and Is Impermissibly Vague with regard to:

- (a) The management and operation of the STP and the system used to apply effluent;
- (b) There is no irrigation plan for the second and final phases of the STP facility;
- (c) There is no emergency plan in the event of a spill or other catastrophic event at the STP site.
- (d) There is a conflict in the numbers of acres of land proposed to be irrigated.

(a) Management and Operation of STP and System Used to Apply Effluent:

The proposed irrigation plan is so vague as to make it impossible to assess whether the proposed irrigation plan and effluent application rate would pose unreasonable risk of contamination of surface and ground waters and therefore in violation of 30 TAC 309.12 and rendering the permit non-final.

Despite the requirement that the Applicants must demonstrate that the quality of ground or surface water will not be adversely affected, the ALJ and much of the application defers the details regarding management and operation of the wastewater treatment plant and the disposal of the treated effluent. For instance, the design and operation of the irrigation

system is completely unaddressed in the application and the proposed permit. Rather than require the Applicant to develop such a plan prior to issuing the permit, however, the Judge would allow these matters to be addressed in a Final Irrigation Management Plan to be submitted at some time in the future.⁴ In deferring the development of this plan, however, the permit would be issued without the necessary demonstration that the proposed permitted activities will not adversely affect ground and surface waters.

The Judge improperly determined that the lack of a decision on which irrigation system to use is irrelevant. It is clear, as per Dr. Carlisle's testimony, that the outer nozzles on a pivot system are larger and emit a larger amount of water per unit time than the inner nozzles. Therefore, the irrigation system must be properly designed to apply the same amount of water throughout the pivot to affect a proper effluent application rate. Unless a final irrigation plan is required before the permit is issued, there is no way of knowing how the system will be constructed or implemented, and thus, whether the permit will have a deleterious affect on water quality.

Accordingly, TCEQ should refrain from issuing the permit until the management and operation of the STP and the system used to apply effluent are sufficiently final such that a meaningful hearing and decision on the merits of the application may be had. TCEQ cannot defer such a refinement.⁵

Applicants have insisted on providing only a preliminary irrigation plan. There is

⁴ PFD Pg 39.

⁵ See *Coalition of Cities for Affordable Utility Rates v. Public Utility*, 798 S.W.2d 560, 564 (Tex. 1990), cert. den. 499 U.S. 983, 111 S.Ct. 1641, 113 L.Ed.2d 736 (1991); (agency "powerless to defer its decision to a future proceeding"); *Id.* at 565 ("All parties were entitled to a straightforward decision from the PUC the first time that this case was presented."); *Gulf States Utilities Company v. Public Utility Commission of Texas*, 947 S.W.2d 887 (Tex. 1997); and *BFI Waste Systems of North America v. Martinez Environmental Group*, 93 S.W.3d 570, 580 (Tex. App. Austin 2002, rev. denied).

no final and enforceable irrigation plan at this time. The preliminary plan states, and it has been testified by the Applicants' experts, that the type of system which will be used for effluent irrigation is not yet determined. At least two systems are possibilities: the pivot system or the fixed riser system. The system actually used is critical to the determination of whether the application rate planned by Applicants is adequate to prevent runoff and water quality degradation.

Dr. Robert Carlile testified that when using the pivot system, the application rate of effluent differs on the outer portion of the center pivot as compared to the inner portion. "Since the outer portion of the pivot is traveling much faster than the inner portion...then you're putting out a higher rate per unit time on the outer portion of the pivot than you do on the inner portion." See Exhibit P-1, Prefiled Testimony of Dr. Robert Carlisle.⁶

Dr. Carlile also testified that on a pivot system, you have to take into consideration that the application rate will be higher on the outer sprinklers, so that the application rate on the outer sprinklers must be less than the measured infiltration rate of the soil or you will get runoff.⁷

He also opines that there are areas in the site that will need fixed risers because of the varying slopes on the property, varying soil depths and varying infiltration rates, and that on slopes of 12 per cent or greater, which exist on this site in question, you would not use the center pivot system.⁸

The type of effluent application that will be undertaken is one of the most critical components of daily operation of the plant to avoid adverse effects to water resources. The

⁶ See LCRA Exhibit 1, Prefiled Testimony of Dr. Robert Carlile and Transcript, Page 659 Lines 4 – 24.

⁷ Transcript, Pg 660.

⁸ Transcript, Pg 661 Lines 8 – 25; Pg 662; Pg 671 Lines 22 – 25; Pg 672 Lines 1 – 16.

type of irrigation equipment was requested from the Applicant as early as during the administrative and pre-technical review of the application.

On June 22, 2005 TCEQ **staff requested additional material regarding the application from the Applicant** (Exhibit P-2), including; "Item 1(a) of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal):

- **"To complete the response for this item, we need for you to please indicate the *method* of application of effluent. (Emphasis added).**
- Applicant's Response: "Decisions on the most appropriate application *rate* will be made in the final design phase." (Emphasis added).

See Exhibit P-3.⁹

Throughout the application and contested case hearing process Applicant has failed to provide the basic and critical information needed to determine whether the irrigation system is protective of groundwater and surface water.

The commission may authorize land disposal of treated effluent when the applicant demonstrates that the quality of ground or surface waters in the state will not be adversely affected. 30 TAC § 309.3(f). The commission may not issue a permit for a new facility...unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater. 30 TAC § 309.12.

Under the draft permit, Special Provision 16, the permittee is required to submit a Final Irrigation Management Plan to the TCEQ Water Quality Assessment Team for approval before any wastewater is applied to the permitted area. "The Final Irrigation Management Plan

⁹ See Applicant's Miertschin Exhibit 3, July 21, 2005 letter from James Miertschin to Ms. Adrienne McClarron.

shall describe the type of irrigation system, the layout or distribution of fixed head side roll, pivot, or traveling gun main lines of the irrigation system, the locations and coverage of each spray nozzle, wastewater dosing schedule, and a proposal to prevent freezing, rupture or averting mechanical damage to the irrigation lines.”¹⁰

In the “Preliminary Irrigation Management Plan”,¹¹ Miertschin alleges the plan is “preliminary” only with respect to the specification of the exact irrigation equipment to be used to apply the effluent, and that “[a]ll other aspects of the Plan are final.”¹² This is not necessarily so. Not only does the Preliminary Irrigation Management Plan fail to describe the type of irrigation system, but it also fails to specifically set out a procedure for the management and operation of the system and including but not limited to the layout or distribution of the main lines of the irrigation system, the locations and coverage of each spray nozzle, wastewater dosing schedule for the particular type of irrigation system chosen, a proposal dealing with or preparing for severe weather conditions and poor or improper maintenance, or a proposal to prevent freezing, rupture, vandalism, or averting damage to the irrigation lines.

These are is particularly critical given that the disposal fields are located in the Little Barton Creek Watershed and the Contributing Zone for the Barton Springs segment of the Edwards Aquifer. Rainwater in this zone flows to Barton Creek, to the recharge zone, and then rapidly enters the Aquifer to be subsequently discharged at Barton Springs within a very short time, usually several hours to several days. The quality of water leaving the Contributing Zone, therefore, affects the quality of water in the Aquifer. Wastewater entering the Aquifer due to line breaks, lift station failure, poor or improper maintenance, vandalism, and severe

¹⁰ Draft Permit, Special Provision 16.

¹¹ Miertschin Exhibit 10 to Miertschin Prefiled Applicant Ex. 3.

¹² Applicant Exhibit 3, Miertschin Prefiled at 21.

weather conditions is one of the top ten pollutant sources of Barton Springs. Research by the City of Austin and others has shown that Barton Springs is already suffering from elevated levels of nitrogen and phosphorous (causing excess algae growth) and that the sediments at Barton Springs are at times found to contain hydro-phobic chemicals at levels toxic to aquatic life. Nitrogen and phosphorous entering the Edwards Aquifer and Barton Springs as a result of the proposed activities will only cause further degradation of the Barton Springs aquatic habitat. Additionally, the irrigation field is located in the Drinking Water Protection Zone (“DWPZ”), which is composed of areas with sensitive environmental features and watersheds that contribute to the City of Austin’s drinking water supply, such as the Barton Creek Watershed. The City discourages and seeks to limit development in the DWPZ.

In order for TCEQ to determine that the proposed facility will not adversely affect groundwater and surface water and that the proposed site minimizes contamination, as required by 30 TAC 309.3(f) and 309.12, a Final Irrigation Management Plan must be submitted and reviewed prior to any permit being issued.

- (b) Preliminary Irrigation Management Plan only addresses the first phase of the system. There is no plan, preliminary or otherwise, concerning the second phase and the final phase.**

The Preliminary Irrigation Management Plan states “[s]ince the irrigation system will be developed in phases, this Irrigation Management Plan will address in detail the **aspects of the first phase of the system. Plans for subsequent phases of system development may differ from this plan for the initial phase**, since site conditions may be different and operational data from the first phase will be available.” (Emphasis added.)¹³

Even when the Final Irrigation Plan is available, according to the Preliminary

¹³ App Ex. 10, Preliminary Irrigation Management Plan at I.

Plan, that Final Plan will not include provisions as to how the majority of the effluent will be managed.¹⁴ By only accounting for the first phase of the irrigation system (an effluent flow of 180,000 gallons per day),¹⁵ **the remaining 520,000 gallons per day is not addressed in the plan.**

Applicants have provided no irrigation management plan whatsoever for the second and final phases of the STP facility. Thus, it is impossible to determine at this point whether the proposed facility will adversely affect groundwater and surface water.

(c) Applicants have also failed to establish an Emergency plan to address operating practices necessary in the event of a catastrophic event.

In prefiled testimony, Applicants' witness, Rick Wheeler,¹⁶ testified that "Each grinder pump installation will have a one-day storage capacity as well." At the contested case hearing, however, Mr. Wheeler amended this testimony so that each grinder pump installation will not necessarily have a one-day storage capacity, but only a storage capacity "...that generally corresponds to the size of the various housing units in the development."¹⁷

Mr. Wheeler also testified that he recommends that backup power supply should be installed for each facility – the wastewater treatment plant, headworks lift station, and treated effluent pump station. His recommendation is not necessarily for a backup generator for each such facility, but may be only one generator for all three facilities. Applicants have not as yet made this determination.¹⁸

Although the Judge finds that a spill event is not very likely, his conclusion is not

¹⁴ Preliminary Management Plan.

¹⁵ PFD Pg 40.

¹⁶ Prefiled Testimony of Rick Wheeler.

¹⁷ Transcript, Pg. 478, Lines 22-25; Pg. 479, Lines 1-15.

¹⁸ Transcript, Pg. 485, Lines 16-25; Pg. 486, Lines 1-4.

supported by the evidence.¹⁹ Spill events can and do occur all of the time. In this case, where the STP is located on the banks of Bee Creek, any spill event would result in a spill directly into Bee Creek, causing pollution of its waters. This is particularly critical given that the waters of Bee Creek flow into Lake Travis, a primary source of drinking water for the area as well as a prime recreational area. Wastewater entering Bee Creek as a result of upset conditions and system failures will unacceptably pollute these largely pristine waters.

In this connection, further analysis must be conducted regarding the vulnerability of Bee Creek as a result of the proposed activities and catastrophic spills or bypasses. Particularly, given that such vulnerability seems to be inherent in the system's design. For example, the STP is situated near the banks of Bee Creek. Any significant overflow event, therefore, would drain directly into the creek. Furthermore, the effluent storage ponds are over a mile away and 300 feet higher than the plant. No storage is available at the treatment plant, other than berms to contain one day's containment (which Applicants finally agreed to erect by virtue of the settlement in this contested case hearing entered into in December of 2006 with LCRA and the City of Austin). Consequently, pumps will be necessary to continuously carry the treated wastewater away from the plant to the storage ponds. Any extended failure in these pumps could result in an overflow at the treatment plant.

Despite this prospect, specific emergency plan provisions are not part of the proposed permit. The only emergency "plan" is as stated in the changes proposed to Paragraph 18 of the draft permit by virtue of the settlement.²⁰ These changes require berms to contain one day's volume of wastewater, back up power generator at the STP, back up power

¹⁹ PFD Pg 47.

²⁰ See Pg. 27 of the PFD.

generators for the lift stations in Bee Creek watershed and auto dial equipment with visual and auditory alarm systems that will activate in the event of a power outage. (But see testimony of Applicants' witness, Rick Wheeler, wherein he states that there may be only one back up generator.)²¹

There is nothing in the "plan" with regard to chlorine leaks, lift station high water alarms, or procedures and practices for actions to be taken subsequent to a spill or catastrophic event. How will an accidental discharge into Bee Creek be contained and damage minimized? This is simply insufficient to guard against the highly likely scenario that the pumps will fail.

These deficiencies cannot be cured by the submission of a Wastewater Treatment Plant Emergency Plan after the permit has been issued given that, as stated above, TCEQ cannot reach the conclusion – as it must in order to issue the proposed permit – that the proposed activities will not adversely impact ground and surface waters.

(d) Conflicting Evidence of Land Proposed to be Irrigated:

The ALJ improperly concluded that there are at least 285 acres available for irrigation, basing his opinion on Dr. Miertschin's testimony at the contested case hearing rather than the documentary evidence in the record.²² Dr. Miertschin claims that he prepared a map of the available irrigation areas, subtracted those areas which will not be irrigated, and recalculated the available acres. He stated that this calculation or map was not introduced into evidence. Surely, if such a calculation or recalculation existed, Applicants would have submitted it as evidence that there were at least 285 acres available for irrigation – since

²¹ Transcript, Pg. 478, Lines 22-25; Pg. 479, Lines 1-15.

²² PFD Pgs 42-44.

Applicants are required to carry the burden of proof.

Under the preliminary irrigation plan submitted by Applicants, 374 acres were initially available for irrigation.²³ (Exhibit P-4.) In the initial application, it was determined by Applicant that "With the application rate of 2.75 feet/year, the minimum irrigation area required would be 298 acres".²⁴ (Exhibit P-5.) Applicants determined that effluent would be irrigated on 298 acres of rangeland.²⁵

By July 29, 2005, the acres to be irrigated were reduced to 285 acres. See Exhibit P-6, regarding publication of notice that 285 acres will be irrigated.²⁶

The notice, which was published on August 4, 2005 in the Austin American Statesman also states that 285 acres will be irrigated. (Exhibit P-7.)²⁷

By the time of the hearing (on December 11, 12 and 13, 2006), the acreage proposed to be irrigated was reduced again. By virtue of the proposed Settlement Agreement between applicants, LCRA and the City of Austin, which Applicants seek to have approved by the TCEQ, the acreage available for irrigation is reduced in the following respects:

- (1) The buffer zone for Little Barton Creek is increased from 200 feet to 210 feet, or the width of the 100-year flood plain, whichever is greater;
- (2) There will be a buffer zone around the wetlands, which will be 150 feet from the center of the wetland area;
- (3) There will be buffer zones of 50 feet each around two intermittent streams and valley area or the width of the 100 -year flood plain, whichever is greater;

²³ Domestic Worksheet 3.0 – Land Disposal of Effluent, Page 13 of 13; Prefiled Testimony of Dr. James Meirtschin.

²⁴ Supplemental Technical Report for Irrigation Disposal, dated June 2005, Page 3; Prefiled Testimony of Dr. James Meirtschin.

²⁵ Supplemental Technical Report for Irrigation Disposal, dated June 2005, Page 6; Prefiled Testimony of Dr. James Meirtschin.

²⁶ letter of TCEQ dated July 29, 2005, directed to Mike Willatt (declaring the application administratively complete); and Notice of Receipt of Application and Intent to Obtain a Water Quality Permit.

²⁷ Notice published on August 4, 2005.

- (4) 1.9 acres located in the northwest corner of the site will be excluded from effluent application.²⁸

But in trial testimony, Dr. Miertschin states that, as of December 12, 2006 (the date of his testimony), the acreage planned to be used for effluent irrigation total 285, and the application rate of 2.75 acre per year has not changed.²⁹

The Judge, in making his own calculation of the acres to be irrigated, (because Applicants failed to do so), improperly concludes that Applicants' proposed settlement with LCRA and the City only reduces the area available for irrigation by 1.9 acres and no more than another 13.1 acres. This is not calculable from the evidence introduced by Applicants. The additional buffer zones are not stated in acres; therefore, the Judge's conclusion that there is still another 13.1 acres available to be used as buffer zones is not based on any evidence in the record. Furthermore, the Judge began his calculation by stating that 300 acres were available for irrigation as per Dr. Miertschin's letter dated 7/21/05, to the E.D.³⁰ Yet, the Applicants' evidence shows that the Judge's starting figure of 300 acres is also incorrect. As late as June 23, 2006, there were only 285 acres available for irrigation, not 300 as the Judge incorrectly concluded. See Exhibit P-8.³¹

285 acres is the number which Applicants proposed to be irrigated when Notice of Receipt of Application and Intent to Obtain a Water Quality Permit was first published on August 4, 2005. Exhibit P-7. 285 acres was also the number which Applicants proposed to be irrigated when Notice of Application and Preliminary Decision was published on 4/23/06

²⁸ See proposed Settlement Agreement between Applicants, City of Austin and LCRA; Rebuttal Testimony of Dr. Miertschin, Pages 2, 4, 5, and 9; and Miertschin Rebuttal Exhibit No. 2, Lazy Nine M.U.D. Effluent Disposal Area Rocky Area Map.

²⁹ Transcript Page 447 Line 25; Page 448 Lines 1 – 9.

³⁰ PFD Pg 42; and Applicant's Ex. 3, Miertschin's Ex. 5.

³¹ See Notice of Public Meeting, published 6/23/06, in Miertschin's Ex. 3 to Applicants' Ex. 3.

(Exhibit P-9), and when Notice of Public Meeting on an Application for Water Quality Land Application Permit was published on 6/23/06. See Exhibit P-8.³² Since that time and only recently, by virtue of the proposed Settlement Agreement between Applicants, LCRA and the City, buffers were increased (as stated in items 1 – 3 above) and another 1.9 acres were excluded (as stated in item 4 above). This evidences that less than 285 acres are now available for effluent application, contrary to the testimony of Dr. Miertschin.

Applicants' experts had calculated the proposed effluent application rate – prior to Applicants' proposed settlement with LCRA and the City of Austin - based upon 285 acres being available for irrigation.

Dr. Carlisle testified that based on his preliminary calculations, there is probably land available for the irrigation of the proposed wastewater loading rates. And that his recollection of the loading rate was going to be variable depending upon the time of the year, but max is 1 inch per day, ½ inch on average and in the wintertime as low as 3/10 to ½ inch per day. Assuming that 95 or 98 percent of the land could be irrigated, then there will be enough land.³³

98% of the original 374 acres is 366.52 acres. The reduction of the available 285 acres for an increase in buffers results in a number of acres available for irrigation of much less than the 366.52 acres which should be available according to Dr. Carlisle.

Applicants have put forth no evidence that the reduced number of acres now available for effluent application will allow sufficient infiltration to prevent run off and water quality degradation. Considering that buffer zones have been increased, some areas of rock

³² See Notice of Application and Preliminary Decision – 4/23/06; and Notice of Public Meeting on an Application for Water Quality Land Application Permit – 6/23/06; and Applicant's Ex. 3, Miertschin's Ex. 5.

³³ Transcript, Pg 669; Page 670 Lines 1 – 19.

outcrops excluded, there is testimony that seeps are found on the property which may require buffers, there is an area of wetlands and 2 streams which require buffers, and there may be areas of slope at 12% or greater which may not be irrigated, Applicants are unable to eliminate the possibility of surface water or ground water contamination from irrigation of effluent.

Dr. Carlile testified that to calculate the area, which could be used for irrigation, it is necessary to subtract the buffer zones and any other areas that could not be irrigated. If there were not enough acreage for the proposed application rate, the application rate would have to be lowered or get more acreage.³⁴

Such gaps in analysis and planning as to a final irrigation plan, an irrigation plan for the second and final phases, an emergency plan, and an accurate number of acres to be irrigated preclude TCEQ from rationally concluding that the Applicants have demonstrated that the proposed activities will not adversely affect ground and surface waters. Protestants are entitled to a final determination on these very important and critical issues. Issuing the proposed permit in this context would be manifestly unlawful.

II. Need, Capacity and Regionalization:

(a) Need and Capacity:

The Protestant's Application demonstrates on its face that much of the wastewater capacity of the proposed facility is not needed to serve the Sweetwater development and is speculative capacity. See Exhibit P-10.³⁵ The Application for New TLAP Permit, Domestic Technical Permit 1.1, section 1(b) states: "A new subdivision will be constructed upon approval of this permit application. **The initial phase will be sufficient to**

³⁴ Transcript, Page 663 Lines 23 – 25; Page 664.

³⁵ Domestic Technical Report 1.1; Prefiled Testimony of Dr. Miertschin.

handle the wastewater loading.” This answer was provided in response to specific instructions: “Provide a detailed discussion regarding the need for the proposed permit or proposed phase(s). Failure to provide sufficient justification may result in the Executive Director recommending denial of the proposed phase(s) or permit.”

The ALJ determined that because the Application asserts that the Final Phase 700,000 gallon per day flow is projected to be reached in 2012 “the ALJ cannot agree that 2012 is so far in the future that there is no need for wastewater facilities to treat a flow volume reasonably anticipated by that year.”³⁶ The evidence, however, does not support the **need** for wastewater facilities to treat 700,000 gpd. The Application asserts the needs of the subdivision will be met by the initial phase; other parts of the application assert that 2,250 living units will require 700,000 gpd but testimony by the developer and engineer confirmed only 1,800 living units are planned for the subdivision.³⁷ There is no demonstration of a need for 700,000 gallons per day on any timeframe. The ALJ specifically concluded that Lazy Nine may need 540,000 gallons per day to serve the projected 1,800 living units within the Sweetwater Subdivision.³⁸ Applicants assert that additional capacity may be needed to develop 20 or 25 acres of commercial development within Lazy Nine.³⁹ The Application, however, makes no mention of commercial wastewater service or the potential capacity needed to serve 20 or 25 acres of commercial development. The ALJ correctly concludes that the commercial development is uncertain, and “there is no evidence to quantify that flow.”⁴⁰ Traditionally retail and small restaurants use much less water than residential development and could not

³⁶ See PFD, Pg 17.

³⁷ See PFD, Pg 19.

³⁸ See PFD, Pg 20.

³⁹ Prefiled Testimony of Rick Wheeler, P.E.; Prefiled Testimony of William T. Gunn, III.

⁴⁰ PFD, Pg 20.

possibly require 160,000 gallons per day of wastewater service. The Applicants have not sustained their burden of demonstrating the need for the wastewater capacity being requested.

By acquiring a permit with excess capacity the Applicants are circumventing the major amendment process for adding capacity to existing wastewater treatment facilities as capacity is needed. Avoiding the major amendment process denies downstream and adjacent landowners the opportunity for notice, comment, and request for contested case hearing. Amending the permit as capacity is needed allows proper evaluation of the facility's operational and management capabilities and ability to handle larger capacities. The ALJ erred in concluding the Applicant demonstrated by a preponderance of the evidence "that Lazy Nine will need at least 540,000 gpd of domestic wastewater treatment capacity over the next few years to serve customers within its service area."⁴¹ The Commission should exercise its discretion under Texas Water Code section 26.0282 to "based on consideration of need, including the expected volume and quality of the influent" to deny or alter the Lazy Nine MUD draft permit in order to reflect the actual need demonstrated by Applicants.

(b) Regionalization

Applicants presented several letters to TCEQ from nearby wastewater service providers regarding their interest and ability in providing wastewater service to Lazy Nine. See Exhibits P-11, P-12, P-13, and Exhibit P-14 in Globo.⁴² Lazy Nine was required to make these inquiries by the TCEQ under their policy to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to

⁴¹ See PFD, Pg 20.

⁴² Protestant's Prefiled Testimony Miertschin Exhibit 3 and 5.

implement this policy.” Tex. Water Code § 26.003. Based on the letters presented by the Applicant, the ALJ concludes that “while the evidence would not be sufficient to eliminate any reasonable doubt, the ALJ finds it more likely than not that there is a lack of undedicated wastewater capacity in the immediate region.”⁴³ The ALJ errs in this conclusion because a preponderance of the evidence does not show that granting this permit complies with the Texas policy to promote regionalization; and the letters presented by Lazy Nine do not show that there are not nearby facilities that could serve the Sweetwater development’s wastewater needs.

1. The letter from Lakeway MUD, attached as Exhibit P-11, is not in response to Lazy Nine’s wastewater permit. The letter states “RE: Application from Lazy Nine MUD to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis County, Application No. 34753-CCN: Pending, RN: Pending.” There is no indication what sort of capacity Lazy Nine requested from Lakeway or if any specific number was requested as part of the CCS; in any event the Lazy Nine CCN application is not relevant to the potential wastewater treatment capacity sought for permit application WQ 0014629-001. Frequently MUDs have a CCN for large service areas and various treatment facilities within that service area. The letter does not state what treatment capacity was requested from Lakeway MUD. The letter from Lakeway MUD is not probative evidence that Lakeway MUD does not have undedicated wastewater treatment capacity.
2. The letter from LCRA, attached as Exhibit P-12, states that “you asked if the LCRA can provide wastewater service to the Lazy Nine MUD at a flow of 900,000 gallons per day.” The response from LCRA is that “Should the LCRA be successful in obtaining the

⁴³ PFD, Pg 24.

requested increase in capacity at the Lake Pointe Plant System that would leave only approximately 800,000 gallons per day of available capacity. Best [sic] on the capacity available should LCRA obtain its permit amendment, LCRA, there would be insufficient capacity in the Lake Pointe Plant to honor and serve a request for the projected flow of 900,000 gallons per day.”

As discussed previously the maximum possible need demonstrated by the Applicant is 540,00 gallons per day of wastewater. The LCRA letter clearly contemplates nearly double that capacity being needed. The LCRA letter is not probative evidence that there is not sufficient undedicated wastewater treatment capacity in the area to serve Lazy Nine.

3. The letter from Hurst Creek MUD, attached as Exhibit P-13, does not state the wastewater capacity requested from Lazy Nine. The letter merely states that “existing Hurst Creek MUD wastewater system facilities would need to be significantly expanded to provide service to Lazy Nine MUD. It does not appear to be very practical or reasonable for Hurst Creek MUD to undertake such an effort. ”Without any indication whether the capacity requested was 180,00 gpd, 540,000 gpd, or 900,000 gpd as was the case from LCRA, the Hurst Creek MUD letter is not probative of undedicated wastewater capacity in the area.
4. Correspondence with Travis County WCID 17 is encompassed in 3 documents, all attached as Exhibit P-14 in Globo. In the June 14, 2005 letter from Richard J. Wheeler, P.E. to Deborah Gernes, General Manager, Lazy Nine does not inquire whether Travis County MUD 17 has any available wastewater treatment capacity or interest in serving

Lazy Nine's wastewater needs but rather request a letter indicating that "the District either does not have capacity to serve Lazy Nine or has no intention of serving Lazy Nine." Here Mr. Wheeler points out that Lazy Nine has obtained two CCN's but does not mention the capacity being sought by Lazy Nine, the location of the development or the distance from the Travis County WCID 17 facilities. In the July 20, 2005 letter from Travis County WCID 17 to Lazy Nine Ms. Gernes confirms that "[a]lthough District 17 is in proximity to the MUD, the District systems would have to be significantly expanded to provide service to the MUD, and it does not appear feasible to undertake this effort," but "the District would be willing to work with the MUD to provide service to the area should that option be feasible." Again there is no indication of the wastewater capacity requested to be served and none of the correspondence between Lazy Nine and Travis County WCID 17 states a capacity that was requested. The letter from Travis County WCID 17 is not probative evidence there is not undedicated wastewater capacity in the area near to Lazy Nine MUD.

The ALJ consistently concluded that the surrounding wastewater treatment facilities did not have capacity to serve the Lazy Nine MUD, although there is no evidence in the record of this fact.⁴⁴ The only evidence as to capacity of other facilities, however, is that 900,000 gallons per day were requested of LCRA and LCRA has 800,000 gallons per day undedicated capacity, more than enough to serve the needs of Lazy Nine MUD, which according to the ALJ are at the most 700,000 gallons per day, more likely 540,000 gallons per day, and according to the Application even less than that. The ALJ's finding that "more likely than not there is a lack of undedicated wastewater treatment capacity in the immediate region"

⁴⁴ PFD, Pg 21, 22, 23.

is not in accordance with the weight of the evidence. There is no evidence in the record that there is a lack of undedicated wastewater treatment capacity in the region.

The ALJ also recommends that the Commission issue the requested permit because doing so would “modestly encourage and promote regional wastewater collection, treatment, and disposal.”⁴⁵ The ALJ’s reasoning is that although Lazy Nine has not demonstrated and may not need the capacity requested for the permit, “the excess capacity could serve the possible, but uncertain, commercial development at the Sweetwater Project or other needs along the Highway 71 corridor. For example, it could serve approximately 500 additional single-family homes. In short, it would be a significant regional facility, which state policy encourages.”⁴⁶ The ALJ’s reasoning, carried to its logical extent, completely guts the requirement that an applicant demonstrate the need for the proposed wastewater facility and the State’s policy to encourage regional wastewater treatment. The LCRA has a regional wastewater treatment facility very near the proposed Lazy Nine facilities, and as demonstrated by the LCRA’s letter this facility has 800,000 gallons per day of undedicated capacity that could serve Lazy Nine. According to the ALJ, however, Lazy Nine should build another regional facility 3 miles down Highway 71 in order to promote regionalization of waste treatment. Under the ALJ’s reasoning, an applicant needing 100,000 gallons per day of capacity could apply for a 1,000,000 gallon per day facility and operate such as a regional facility if the market arises, whether that operator has a demonstrated ability to provide such regional waste services or not.

The Lazy Nine has no demonstrated ability to provide waste services within its

⁴⁵ PFD, Pg 24.

⁴⁶ PFD, Pg 25.

own boundaries yet the ALJ is recommending this facility be built larger than necessary to accommodate future, unplanned development outside the MUD boundaries.⁴⁷ The ALJ's recommendation conflicts with Texas Water Code section 26.003 encouraging the development of regional and areawide waste collection and Texas Water Code section 26.0282 directing the commission to consider the need, including the expected volume...of influent" in issuing wastewater treatment permits. The Commission should exercise its discretion to deny Lazy Nine's permit application based on a lack of need and conflict with the State's regional waste collection policy.

III. The Judge Improperly Relied on Testimony of the Executive Director's Staff to Carry Applicants' Burden of Proof:

The Judge improperly concludes that 30 TAC 80.127(h) and Section 5.228(e) of the Water Code provide authority for him to use the deposition testimony of the ED's representatives, Firoj Vahora and Julian Centeno, to assist Applicants sustain their burden of proof.⁴⁸ This is contrary to law.

30 TAC 80.127(h) does not prohibit the introduction of evidence, analysis, studies or review that the ED is required to perform. But, the admission of such evidence is still limited by the prohibition of the Water Code, Sec. 5.228(e).

30 TAC 127(h) does not give the Judge authority to use the listed evidence in assisting the Applicants to meet their burden of proof, but, in accordance with the Water Code, only to show the fact that all procedural requisites of the permitting process, including analyses, studies, etc., have been performed.

Applicants have attempted to use the deposition testimony of Firoj Vahora, Applicants'

⁴⁷ See PFD Pg 24.

⁴⁸ PFD Pg 48-50.

Exhibit 8, and Julian Centeno, Applicant's Exhibit 9, to carry their burden of proof in this case. These depositions were admitted into evidence at the contested case hearing over the objection of Protestants' counsel. Applicant's Closing Argument at 7, 8.

Clearly, Mr. Firoj Vahora and Mr. Julian Centeno, through their deposition testimony, are acting for the Executive Director. Mr. Vahora testified as team leader for the Municipal Permitting Team of the TCEQ and Mr. Centeno testified as a permit reviewer and permit writer for TCEQ and identified as an exhibit to his deposition the Technical Summary and Executive Director's Preliminary Decision, dated March 31, 2006. See Applicants' Reply Page 6, Paragraph II.

These depositions could only be used to complete the administrative record as required under the Water Code – that is to provide evidence that all procedural rules were followed. Those portions of the depositions in which Vahora and Centeno state that the proposed permit complies with all applicable and statutory and regulatory requirements should have been disregarded by the ALJ, because such testimony violates the prohibition against the E.D. and his staff from assisting with the burden of proof.

Even if it is found that the above cited TAC conflicts with the provisions of the Water Code, rules of procedure do not override the statutory language found in the Water Code, that is, the statutory language prohibiting the E.D. from carrying Applicants' burden of proof. Rules of procedure, when in conflict with statutory prohibitions, cannot be used to eviscerate the statutory meaning. Rules of procedure must conform to statutory provisions.

Accordingly, the ALJ should have disregarded any conclusions made by the E.D. or his staff regarding compliance with statutory and regulatory requirements. The ALJ erred in

admitting the depositions for any purpose other than that the application is administratively complete and the manner in which it became administratively complete (all procedural requisites of the permitting process).

IV. The Change in Applicant Name is a Major Amendment to the Permit.

The Judge improperly concluded that the change in the co-applicant from FC Sweetwater LLC to Forest City Sweetwater Limited Partnership was only a clerical error. There is nothing to support this conclusion.

The change of name or an attempted transfer of an application is no mere clerical error. Under the provisions of 30 TAC 281.23 and 305.62, a substantive change to an application, as the change in applicant, constitutes a major amendment. Under 30 TAC 281.23 such change constitutes "an amendment requiring additional notice." The new notice must include "a description of the proposed amendments to the application." 30 TAC 281.23(a)

The original co-applicant and the present co-applicant are two distinct entities whose identities are not interchangeable, regardless of whether or not they are related or affiliated entities. This is easy to see in the context of contract law. If a contract was entered into between one party and a limited liability company, could the first party require a limited partnership (a related entity to the LLC) perform the obligations of the original contract? The answer is emphatically no. Our Business Organization law allows the formation of many different forms of business entity. The principals of these entities, however, are responsible for knowing and contracting in the proper name. The obligations of a contract entered into by one entity cannot be simply transformed into the obligations of another related entity by using the lame excuse that it was just a "clerical error". The same goes for the rights resulting from the

contract.

Similarly, Applicants, who allegedly are acting through their authorized representatives, must have knowledge of the differing related entities which they have formed and the reasons for which each was formed. Exchanging one business entity name for another business entity name is not a simple change, but a change which results in freeing one entity from any obligation or enjoyment of any rights and allowing another entirely different entity to be obligated and enjoy such rights. A change in co-applicant name is, indeed, not a minor clerical error.

Protestants objection to the change in applicant name is not that we didn't receive notice, but that the change of the co-applicant's name from FC Sweetwater Partner LLC to Forest City Sweetwater Limited Partnership is a major amendment. The issue is not whether Protestants were harmed by this change, as the Court suggests, but the issue is whether the Applicants complied with TCEQ rules, and they have not.

The initial permit application was filed only by Lazy 9.⁴⁹

Since Lazy 9 did not own the land on which the proposed STP would be located or the land where the proposed irrigation site would be located, TCEQ required that either an easement be created in favor of Lazy 9 and/or the land be leased by Lazy 9.⁵⁰ Lazy 9 responded to TCEQ on July 21, 2005, by stating that FC Sweetwater Partner LLC, the owner of both sites, would be added as co-permittee.⁵¹

The signature page, purportedly signed on behalf of FC Sweetwater Partner LLC (by

⁴⁹ See Prefiled Testimony of Dr. James Miertschin, Miertschin Exhibit No. 2, which is a copy of the original application filed with TCEQ on June 8, 2005.

⁵⁰ See letter dated June 22, 2005 from TCEQ to Miertschin.

⁵¹ See Paragraph 1.b., page 2 of 11, of the Domestic Administrative Report 1.0 attached to the July 21, 2005 letter of Dr. Miertschin to TCEQ.

William T. Gunn, III, as "Partner", although there are no partners in the limited liability form of business organization) was also provided to TCEQ.⁵² Although the TCEQ requires that both co-permittees sign separate signature pages to the application, there is no signature page in the record on behalf of Forest City Sweetwater Limited Partnership as a joint applicant. The only signature pages are for Lazy 9 and another for FC Sweetwater Partner LLC as co-permittee.

TCEQ determined that the permit application was "administratively complete" on July 29, 2005.⁵³ See Exhibit P-6.

As of July 29, 2005, TCEQ records show that the applicant and co-permittee were Lazy 9 and FC Sweetwater Partner LLC, respectively, and the signature pages on file with TCEQ were for the same two entities. *Forest City Sweetwater Limited Partnership was not an applicant at the time that the application was determined "administratively complete".*

In fact, when the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit was published on August 4, 2005, notice was given that FC Sweetwater Partner, LLC (not Forest City Sweetwater Limited Partnership) and Lazy 9 were the applicants.⁵⁴ See Exhibit P-7.

By the time of the next required notice, Notice of Application and Preliminary Decision (published on 4/23/06), **the co-permittee had become a completely different entity from the original co-permittee**, namely, Forest City Sweetwater Limited Partnership, the entity

⁵² See Paragraph 7, Page 8 of 11 of the Domestic Administrative report 1.0 - signed by William T. Gunn, as Partner, on July 20, 2005.

⁵³ See Prefiled Testimony of Dr. Miertschin, Page 10, and July 29, 2005 letter of TCEQ to Mr. Mike Willatt.

⁵⁴ Prefiled Testimony of Dr. Miertschin, which contains the Affidavit of Publication for such notice.

which Applicants now claim, is the co-permittee.⁵⁵ Exhibit P-9.

Applicants have introduced no evidence to support the right of Forest City Sweetwater Limiter Partnership to stand in the shoes of the original co-permittee, FC Sweetwater LLC, and have introduced no evidence that, as required by 30 TAC 281.23(a), later notices included a description of the proposed amendments to the application. In fact, the later notices were silent as to any amendment whatsoever, but just inserted the name of the Limited Partnership in place of the LLC, with no statement or description or notice that any amendment had occurred. This is a clear violation of Commission rules, and the permitting process should begin anew because of the failure to follow Commission rules and provide the required notice of amendment to the permit.

V. The Record Reflects Only Contradictory Evidence to Support the Alleged Authority of William Gunn to Apply for the Permit on Behalf of Lazy 9 or Forest City Sweetwater Limited Partnership.

As a result of misapplying the burden of proof in the PFD, the ALJ errs in determining that Gunn had the authority to act for Forest City Sweetwater Limited Partnership. At the hearing, the Applicants produced no evidence that Gunn had the authority to act or sign the permit application on behalf of either Forest City Sweetwater Limited Partnership or its general partner, FC Sweetwater Partner LLC.

In fact, the evidence affirmatively establishes Gunn's lack of authority, as it is undisputed that Gunn is only a limited partner in Forest City Sweetwater Limited Partnership. Gunn's bald assertion that he had the requisite authority from another source, membership in the management committee of FC Sweetwater Partner LLC, was contradicted and undermined by his own admissions that he had no written, specific authority from the LLC to act on the

⁵⁵ Prefiled Testimony of Dr. Miertschin, Page 13, and Affidavit of Publication, publication date of April 23, 2006.

permit application.

Having failed to rebut the evidence that Gunn was a limited partner with no authority to act for Forest City Sweetwater Limited Partnership, the ALJ clearly errs in concluding that the Applicants had carried their burden to prove Gunn's authority by a preponderance of the evidence. Moreover, the ALJ impermissibly shifts the burden by requiring the Protestants to rebut Gunn's bald claim of authority.

Under the provisions of 30 TAC 305.44(a)(2), when an applicant is a partnership, the application must be signed by a general partner. The application is signed by Mr. Gunn as "Partner", yet he is only a limited partner of Forest City Sweetwater Limited Partnership.⁵⁶ Clearly, Mr. Gunn cannot establish his authority over Forest City Sweetwater Limited Partnership on this basis. Besides the governing rule of 30 TAC 305.44(a)(2), it is axiomatic in Business Organizations law that a limited partner has no authority to bind the partnership. See Texas Business Organizations Code, Articles 153.001 – 154.

Instead, the Applicants claim that Mr. Gunn's authority to act for Forest City Sweetwater Limited Partnership stems from a different source: his membership in the management committee for FC Sweetwater Partner LLC, which is Forest City Sweetwater Limited Partnership's general partner. At the hearing, Gunn stated that Forest City is a New York Stock Exchange Company that is the majority owner in Forest City Sweetwater Limited Partnership.⁵⁷ When asked who was the general partner of Forest City Sweetwater Limited Partnership, Mr. Gunn replied that there is a management committee that Forest City

⁵⁶ Prefiled Testimony of William T. Gunn, III, Pg 2.

⁵⁷ Trial Transcript, Pg 557, Lines 15 – 24.

appointed, and he is a member of the management committee.⁵⁸

Yet when Gunn was asked by Protestant's counsel on cross-examination if "there is anything in the files . . . anything at TCEQ or submitted into evidence that, in writing, authorizes you to act as the managing partner . . . for Forest City Sweetwater Limited Partnership," Gunn responded: "for this particular act, I don't believe so."⁵⁹ (emphasis added). When Protestant's counsel then said "[s]o when you indicate certain things in your prefiled testimony, there's nothing of record that would indicate that you have authority to make those representations for the co-applicant," Gunn admitted: "No sir, but I could have it to you by the end of the day, if you want it."⁶⁰ (emphasis added). Later, however, Gunn changes his testimony and states that somewhere there is a general authorization for him to act for the management committee, on this project.⁶¹

Despite Gunn's damning admissions that he had no authority from FC Sweetwater Partner LLC to sign this particular permit for Forest City Sweetwater Limited Partnership, the ALJ concludes that "[t]here is no evidence to contradict Mr. Gunn's claim of authority."⁶² In fact, Gunn's own admissions contradict his claim of authority. It is hard to see why, under these circumstances, the ALJ would find that Gunn more likely than not had the requisite authority.

The ALJ effectively reverses the burden, making it incumbent upon the Protestants to prove a lack of authority. This is clearly in error, as it is the Applicants who must demonstrate Gunn's authority by the preponderance of the evidence. Here, the Applicants failed to carry

⁵⁸ Transcript Pg 558, Line 8.

⁵⁹ Transcript Pg 559, Lines 1 – 10.

⁶⁰ Transcript Pg 559, Lines 11 – 16.

⁶¹ Transcript Pg 564, Lines 19 – 25, and Pg 565, Lines 1 – 6.

⁶² PFD Pg 7.

their burden.

The ALJ's PFD is also based upon an incorrect conclusion concerning the facts and evidence. The ALJ finds that FC Sweetwater Partner LLC, the general partner of the co-applicant, is a corporation.⁶³ Based upon this incorrect factual determination, the ALJ finds that under 30 TAC 305.44(a)(1), Gunn as the "person who performs similar policy or decision-making functions for the corporation...." has authority to sign documents on behalf of the corporation. Clearly, it has been established without a doubt that the general partner of FC Sweetwater Limited Partnership is not a corporation, but is in fact a limited liability company, and 30 TAC 305.44(a)(1) does not apply.

The ALJ also finds that Gunn satisfies the standard established in 30 TAC 305.44(a)(1) as a "person who performs similar policy or decision-making functions" for FC Sweetwater Partner LLC.⁶⁴ He concludes that "[w]ritten authorization would be better evidence, but the ALJ sees nothing in 30 TAC 305.44(a)(1) that requires it for a person who performs 'decision-making functions.'" ⁶⁵ In light of Gunn's limited partner status in Forest City Sweetwater Limited Partnership and his contradicted claim that he has FC Sweetwater Partner LLC management authority, and the general partner of FC Sweetwater Limited Partnership is not a corporation, written authorization of Gunn's authority was necessary evidence. Because TCEQ required Forest City Sweetwater Limited Partnership to be a co-permittee for the application, this lack of evidence is fatal to the application.

Moreover, the ALJ's handling of this issue in the PFD sets an awful precedent for future Applicants, who may feel free to play fast and loose with the facts of their authority. The

⁶³ PFD Pg 10.

⁶⁴ PFD Pgs 10-11.

⁶⁵ PFD Pg 11.

Commissioners should not tolerate disregard for strict compliance with the law; regardless of the issue of harm, this disregard weakens the integrity of the permitting process.

VI. The ALJ Errs in Determining that the Applicants Sufficiently Investigated the Geology of the Proposed Sewerage Treatment Plant (STP) and That There is No Evidence of a Fault at Either Site:

By misconstruing the testimony of the geologists charged with investigating the proposed STP, the ALJ's PFD finding that Applicants sufficiently investigated geologic conditions under the proposed STP and finding that no evidence of a fault under the STP exists, is contrary to the evidence.

A careful reading of the testimony of geologists Woodruff and Thornhill reveals that they failed to examine the subsurface geology of the STP in any meaningful way and failed to rebut the existence of an inferred fault underlying the STP. This existence of a fault, a subsurface geological feature, is a characteristic of the proposed STP site that poses unreasonable risks of contamination of groundwater and surface water. Therefore, the proposed STP fails to meet the requirements of 30 TAC 309.20(a)(2).

Under 30 TAC 309.12 and 309.13, unless the proposed site minimizes possible contamination of water resources, a permit shall be denied.

Woodruff Testimony:

The LCRA map accepted into evidence at the preliminary hearing of this cause showed a fault line in the area of the proposed STP.

The Applicants' witness, Woodruff, testified that it was his job in this project to look at the subsurface geology. Although Woodruff is a Licensed Professional GeoScientist and a Registered Professional Geologist, his survey of the subsurface geology in this project was

limited to the area where the proposed irrigation field is to be located.⁶⁶ He was retained by the Applicants as an expert in geology and to determine proper site selection, yet he was not tasked with inspecting or studying the site of the proposed STP.⁶⁷ Nor did he perform a lineament survey.⁶⁸ Woodruff testified that there were no faults or sinkholes *only* on the irrigation site.⁶⁹ He could not make the same statement about the proposed STP.

Under 30 TAC 309.20(a)(2), the following geological study is required:

Geology. The existence of any unusual geologic formations such as faults or sinkholes on the waste disposal site shall be noted in the technical report and identified on the site map. The conceptual design of the waste disposal systems shall include appropriate engineering considerations with respect to limitations presented by these features.

The ALJ, citing the wrong section of the TAC, determines that the name of 30 TAC 309.20(a)(2) and its subchapter, "Land Disposal of Sewage Effluent," compels the following conclusion: "the ALJ does not interpret the rule as requiring an application to include a report concerning faulting below the pre-disposal treatment plant."⁷⁰ It is hard to see why the name and specific text of these sections logically leads to this conclusion. Lacking a better justification (i.e. a cited authority), this reasoning seems arbitrary and geared toward a foregone conclusion.

In the absence of a specific exclusion in the regulations, a more logical reading of 30 TAC 309.20(a)(2) would include mandatory consideration of geologic formations underlying the STP itself. Here, Woodruff failed to include the required technical report, violating the mandate of 30 TAC 309.20(a)(2).

⁶⁶ Transcript Pg 238 Lines 17 – 25; Pg 239– 40 Line 1; Pg 249 Lines 4 – 13.

⁶⁷ Transcript Pg 212, Lines 14 – 25; Pg 213, Lines 1 – 12, and Prefiled Testimony of Charles Woodruff, Jr, Pg 2.

⁶⁸ Transcript, Pg 211 Lines 6 – 14.

⁶⁹ Prefiled Testimony of Dr. Charles Woodruff, Jr, Pg 14.

⁷⁰ PFD Pg 35.

The ALJ tries to explain away the undeniable fact that Woodruff failed to consider anything outside the irrigation area. The PFD says that “the ALJ does not conclude from his lack of focus that Dr. Woodruff’s conclusions have no relevance to the treatment plant site. Dr. Woodruff generally reviewed the geology in the entire region.”⁷¹ The ALJ notes that the irrigation areas are 6,000 to 12,000 feet from the treatment plant, as if this fact might support a tight link between Woodruff’s studies and the geologic conditions underlying the STP.⁷² This is far from the sort of rigorous examination that the regulatory regime requires. 30 TAC 309.20(a)(2) mandates that “[t]he conceptual design of the waste disposal systems shall include appropriate engineering considerations with respect to limitations presented by” the studied geological features. For the ALJ to accept overly-general studies like Woodruff’s, that ignore the geologic features underlying the STP, would render 30 TAC 309.20(a)(2) useless in the sense that no appropriate engineering considerations would be implemented. Because Woodruff’s studies fail to satisfy 30 TAC 309.12, requiring proposed sites to minimize possible contamination of water resources, the permit must be denied.

Thornhill Testimony:

The Applicants’ witness, Thornhill, also a geologist, was given the task for this project of developing some of the information concerning land disposal of sewage effluent, specifically concerning the geology, soils and groundwater quality of the site of the proposed irrigation field and surrounding areas.⁷³ Thornhill testified that he submitted a figure showing features that he saw on the site, did a geologic assessment, a drawing showing where those features were,

⁷¹ PFD Pg 36.

⁷² PFD Pg 36.

⁷³ Prefiled Testimony of Michael R. Thornhill, Pg 2.

did a well inventory and a geologic map.⁷⁴ The results of his work were submitted to Dr. James Miertschin who used it to prepare attachments C, M and N to the permit application.⁷⁵ On cross-examination, Thornhill stated that he was tasked to “put together the geological components” of the permit and to assist in the soils work. Thornhill did not personally conduct the field investigations, but his project manager conducted these investigations and did not note a fault.⁷⁶

Thornhill admits that Woodruff is more of an expert than he is in using aerial photography to determine the presence of a fault. Yet, Woodruff did not use aerial photography in his inspection of the land or in his studies, although he recognizes that “linear features, linear fabrics in the photography . . . may indicate lineaments or fractured areas or faults.”⁷⁷ Thornhill did not look at the LCRA map, which shows a lineament going through the tract where the proposed STP is to be located. He admits that he did not look for lineaments because it was not part of his study.⁷⁸

On rebuttal on December 13, 2006, Thornhill was called by the Applicants, who asked him to investigate whether or not he could find any evidence of a fault line running through the proposed wastewater treatment plant site.⁷⁹ His investigation of the existence of a fault was conducted after his initial testimony on December 10, 2006, and resulted in his preparation of a map, Applicants’ Exhibit No. 14. This map shows the local surface geology in the vicinity of the plant. Thornhill admitted that there is a fault mapped in the area, but claimed it is west of

⁷⁴ Transcript, Pg 175, Lines 16 – 22.

⁷⁵ Prefiled of Thornhill, Pg 4.

⁷⁶ Transcript, Pg 177, Lines 3 – 25.

⁷⁷ Transcript, Pg 211, Lines 6 – 14; Pg 178, Lines 1 – 18.

⁷⁸ Transcript, Pg 178, Lines 19 – 25; Pg 179, Lines 1 – 5.

⁷⁹ Transcript Pg 610, Lines 9 – 14.

the treatment plant.⁸⁰

Thornhill introduced a geologic map of the Shingle Hills Quadrangle, Bureau of Economic Geology Open File Map, dated 2002, Applicants' Exhibit 15, which includes the area of the plant. This map also identifies a fault line, substantial in depth, in the location of the plant. It is indicated as an inferred fault or a fault that is down to depth, approximately 500 feet west of the proposed STP site. The map marked Exhibit 15 only shows surface geology.⁸¹ Thornhill then inspected the site of the proposed wastewater treatment plant to look for any surface expressions of the fault area. He did not see any surface evidence or expressions of a fault in the area where it is shown on Exhibits 14 and 15.

In an effort to rebut earlier testimony that the STP may be located on a fault, Thornhill conducted an on-site evaluation of the location of the proposed STP. His physical inspection of the property consisted of nothing more than walking the site and looking on the ground.⁸² No other studies were conducted. His opinion is: "[he] can't say that there's not [a fault] at depth, but there's no, there's no evidence at the surface . . ." that there is a fault.⁸³ Mr. Thornhill admitted that alluvium obscures surface evidence of a fault, therefore, surface evidence of faults will not be found in alluvium. There is no doubt that the STP, according to the permit application, is proposed to be constructed in the alluvium of Bee Creek.⁸⁴

Considering the LCRA map, which shows what appears to be a lineament that transects the sewage treatment plant, it would have been prudent for the Applicants to direct its' expert to survey the area of the proposed STP. This they failed to do until it was brought up at trial.

⁸⁰ Transcript, Pg 610, Lines 16 – 25.

⁸¹ Transcript, Pg 613 and 614; Pg 1 – 19.

⁸² Transcript, Pg 624.

⁸³ Trial transcript, Pg 624.

⁸⁴ Transcript, Pg 620, Lines 9 – 14; Pg 638, Lines 20 – 25; Pg 639, Pg 1 - 6.

And then, the inspection and investigation consisted of looking at a map of surface geology and "looking at the ground".⁸⁵ Nothing further – even though it is known that surface geology consisting of alluvium obscures evidence of the existence of a fault and the particular area of interest is just that – alluvium.

Thornhill admitted that there is evidence of a fault to the west of the STP.⁸⁶ He noticed differing geology from one side of the inferred fault to the other, displacement between the lower Glen Rose and the upper Glen Rose across the fault.⁸⁷ He agreed that a dislocation, which may be due to a fault, can be inferred from an abrupt change in surface geology from one formation to the next.⁸⁸ He also agreed that it is common to infer a fault by virtue of surface evidence such as swales, creeks or similar features, and that you can also infer a fault by virtue of the difference in the formation from one side of the fault versus the other.⁸⁹ Other surface evidence of a fault could be a creek bed.⁹⁰

It is probable that the STP, located in alluvium, communicates with the fault, and may be a source of transportation of contaminants from the STP site to the fault and subsurface geology. And, if it were a normal fault, it would dip toward the down throne side on the southeast, so that the fault dip would be toward the south and east. In this case the down throne side of the inferred fault would dip toward the STP.⁹¹

Thornhill agreed that faults in this area don't go straight down to the core, they have some kind of slant, but, as to this area, he didn't know what degree of slant faults in this area

⁸⁵ Transcript, Pg 624.

⁸⁶ Transcript, Pg 649, Lines 24 – 25; Pg 650, Lines 1 – 8.

⁸⁷ Transcript Pg 635, Lines 2 – 25.

⁸⁸ Transcript Pg 635, Lines 13 – 25.

⁸⁹ Transcript Pg 634, Lines 9 – 25.

⁹⁰ Pg 638, Lines 1 – 8.

⁹¹ Transcript Pg 639, Line 25; Pg 640, Lines 1 – 9.

have.⁹² He admitted that since he doesn't know the angle of the slope of the fault, he didn't know whether the fault goes below the STP at some point.⁹³

Despite this wealth of testimonial evidence on the issue of a fault underlying the proposed STP, the ALJ finds that "[t]he protestants did not offer expert testimony to prove that a fault exists below the plant."⁹⁴ Again, the ALJ has misapplied the burden of proof.

Applicants have the burden to prove by a preponderance of evidence that there is no subsurface geology which creates an unreasonable risk of contamination to groundwater or surface waters (otherwise a technical report will be needed and appropriate engineering considerations taken). Whether or not Protestants used any expert witnesses on this issue is not relevant. The record reflects, on cross-examination that a fault is present, and that considering the likely depth and slant of the fault, it may run under the STP site.

Not only is there ample evidence of a fault, both in the maps and shown in the cross-examination of the geologists, but the Applicants failed to rebut its existence. This existence of a fault, a subsurface geological feature, is a characteristic of the proposed STP site that poses unreasonable risks of contamination of groundwater and surface water. Therefore, the proposed STP fails to meet the requirements of 30 TAC 309.20(a)(2). The design of the STP must include appropriate engineering consideration with respect to limitations presented by these geologic features. The Applicants have not made sufficient studies and field investigations to determine with any degree of reliability whether a fault exists under the STP or whether it slopes under the STP. The location of the plant in alluvium presents unique problems, which limit the accuracy of the limited investigations performed by the Applicants

⁹² Pg 641, Lines 16 – 24.

⁹³ Pg 642, Lines 8 – 13.

⁹⁴ PFD Pg 37.

with regard to the location of the fault. If the fault line is within the alluvium, as it is here, any spills in the alluvium will travel through the alluvium which is highly transmissive and porous, to the fault. The fault serves as an opportunity for the contamination to get transported very rapidly, much more rapidly than would otherwise occur.

The ALJ also based his PFD on Thornhill's testimony that "he could see no way that water from the treatment plant could move toward a possible fault at a higher elevation."⁹⁵ The elevation of the fault is not the sole determining factor as to whether this geologic process would likely cause ground or surface water contamination. Thornhill and the Judge make an improper conclusion that because the fault is at a higher elevation than the STP, it may be disregarded. A fault in the area, whether at a higher, lower or same elevation, could have significant impact on the structural integrity of the STP, and any geological event which affected the structural integrity of the STP could very likely have dire consequences for the groundwater and surface waters in the area.

Under 30 TAC 309.12 and 309.13, unless the proposed site minimizes possible contamination of water resources, a permit shall be denied.

VII. Improper Apportionment of Transcript Costs:

The Administrative Law Judge has proposed to TCEQ that Applicants should only be required to pay one-half of the transcript costs, and that Protestants be required to pay the other half.⁹⁶

This proposal was made without the court taking any evidence concerning apportionment of costs. The Court does not even know the actual cost of the transcript.

⁹⁵ See PFD Pg. 37.

⁹⁶ PFD Pgs 50-52.

The Court suggests that because Protestants called no expert witnesses, but instead relied almost entirely on cross-examination in support of their case, that they should be penalized by being required to pay one-half of the transcript cost.

What the Court forgets is that the burden of proof is on the Applicants. Applicants are required to prove that their permit application complies with the law and will not adversely affect ground or surface water. Protestants are not required to put on any evidence.

Certainly, if it were a matter of who could get the best and most expensive experts, the Applicants would always succeed because of the superior financial position of Applicants and the ability to retain and pay for the testimony of numerous experts.

Additionally, at the commencement of the contested hearing, Applicants offered and introduced into evidence a stack of documents, probably over 600 pages, which were accepted into evidence the first morning of trial. Protestants had never seen this exhibit, which was marked Miertschin Exhibit 3 of Applicants Exhibit 3. Protestants, therefore, needed to determine the nature of this evidence and to cross-examine Applicants' witnesses concerning these documents and concerning the very lengthy and voluminous pre-filed testimony and exhibits submitted by Applicants.

The Judge also suggests that Applicants have been delayed for "many months" because of Protestants request for a hearing. Yet, the Judge fails to cite what the Protestants did to delay this process beyond what is normal and necessary. The contested case hearing process is set up for the purpose of requiring Applicants to prove that the proposed STP will not adversely affect ground and surface water quality.

In the preliminary hearing the Judge himself recognized the unique nature of this

application where the STP is located in one watershed (Bee Creek watershed) and the irrigation site is located on another watershed (Little Barton Creek watershed and the Contributing Zone for the Barton Springs segment of the Edwards Aquifer).

It is unconscionable to require landowners to pay for the transcript merely because they exercised a right to due process to force Applicants to prove up how our precious natural resources will be protected.

In fact, the Protestants did not request the contested case hearing, the Applicants did, which is why Applicants are required to carry the burden of proving that the proposed permit complies with all laws and regulations. The proceeding was on a fast track, with no delay in the process at all.

As an example of why this process is necessary, Applicants retained a Licensed Professional GeoScientist and a Registered Professional Geologist to survey the subsurface geology in this project, but Applicants limited his work to the area where the proposed irrigation field is to be located and was not tasked with inspecting or studying the site of the proposed STP. It was not until after the contested case hearing that the Applicants sent an expert back to the site, tasked with ascertaining whether or not there was a fault or subsurface geology at the site of the STP. Even though an inferred fault was shown on an LCRA map introduced at the Preliminary Hearing, Applicants did not make a proper investigation until forced to do so as a result of Protestants' cross-examination of Dr. Woodruff and Dr. Thornhill.⁹⁷

Protestants should not be punished for exercising their due process right to cross-examine witnesses and to have their day in court. The Court has no legal basis upon which

⁹⁷ See Transcript Pg 215, L 8-25; Pg 216; Pg 238, L 17-25; Pg 239; Pg 240, L 1; Pg 249, L 4-13; Pg 212, L 14-25; Pg 213, L 1-12; Pg 211, L 6-14; Pg 14; Pg 178, L 1-8; Pg 179; and Pg 610, L 9-14.

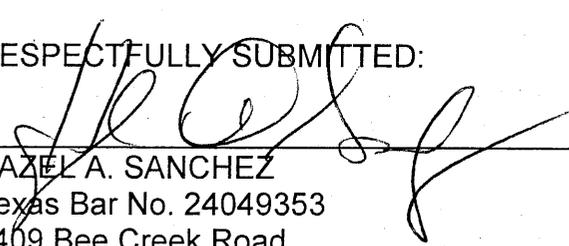
to penalize any party in this manner.

As the Judge correctly stated, TCEQ nearly always allocates most, if not all, of the transcript costs to the Applicants whether they prevailed or not, and TCEQ should do so in this case as well.

CONCLUSION

For all of the above and foregoing reasons, the Homeowners respectfully request that TCEQ not accept the PFD of the Administrative Law Judge and deny the permit application, and further, that the full cost of transcript be borne by the Applicants.

RESPECTFULLY SUBMITTED:


HAZEL A. SANCHEZ
Texas Bar No. 24049353
3409 Bee Creek Road
Spicewood, TX 78669
Telephone: 512.264.2234
Facsimile: 512.264.3078
IN PROPER PERSON AND
ATTORNEY FOR WILLIAM H. CAHILL

TRAVIS SETTLEMENT HOME OWNERS
ASSOCIATION

BY: 
LAURA GRULKE, AUTHORIZED OFFICER

Certificate of Service

I certify that on this the 14th day of May, 2007, a true copy of the Protestants' Exceptions to the ALJ's Proposal for Decision and Order issued on April 23, 2007 was served on all parties by the method shown:

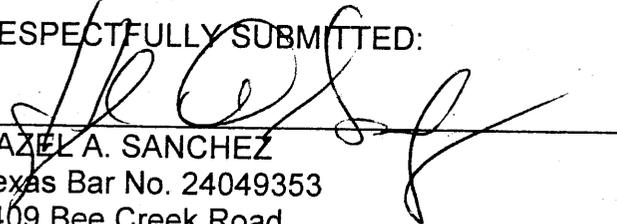
to penalize any party in this manner.

As the Judge correctly stated, TCEQ nearly always allocates most, if not all, of the transcript costs to the Applicants whether they prevailed or not, and TCEQ should do so in this case as well.

CONCLUSION

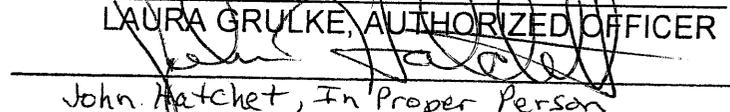
For all of the above and foregoing reasons, the Homeowners respectfully request that TCEQ not accept the PFD of the Administrative Law Judge and deny the permit application, and further, that the full cost of transcript be borne by the Applicants.

RESPECTFULLY SUBMITTED:


HAZEL A. SANCHEZ
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ASSOCIATION

BY: 
LAURA GRULKE, AUTHORIZED OFFICER


John Hatchet, In Proper Person

Certificate of Service

I certify that on this the 14th day of May, 2007, a true copy of the Protestants' Exceptions to the ALJ's Proposal for Decision and Order issued on April 23, 2007 was served on all parties by the method shown:

1. DOCKET CLERK (FAX)
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
P.O. Box 13087
Austin, TX 78711

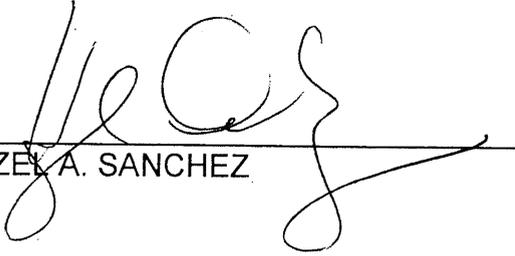
2. LAZY NINE MUNICIPAL UTILITY DISTRICT (email)
AND FOREST CITY SWEETWATER LIMITED PARTNERSHIP
Through Its Counsel of Record
Mike Willatt
2001 N. Lamar
Austin, TX 78705

3. EMILY COLLINS (email)
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
MC-175 P.O. Box 13087
Austin, TX 78711-3087

4. HOLLY C. NOELKE (email)
ASSISTANT CITY ATTORNEY
CITY OF AUSTIN LAW DEPARTMENT
P.O. Box 1088
Austin, TX 78767-1546

5. VICTOR RAMIREZ (email)
ASSOCIATE GENERAL COUNSEL
LOWER COLORADO RIVER AUTHORITY
LEGAL SERVICES-ELECTRIC
P.O. Box 220
Austin, TX 78767-0220

6. JOHN HATCHETT (email)
MANAGER
P.O. Box 340878
Austin, TX 78734



HAZEL A. SANCHEZ

SOAH DOCKET NO. 582-06-2596
TCEQ DOCKET NO. 2006-0688-MWD

APPLICATION OF LAZY NINE § BEFORE THE STATE OFFICE
MUNICIPAL UTILITY DISTRICT §
AND FOREST CITY SWEETWATER § OF
LIMITED PARTNERSHIP FOR §
PROPOSED PERMIT WQ0014629001 § ADMINISTRATIVE HEARINGS

PREFILED TESTIMONY OF DR. ROBERT CARLILE

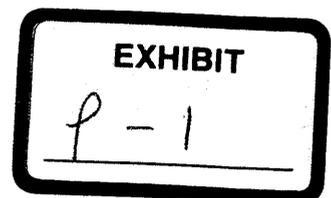
INDEX TO TESTIMONY

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III. SUMMARY OF COMMENTS AND OPINIONS4
IV. SOIL CHARACTERISTICS AND SOIL SURVEY6
V. IRRIGATION SYSTEM DESIGN.....6
VI. CONCLUSION6

EXHIBITS

- 2A Resume
- 1B LCRA Comment letter

LCRA # 1



1 **I. INTRODUCTION**

2
3 Q: Please state your name.

4
5 A: Robert Carlile.

6
7 Q: Please state your address.

8
9 A: P.O. Box 63624, Pipe Creek, Texas 78063;

10
11 Q: What subjects were you asked to evaluate for your work on this case?

12
13 A: I am an expert in the areas of soils and agronomy and reviewed the soil
14 characteristics of the proposed irrigation sites, including data submitted by Dr.
15 Wilding in his prefiled testimony, for the proposed WWTP and the effluent
16 irrigation system.

17
18 **II. QUALIFICATIONS**

19
20 Q: Please describe your education background.

21
22 A: I have the following degrees:
23 B.S. - 1959 Texas A&M University - Soils and Agronomy
24 M.S. - 1966 Washington State University - Soils
25 M.S. - 1966 Washington State University - Civil Engineering
26 Ph.D. - 1972 Washington State University - Soils

27
28 Q: Please summarize your work experience.

29
30 A: The following is a chronological breakdown of my work experience:

31
32 2002-2003
33 Director of Technical and Scientific Affairs
34 Universal Environmental Solutions, Inc., Thatcher, Arizona
35 Directed environmental and regulatory activities of contracts
36 for management of biosolids from several California sources.
37 Evaluated and summarized the development of new alternative
38 methodology for biosolids treatment and disposal.
39 Developed and managed permits for state and federal agencies under
40 multi-million dollar contracts.

41
42 1986 - 2006
43 President and Principal Engineer, B. L. Carlile & Associates
44 Consultant on 150 projects in 24 states of the United States and the

1 Republic of Mexico involving wastes and wastewater reuse systems and
2 land treatment of biosolids and animal wastes.
3 Served as expert witness in over 30 permit and court hearings involving
4 soil contamination cases, wastewater disposal, biosolids applications and
5 animal waste disposal and treatment systems
6
7 1995—2006
8 Consultant to Cargill, Inc. (previously Cerestar, Inc and American Maize
9 Products, Dimmit, Texas)
10 Soil, crop and engineering consultant on land application of waste
11 water, including site review, loading rates, soil sampling, crop selection
12 and water and nutrient utilization rates.
13
14 1982-1988
15 Research and Extension Specialist, Waste Management, Texas A&M University,
16 College, Station, Texas
17 Evaluation and demonstration of alternative waste treatment systems
18 for homes and communities; land application systems for municipal,
19 industrial and agricultural wastewater and sludges.
20
21 1972 –1982
22 Associate Professor, (Tenured) -Wastewater Treatment and Disposal - North
23 Carolina State University, Raleigh, NC.
24 Project Leader – research and demonstration of alternative waste systems
25 for on-site and non-urban developments; land treatment systems for
26 municipal, agricultural and industrial effluents and sludges;
27 Conducted groundwater studies of the Coastal Plains; wastewater
28 movement
29 and treatment in N.C. soils.
30 Taught graduate level courses and advised graduate (PhD and MS)
31 students on thesis programs.
32
33 1969 –1972
34 Research Scientist – Water Resources and Waste Management - Washington State
35 University, Pullman, WA.
36 Project Leader – Irrigation of industrial, municipal and agricultural
37 effluents; water quality studies of irrigation return flows and agricultural
38 field runoff.
39
40 1966 –1969
41 Research Engineer - Battelle Northwest, (Hanford Project) Richland, WA.
42 Water treatment studies and irrigation disposal of nuclear reactor
43 coolant water; groundwater monitoring for low-level nuclear waste;
44 nuclear treatment of municipal and industrial sludges;
45 development of regional water supplies.
46

1 1962 –1966
2 Graduate Assistant – Washington State University, Pullman, WA.
3 U.S. Public Health Fellow and National Defense Fellow in Soils and
4 Civil Engineering (Environmental and Hydrology).
5
6 1958 –1962
7 Soil Scientist – U.S. Dept. of Agriculture, Soil Conservation Service - Bryan,
8 Nacogdoches and Carthage, TX.
9 Soil survey and interpretations for agriculture, timber production
10 and other land use activities.
11
12 Q: Please identify Exhibit 2A.
13
14 A: It is a copy of my resume/vitae of experience and education.
15
16 Q: Is it accurate and up-to-date?
17
18 A: Yes.
19
20 (LCRA offers Exhibit 2A)
21
22 Q: Are you a registered professional engineer?
23
24 A: Yes.
25
26 Q: What is your role in this matter?
27
28 A: I was hired by LCRA as their soils and agronomy consultant regarding the Lazy
29 Nine application for a wastewater permit that is the subject of this hearing. In
30 particular, I was asked by LCRA to review the soil characteristics of the proposed
31 irrigation sites and the prefiled testimony and exhibits submitted by the Applicant
32 and to be prepared to testify on those matters.
33
34 **III. SUMMARY OF COMMENTS AND OPINIONS**
35
36 Q: Have you reviewed the application by Lazy Nine Municipal Utility District and
37 Sweetwater Limited Partnership (the Applicant) for Permit No. WQ 00014629-
38 001?
39
40 A: Yes.
41
42 Q: Did LCRA submit comments to the Texas Commission on Environmental Quality
43 (TCEQ) regarding the Lazy Nine application which is the subject of this hearing?
44
45 A: Yes.
46

1 Q: Did you participate in the preparation of those comments?
2
3 A: Yes.
4
5 Q: Can you identify Exhibit 1B?
6
7 A: Yes. It is the LCRA's comment letter, regarding the Lazy Nine Application, filed
8 with the TCEQ by LCRA.
9
10 Q: Are you aware of the issues raised by LCRA regarding the soil characteristics at
11 the proposed irrigation site?
12
13 A: Yes.
14
15 Q: Did you discuss similar concerns with LCRA as part of your review of the Lazy
16 Nine wastewater treatment permit applications as LCRA's consultant?
17
18 A: Yes.
19
20 Q: What concerns did LCRA have regarding the soil characteristics at the proposed
21 irrigation site as described by the Applicant?
22
23 A: Due to the variability of the soil conditions in the area of the proposed irrigation
24 site, LCRA recommended that the Applicant perform a soil depth survey of the
25 irrigation site.
26
27 Q: Have you reviewed the prefiled testimony and exhibits filed by the Applicant in
28 this matter?
29
30 A: Yes. In particular, I have reviewed Dr. Wilding's prefiled testimony and exhibits.
31
32 Q: Based on your review of the prefiled testimony and exhibits filed by the Applicant
33 in this matter, including the prefiled testimony of Dr. Wilding and the exhibits to
34 his testimony, do you have any opinions, recommendations or conclusions after
35 reviewing the Applicant's testimony and the related exhibits as they pertain to
36 certain concerns raised by LCRA in its comment letter, including comments
37 regarding the soil characteristics at the proposed irrigation site and recommending
38 that the applicant conduct a soil survey in the area of the irrigation site?
39
40 A: Yes.
41
42 **IV. SOIL CHARACTERISTICS AND SOIL SURVEY**
43
44 Q: Do you have any opinions regarding the soil characteristics at the proposed
45 irrigation site?
46

1 A: Yes. I have reviewed Dr. Wilding's data, as submitted in his prefiled testimony
2 and have arrived at certain conclusions and opinions.

3 Q: Please summarize your opinions, recommendations or conclusions after reviewing
4 the Applicant's prefiled testimony and exhibits as they pertain to LCRA's
5 recommendation that the Applicant conduct a soil survey in the area of the
6 irrigation site.

7
8 A: Having reviewed the testimony and exhibits prepared by Dr. Wilding, it appears
9 that the study he and his crew performed at the Lazy Nine irrigation site addresses
10 the concerns regarding the soil characteristics of the irrigation site that LCRA
11 initially had with the permit application.

12
13 In my opinion, the data and information in Dr. Wilding's report does not raise any
14 caution flags concerning the irrigation design as related to surface water runoff or
15 groundwater recharge at the site. Based on the data submitted as part of Dr.
16 Wilding's prefiled testimony, I see no reason to believe that any site in the
17 proposed application area, for the Lazy Nine wastewater permit, would have
18 infiltration rates less than 1 inch per hour which is well above any design
19 irrigation rate.

20
21 While it is possible that there will be occasional rainfall runoff from the site
22 during intense storm events, this should not present any surface water quality
23 problems in adjacent streams.

24
25 **V. IRRIGATION SYSTEM DESIGN**

26
27 Q: Please summarize your opinions, recommendations or conclusions after reviewing
28 the Applicant's prefiled testimony and exhibits as they pertain to LCRA's
29 recommendation to the Applicant regarding design of the irrigation system to be
30 used to irrigate the treated wastewater for the wastewater treatment plant
31 proposed in the application.

32
33 A: I have not seen the actual type of system and design to be used by the Applicant.
34 However, as long as the design application rate is under 0.75 to 1 inch per hour at
35 all points in the system, I do not see a problem.

36
37 **VI. CONCLUSION**

38
39 Q: Does this conclude your testimony?

40
41 A: Yes.

42
43

Kathleen Hartnett White, *Chairman*
P. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 22, 2005

CERTIFIED MAIL

Mr. James Miertschin, P.E., PhD
James Miertschin & Associates
P.O. Box 162035
Austin, Texas 78716

Re: Application for Proposed Permit No. WQ0014629001
Lazy Nine Municipal Utility District (CN602731572)

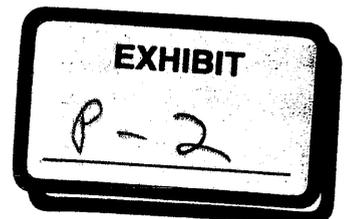
Dear Mr. Miertschin:

We have received the application for the above referenced permit and it is currently under review. Your attention to the following items is requested before we can declare the application administratively complete. Please submit one original and two copies (including a cover letter) of the complete response.

1. Item 3.d. on page 4 of the administrative report: Willatt & Flickinger is not considered a publicly owned facility. TCEQ rules defines a publicly owned facility as one built and/or maintained with public monies (e.g. Public Library, Court House, City Hall). Please provide the name, address and city of a publicly owned facility where the application will be made available for viewing and copying. The public place must be located in the county in which the facility is located.
2. Item 4.d on page 4 of the administrative report: The owner of the land on which the facility is/will be located is different from the owner of the facility. Therefore, the owner of the land can apply for the permit as a co-permittee or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give Lazy Nine Municipal Utility District sufficient property rights to the land for operation of the treatment facility and be recorded in the county where the facility is located. Furthermore, if the land is to be acquired by the Lazy Nine Municipal Utility District, a copy of an executed option to purchase agreement may be provided. The option to purchase agreement must give a legal description of the land to be purchased and identify when the option to purchase expires.
3. Item 4.e. on page 4 of the administrative report: The owner of the effluent disposal site is different from the owner of the facility. Therefore, a long-term lease agreement giving Lazy Nine Municipal Utility District uses of the land for effluent disposal must be provided. The lease agreement must include a term of at least five years, be current or include an option to renew the term, and be between Lazy Nine Municipal Utility District and the landowner.
4. Item 1.b. on page 11 of administrative report 1.1: You indicated that the landowners mailing list was submitted on a disk; however, we can not locate the disk. Please either submit the landowners mailing list on a 3 1/2 disk (using software compatible with WordPerfect) or four sets of printed labels.

COPY

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: www.tceq.state.tx.us



Mr. James Miertschin, P.E., PhD
Page 2
June 21, 2005
Permit No. WQ0014629001

5. Item 2 on page 13 of Domestic Worksheet 3.0 and Item 1.a on page 15 of Domestic Worksheet 3.1: The irrigation acreage's indicated differ. Please verify the amount of acres being used for irrigation.
6. A preliminary technical review was performed by the technical staff and it has been determined that additional information is needed before the application can be declared technically complete. Please provide a complete response to each item identified in Attachment 1 of this letter. If you should have any questions, please contact Julian D. Centeno, Jr., Municipal Permits Team at (512) 239-4608.
7. The following is a portion of the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit which contains information relevant to your application. Please read it carefully and indicate if it contains any errors or omissions. The complete notice will be sent to you once the application is declared administratively complete.

APPLICATION. Lazy Nine Municipal Utility District, 2001 North Lamar Boulevard, Austin, Texas 78705, has applied to the Texas Commission on Environmental Quality (TCEQ) for a wastewater disposal Permit No. WQ0014629001 to authorize the disposal of treated wastewater at a volume not to exceed a daily average flow of 700,000 gallons per day via irrigation. The domestic wastewater treatment facility is located approximately 6.2 miles west of the Village of Bee Cave near State Highway 71, Travis County, Texas. The disposal site is located on the south side of State Highway 71 approximately 3 miles west of the Village of Bee Cave, also in Travis County. This application was submitted to the TCEQ on June 8, 2005. The permit application is available for viewing and copying at *[public place in county in which facility is located]*.

Further information may also be obtained from Lazy Nine Municipal Utility District at the address stated above or by calling Mike Willatt, Willatt & Flickinger, at 512-476-6604.

Please submit the complete response, addressed to my attention by July 21, 2005. If the requested information is not received by the given deadline, pursuant to 30 TAC Chapter 281, the application will be removed from our list of pending applications. If you should have any other questions, please do not hesitate to call me at (512) 239-5137.

Sincerely,



Adriene McClarron
Water Quality Applications Team
Permits Administrative Review Section (MC161)
Registration, Review, and Reporting Division

Enclosure

cc: TCEQ Region 11, Water Program Manager (w/enclosure)
Mike Willatt, Willatt & Flickinger, 2001 North Lamar, Austin, Texas 78705 (w/enclosure)
Julian D. Centeno, Municipal Permits Team (MC 148) (w/enclosure)

COPY

Attachment 1
Lazy Nine Municipal Utility District
Proposed Permit No. 14629-001

Technical Report Data Completeness Review - Domestic Wastewater Permit Application

Please address the following item(s):

1. Item 1(b) on page 5 of the technical report 1.1: To complete the response to this item, we need for you to please show the proposed design flows of 0.18 MGD, 0.44 MGD and 0.7 MGD were derived. Please provide population estimates and/or projection and unit wastewater generation rate used to derive the flow estimates and anticipated growth rates for development.
2. Item 1(c) on page 5 of the technical report 1.1: To complete the response to this item, we need for you to please provide a copy of the response from Travis County WCID No. 17.
3. Item 2(c) on page 6 of the technical report 1.1: To complete the response to this item, we need for you to please complete the table for the proposed design flows of 0.18 MGD and 0.44 MGD.
4. Item 2 on page 13 of the Domestic Worksheet 3.0: For consistency and clarity, we need for you to please indicate the proposed treated domestic wastewater flows for the effluent application in GPD (first column). For clarification, we need for to please exclude runoff because it is not domestic wastewater. Also, for consistency with the Supplemental Technical Report for Irrigation Disposal, we need for you to please state the proposed acreage to be irrigated under the second column.
5. Item 2 on page 13 of the Domestic Worksheet 3.0: To complete the response to this item, we need for you to please accomplish the table for the proposed 0.18 MGD and 0.44 MGD flows.
6. Item 3 on page 13 of the Domestic Worksheet 3.0: for clarification, we need for you to please confirm that the same storage volume will be used for all proposed phases.
7. Item 4 on page 13 of the Domestic Worksheet 3.0: To complete the response to this item, we need for you to please provide a description of the rainfall runoff controls proposed for the irrigation site.
8. Item 1(a) on page 15 of the Domestic Worksheet 3.1: To complete the response to this item, we need for you to please verify that the same area, 298 acres, will be irrigated in the proposed interim and intermediate phases (0.18 MGD and 0.44 MGD flows). If not, we need for you to please complete a separate worksheet for each of the interim flows.
9. Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): The report states that "Irrigation was restricted by evaluation of the daily water needs and the antecedent four-day infiltrated rainfall." For clarification, we need for you to please explain how this condition was incorporated in the water balance and storage calculations. Was a uniform CN (74) used throughout the calculation procedure or should there be a different CN number for storm events? Why was a daily ET not used instead of the monthly average divided by the number of days in a month and what effect does a daily ET value have on the calculated hydraulic application rate and storage?

5. FACILITY SITE (Instructions, Page 30)

a. Will the proposed facilities be located above the 100-year frequency flood level? Yes No

If no, describe measures used to protect the facility. Include a site map showing the location of the treatment plant within the 100-year frequency flood level. If applicable, provide the size of dikes or other protective structures being utilized.

Provide the source(s) used to determine 100-year frequency flood plain.

FEMA Maps

For a new or expansion of a facility, will a wetland or part of a wetland be filled? Yes No

If yes, has the applicant applied for a U.S. Corps of Engineers 404 Dredge and Fill permit?
 Yes No

If yes, provide the permit number: NA

b. Indicate by a check mark that a wind rose has been submitted.

6. SEWAGE SLUDGE SOLIDS MANAGEMENT PLAN (Instructions, Page 31)

See Attachment J

Provide a sewage sludge solids management plan. Indicate by a check mark that it contains the following:

- Treatment units and processes dimensions and capacities
- Solids generated at 100, 75, 50, and 25 percent of design flow
- Mixed liquor suspended solids operating range at design and projected actual flow
- Quantity of solids to be removed and a schedule for solids removal
- Identification and ownership of the ultimate sludge disposal site
- For facultative lagoons, design life calculations, monitoring well locations and depths, and the ultimate disposal method for the sludge from the facultative lagoon

An example of a sewage sludge solids management plan has been included as Example 5 of the instructions.

Received

JUN 13 2005

Water Quality Application Team

JAMES MIERTSCHIN & ASSOCIATES, INC.
ENVIRONMENTAL ENGINEERING
P.O. Box 162305 • AUSTIN, TEXAS 78716-2305 • (512) 327-2708

July 21, 2005

Ms. Adriene McClarron
Water Quality Applications Team
Registration, Review and Reporting Division
Texas Commission on Environmental Quality
Post Office Box 13087 (MC 161)
Austin, TX 78711-3087

RE: Lazy Nine MUD Permit Application
Proposed Permit No. WQ0014629001

Dear Ms. McClarron:

This letter serves as a response to your June 22, 2005, letter requesting additional information on the Lazy Nine Municipal Utility District permit application. Please see Attachment 1 for the response to the administrative comments and Attachment 2 for the response to the technical comments. Updated pages of the permit application are located in Attachment 3.

If you have any questions or need additional information, please do not hesitate to contact me at (512) 327-2708.

Yours truly,

JAMES MIERTSCHIN & ASSOCIATES, INC.

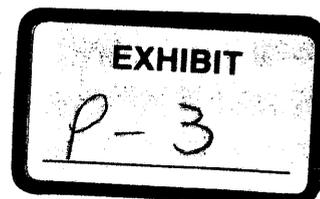


James Miertschin, PE, PhD

Enclosure

cc: Mike Willatt, Willatt & Flickinger, 2001 North Lamar, Austin, Texas 78705

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Attachment 1: Administrative Comments Response

Questions from TCEQ are italicized below, followed by responses.

1. *Item 3.d. on page 4 of the administrative report: Willatt & Flickinger is not considered a publicly owned facility. TCEQ rules define a publicly owned facility as one built and/or maintained with public monies (e.g. Public Library, Court House, City Hall). Please provide the name, address, and city of a publicly owned facility where the application will be made available for viewing and copying. The public place must be located in the county in which the facility is located.*

The application will be made available for viewing and copying at the Village of Bee Cave Municipal Building, 13333-A Highway 71 West, Bee Cave, Texas 78738. The municipal contact is Sherry Mashburn, who can be reached at (512) 263-5576.

2. *Item 4.d. on page 4 of the administrative report: The owner of the land on which the facility is/will be located is different from the owner of the facility. Therefore, the owner of the land can apply as the permit as a co-permittee or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give Lazy Nine municipal Utility District sufficient property rights to the land for operation of the treatment facility and be recorded in the county where the facility is located. Furthermore, if the land is to be acquired by Lazy Nine Municipal Utility District, a copy of an executed option to purchase agreement may be provided. The option to purchase agreement must give a legal description of the land to be purchased and identify when the option to purchase expires.*

The land owner for the Lazy Nine MUD wastewater treatment plant site and irrigation tract will now be identified as a co-permittee. The necessary pages from the permit application and the signature page are located in Attachment 3.

3. *Item 4.e. on page 4 of the administrative report: The owner of the effluent disposal site is different from the owner of the facility. Therefore, a long-term lease agreement giving Lazy Nine Municipal Utility District uses of the land fo effluent disposal must be provided. The lease agreement must include a term of at least five years, be current or include an option to renew the term and be between Lazy Nine Municipal Utility District and the landowner.*

The land owner for the Lazy Nine MUD wastewater treatment plant site and irrigation tract will now be identified as a co-permittee. The necessary pages from the permit application and the signature page are located in Attachment 3.

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4. *Item 1.b. on page 11 of the administrative report 1.1: You indicated that the landowners mailing list was submitted on a disk; however, we cannot locate the disk. Please either submit the landowners mailing list on a 3.5 disk (using software compatible with WordPerfect) or four sets of printed labels.*

As per the telephone conversation between Mr. Al Capps and Ms. Adriene McClarron on July 1, 2005, we will not need to resubmit the landowners mailing list.

5. *Item 2 on page 13 of Domestic Worksheet 3.0 and Item 1.a. on page 15 of Domestic Worksheet 3.1: The irrigation acreage's indicated differ. Please verify the amount of acres being used for irrigation.*

The tract available for irrigation totals 374 acres. Lazy Nine Municipal Utility District proposes to irrigate 285 acres (See Attachment 2, question 15) of the total 374 acre area.

6. *A preliminary technical review was performed by the technical staff and it has been determined that additional information is needed before the application can be declared technically complete. Please provide a complete response to each item identified in Attachment 1 of the letter.*

Please see Attachment 2 for response to the technical comments.

7. *Please review the attached Notice of Receipt of Application and Intent to Obtain a Water Quality Permit and indicate if it contains any errors or omissions.*

The Notice of receipt of Application and Intent to Obtain a Water Quality Permit appears to be accurate.

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Attachment 2: Technical Comments

Questions from TCEQ are italicized below, followed by responses. The answer to question number 15 effects several other questions asked by TCEQ therefore it has been answered first.

15. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): There are uncertain parameters with respect to the proposal to capture the first-flush storm water runoff, process, store and dispose together with the treated wastewater. We recommend that the applicant consider segregating this flow.*

The applicant has decided that the storm water runoff will be handled separately from the wastewater system. Therefore, all wastewater irrigation and storage calculations will be based solely upon expected wastewater flows. The anticipated wastewater flow of 0.7 MGD corresponds to an annual wastewater flow of 784 acre-feet, as discussed in the Supplemental Technical Report for Irrigation that was submitted with the application. With this, the minimum irrigation area required will be 285 acres rather than 298 acres. The proposed storage to be provided will be 129 acre-feet rather than 135 acre-feet.

1. *Item 1(b) on page 5 of the technical report 1.1: To complete the response to this item, we need for you to please show the proposed flows of 0.18 MGD, 0.44 MGD, and 0.7 MGD were derived. Please provide population estimates and/or projections and unit wastewater generation rate used to derive the flow estimate and anticipated growth rates for the development.*

The requested data was generally presented in attachment F: Supplemental Technical Report for WWTP submitted with the permit application. For clarity, the information is summarized below.

Table 1: Projected Population and Flow

LUEs	Population	Unit Wastewater (gpd/LUE)	Flow Estimate (MGD)
550	1925	300	0.18
1,400	4900	300	0.44
2,250	7875	300	0.7

2. *Item 1(c) on page 5 of the technical report 1.1: To complete the response to this item we need for you to please provide a copy of the response from Travis County WCID No. 17.*

Lazy Nine MUD representatives have requested, but not yet received, a written response from WCID No. 17. Once a written response is received from WCID No. 17, it will be forwarded to TCEQ immediately. Please see Attachment 3 for correspondence regarding WCID No. 17.

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3. *Item 2(c) on page 6 of the technical report 1.1: To complete the response to this item, we need for you to please complete the table for the proposed design flows of 0.18 MGD and 0.44 MGD.*

The table in item 2(c) of technical report 1.1 has been updated to include the 0.18 MGD and 0.44 MGD flows, please see Attachment 3.

4. *Item 2 on page 13 of the Domestic Worksheet 3.0: For consistency and clarity, we need for you to please indicate the proposed treated domestic wastewater flows for the effluent application in GPD (first column). For clarification, please exclude runoff because it is not domestic wastewater. Also, for consistency with the Supplemental Technical Report for Irrigation Disposal, we need for you to please state the proposed acreage to be irrigated under the second column.*

The table in item (2) of Domestic Worksheet 3.0 has been updated to only include domestic wastewater. Also, the irrigation acreage has been updated, please see Attachment 3.

5. *Item 2 on page 13 of Domestic Worksheet 3.0: To complete the response to this item, we need for you to please accomplish the table for the proposed 0.18 MGD and 0.44 MGD flows.*

The table in item (2) of Domestic Worksheet 3.0 has been updated to include all three proposed phases, please see Attachment 3.

6. *Item 3 on page 13 of the Domestic Worksheet 3.0: For clarification, we need for you to please confirm that the same storage volume will be used for all proposed phases.*

The storage needs vary with the proposed wastewater treatment phases. The requirements and the storage provided are summarized below.

Table 2: Effluent Storage

Phase	Wastewater Flow (MGD)	Required Storage (acre-feet)	Proposed Storage (acre-feet)
1	0.18	33	64.5
2	0.44	81	129
3	0.70	129	129

The proposed storage corresponds to the construction of two effluent storage ponds. Each pond will have a capacity of 64.5 acre-feet. The first pond will provide sufficient storage for Phase 1 flows. To accommodate flows in Phase 2 and 3, the second storage pond of 64.5 acre-feet will be constructed, which will provide a total volume of 129 acre-feet.

7. *Item 4 on page 13 of the Domestic Worksheet 3.0: To complete the response to this item, we need for you to please provide a description of the rainfall runoff controls proposed for the irrigation site.*

No controls appear to be necessary to prevent run-on of storm water onto the irrigation site. The topography of the irrigation site is such that run-on will be minimal. If controls are necessary for specific areas, they will be implemented during final design of the irrigation site. Such controls could include re-grading to prevent run-on or placement of berms.

8. *Item 1(a) on page 15 of the Domestic Worksheet 3.1: To complete the response to this item, we need for you to please verify the same area, 298 acres, will be irrigated in the proposed interim and intermediate phases (0.18 MGD and 0.44 MGD). If not, we need for you to please complete a separate worksheet for each of the interim flows.*

The required irrigation area will vary according to the project phase, as summarized below.

Table 3: Irrigation Area

Phase	Wastewater Flow (MGD)	Required Irrigation Area (acres)
1	0.18	73.3
2	0.44	179
3	0.70	285

9. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): The report states that "Irrigation was restricted by evaluation of the daily water needs and the antecedent four-day infiltrated rainfall." For clarification, we need for you to please explain how this condition was incorporated in the water balance and storage calculations.*

The explanation is provided in the third paragraph on page 4 of the Supplemental Technical Report for Irrigation that was submitted with the application. This paragraph explains how infiltrated rainfall during an antecedent four-day period is incorporated in the storage balance. So, it is in the storage calculation that the presumed restriction of irrigation occurs, not in the water balance.

Was a uniform CN (74) used throughout the calculation procedure or should there be a different CN number for storm events?

A uniform CN of 74 was used in the runoff calculations for the water balance and the storage balance. This assumption is appropriate for the methodology employed and is consistent with the guidance provided in Chapter 309. There is no justification to use a higher CN for storm

events, per se. In some applications, a higher CN is used to represent an antecedent moisture condition Type III rather than Type II if it is believed that the ground is saturated from previous watering. The use of a higher CN would be less conservative from the standpoint of the ultimate calculation of irrigation and storage needs.

Why was a daily ET not used instead of the monthly average divided by the number of days in a month and what effect does a daily ET value have on the calculated hydraulic application rate and storage?

As discussed on page 2 of the Supplemental Technical Report for Irrigation, the ET was estimated based upon data in Bulletin 6019, consistent with the guidance in Chapter 309. This method provides estimates of monthly ET values, therefore, it is appropriate to divide that monthly estimate by the number of days in the month to estimate a daily ET rate. This represents the best information that is currently available for application in a water balance and storage balance. This is also a conservative approach, since it relies upon a calculated average ET rate for each day. We do not have available any kind of data base that would provide daily ET values for a sustained period of time for a variety of potential cover crops.

10. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): The values under the column "Effluent Needed in the Root Zone for Crop Consumption" are from Columns 10 and 11 of the water balance spreadsheet. We need for you to please verify that these should be the values taken from Column 8 of the water balance spreadsheet.*

This question actually refers to the nitrogen balance that was included as Table 3 of the Supplemental Technical Report for Irrigation. The second column in the nitrogen balance has the heading "Effluent Needed in Root Zone for Crop Consumption." The monthly entries in this column were taken from column 10 of the water balance (Table 1 in the technical report). The values in column 10 represent the effluent applied to the land surface, which is calculated as the root zone requirement divided by the irrigation efficiency. This irrigation efficiency accounts for water lost as spray, drift, or evaporation during the irrigation process. As requested, the values in column 2 of the nitrogen balance have been revised such that values extracted from column 8 of the water balance root zone requirement were used.

A revised nitrogen balance is enclosed. Note that the area has been revised to 285 acres.

11. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): For documentation purposes, we need for you to please provide a reference or justification for adopting a total nitrogen value of 10 mg/l in the effluent.*

A total nitrogen concentration of 10 mg/l has been assumed for the effluent applied as irrigation. This assumed value is lower than what would be expected at the outfall of the wastewater treatment plant. It reflects the various processes that will occur in the storage pond, such as volatilization and algal uptake, that will tend to lower overall nitrogen concentration. This assumption has been supported by a few measurements of effluent from

existing storage ponds. A measurement from the Hurst Creek MUD effluent storage pond in February 2002 showed 5.74 mg/l nitrate nitrogen. With this measurement, it is assumed that nitrate is the primary form and that the total nitrogen is less than 10 mg/l. Two measurements were available from the effluent storage ponds of Travis County MUD#4 in March 2005. Total nitrogen was measured to be 5.8 mg/l in Pond # 1 and 6.2 mg/l in Pond #2.

12. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): To complete the response for this item, we need for you to please indicate the method of application of effluent.*

Attachment L, Cropping Plan, states "At present time, the irrigation application system has not been designed. The rangeland tract will be irrigated with either fixed heads, side roll, pivot, or traveling gun application equipment." Decisions on the most appropriate application rate will be made in the final design phase.

13. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): For clarification, we need for you to please indicate how much of the available 374-acre is irrigable.*

Approximately 285 acres of the total 374 acre irrigation tract are proposed to be used for irrigation. Preliminary analysis has indicated that approximately 300 acres of the tract can be used for irrigation. Some of the remaining tract acreage is not readily available for irrigation due to factors such as terrain slope greater than 12%, location within the 100 year flood plain, effluent pond site, and a proposed 50 foot buffer zone around the irrigation tract. As the irrigation site is designed, certain areas that are problematic may be improved to facilitate irrigation, for example, localized grading improvements may be performed.

14. *Item 1(a) on page 15 of the Domestic Worksheet 3.1 (Supplemental Technical Report for Irrigation Disposal): For accuracy, we need for you to please show the proposed 298 acres on the soil map and the USGS map.*

Based upon the telephone discussion between Mr. James Miertschin and Mr. Julian Centeno on July 18, 2005, it is understood that the overall tract boundary of 374 acres is the appropriate boundary to be shown on the soil map and USGS map, as included with the permit application. The proposed 285 acres that will actually be irrigated is located within the 374 acres, and the specific acreage to be irrigated will be determined at the final design stage of the system. As a general rule, areas of steep slope, flood plains, the storage ponds, and a proposed 50 foot buffer zone will be avoided. However, as the irrigation site is designed, certain areas that are currently problematic may be improved to facilitate irrigation, for example, localized grading improvements may be performed.

Attachment 3
Updated Permit Application Pages

DOMESTIC ADMINISTRATIVE REPORT 1.0

THE FOLLOWING IS REQUIRED FOR ALL APPLICATIONS, RENEWAL, NEW AND AMENDMENT.
PLEASE FOLLOW THE INSTRUCTIONS while completing the application.

Type of application: New TPDES New TLAP
 Major amendment to existing permit Minor modification to permit
 Renewal of existing permit Minor amendment to permit

If applying for an amendment/modification to a permit, please describe the request in detail.

NA

1. APPLICANT INFORMATION (Instructions, Pages 13-14)

a. Facility owner*: Lazy Nine Municipal Utility District

* Owner of the facility must apply for the permit

Mailing address for use on the permit and permit correspondence:

Street No. 2001 Street name: North Lamar Street type _____

City: Austin P.O. Box _____ State: Tx Zip code: 78705

Telephone number: (512) 476-6604

Tax Identification Number issued by the State Comptroller: 41-2113075

Charter Number issued by the Texas Secretary of State: NA

Check one: The TCEQ has issued this Customer Reference Number to the owner: CN _____

The owner has not yet received a Customer Reference Number. A complete Core Data Form (TCEQ-10400) listing the owner as the customer and this facility as the regulated entity is attached to this application.

b. Co-Permittee information (complete only if the operator must be a co-permittee)

Facility operator: FC Sweetwater Partner L.L.C.

Street No. 6836 Street name: Bee Cave Street type Road, Suite 400

City: Austin P.O. Box: _____ State: Tx Zip code: 78746

Telephone number: (512) 329-8800

Date of Birth: NA

Tax Identification Number issued by the State Comptroller: 32015259180

Charter Number issued by the Texas Secretary of State: 0800354799

Check one: The TCEQ has issued this Customer Reference Number to the owner: CN _____

The owner has not yet received a Customer Reference Number. A complete Core Data Form (TCEQ-10400) listing the owner as the customer and this facility as the regulated entity is attached to this application.

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Provide a brief description as to the need for a co-permittee.

The co-permittee has signatory authority over the land owner of the wastewater treatment plant and irrigation sites.

c. Individual information (complete only if the facility owner or co-permittee is an individual)

Name: NA Check one: Male Female
State Identification Number: _____
Date of Birth: _____
Assumed business or professional name: _____
Home address:
Street No. _____ Street name: _____ Street type _____
City: _____ State: _____ Zip code: _____
Telephone number: _____
Business name: _____

Check one: The TCEQ has issued this Customer Reference Number to the owner: CN _____
 The owner has not yet received a Customer Reference Number. A complete Core Data Form (TCEQ-10400) listing the owner as the customer and this facility as the regulated entity is attached to this application.

2. CONTACT INFORMATION (Instructions, Page 14)

Name: Mike Willatt Telephone number: (512) 476-6604
Company: Willatt & Flickinger Fax number: (512) 469-9148

Street No. 2001 Street name: North Lamar Street type: _____
P.O. Box: _____
City: Austin State: Tx Zip code: 78705
Check one or both: Administrative contact Technical contact

Name: James Miertschin, P.E., Ph.D. Telephone number: (512) 327-2708
Company: James Miertschin & Associates Fax number: (512) 327-2733

Street No. _____ Street name: _____ Street type: _____
P.O. Box: 162035
City: Austin State: Tx Zip code: 78716
Check one or both: Administrative contact Technical contact

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3. NOTICE INFORMATION (Instructions, Page 15)

a. Individual publishing the notices

Name: Mike Willatt Telephone number: (512) 476-6604
Company: Willatt & Flickinger Fax number: (512) 469-9148
Street No. 2001 Street name: North Lamar Street type: _____
P.O. Box: _____
City: Austin State: Tx Zip code: 78705
Name of municipality closest to facility Village of Bee Caves

b. Indicate by a check mark the method for receiving Notice of Receipt and Intent to Obtain a Water Quality Permit Package and Instructions.

_____ E-mail: E-mail address: _____
_____ Fax: Fax number: _____
_____ Overnight/Priority mail: (self addressed, prepaid envelope required)
 Regular Mail: Street No. 2001 Street name: North Lamar
Street type: _____ P.O. Box: _____
City: Austin State: Tx Zip code: 78705

c. Contact in the notice

Name: Mike Willatt Telephone number: (512) 476-6604
Company: Willatt & Flickinger Fax number: (512) 469-9148
Street No. 2100 Street name: North Lamar Street type: _____
P.O. Box: _____
City: Austin State: Tx Zip code: 78705

d. Public place information*

*If the facility and/or outfall is located in more than one county, a public viewing place for each county must be provided

Location of public building: Village of Bee Cave
Public building name: Village of Bee Cave Municipal Building
Name: Sherry Mashburn Telephone number: (512) 263-2151
Company: Village of Bee Cave Fax number: (512) 263-5576
Street No. 13333-A Street name: Highway 71 West Street type: _____
City: Bee Cave State: Tx Zip code: 78738
County: Travis

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7. SIGNATURE PAGE (Instructions, Page 18)

Permit Number _____

Applicant Lazy Nine Municipal Utility District

I, William T. Gunn

Partner

Typed or printed name

Title

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

I further certify that I am authorized under 30 Texas Administrative Code Section 305.44 to sign this document and can provide documentation in proof of such authorization upon request.

Signature:  Date: July 20, 2005

NOTE: If co-permittees are necessary, both entities must submit separate Signature Pages.

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DOMESTIC TECHNICAL REPORT 1.1

THE FOLLOWING IS REQUIRED FOR NEW AND AMENDMENT APPLICATIONS

1. PERMITTED AND/OR PROPOSED FLOWS (Instructions, Page 29)

a. Complete the following chart.

PERMITTED AND /OR PROPOSED FLOW:	Initial/existing Phase	Intermediate Phase	Final Phase
Design Flow (MGD)	0.18	0.44	0.7
2-Hr Peak Flow (MGD)	0.9	2.2	3.5
Construction estimated to start	August 2006	August 2007	August 2011
Date waste disposal to start	December 2006	August 2008	August 2012

Phase currently in operation: NA

b. Provide a detailed discussion regarding the need for the proposed permit or proposed phase(s). Failure to provide sufficient justification may result in the Executive Director recommending denial of the proposed phase(s) or permit. **See Attachment F**

A new subdivision will be constructed upon approval of this permit application. The initial phase will be sufficient to handle the wastewater loading.

c. Are there any wastewater treatment and/or collection systems located within three (3) miles of the areas to be serviced by the proposed facility? Yes No

If yes, is a list of these systems and area map attached? Yes No **See Attachment I**

Does a wastewater treatment plant with as collection system within 3 miles of the proposed facility currently have the capacity to accept the volume of wastewater proposed in this application?
 Yes No

If yes, is an analysis of expenditures required to connect to any existing wastewater collection systems located within 3 miles attached? Yes No

Provide copies of all correspondence with the owners/authorities of existing facilities within 3 miles of the existing/proposed facility concerning connection with their system. **See Attachment I**

2. PROPOSED ORGANIC LOADING (Instructions, Pages 29-30)

a. Is this a new permit application? Yes No

b. If no, and the application is to amend an existing permit, provide the following information.

Facility Design Flow (flow being requested in application) _____
 Average Organic Strength or BOD₅ Concentration in mg/l _____
 Average Loading (lbs/day=total average flow x average BOD₅ conc. X 8.34) _____
 Provide the source of the average organic strength or BOD₅ concentration _____

If the increased flow will impact the existing organic strength, the following table must be completed.

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c. If yes to question 2.a on Page 5, this table must be completed.

SOURCE	TOTAL AVERAGE FLOW (MGD)	ORGANIC STRENGTH BOD ₅ CONCENTRATION (mg/l)
Municipality	Phase 1, Phase2, Phase 3	Phase 1, Phase 2, Phase 3
Subdivision	0.18, 0.44, 0.7	200, 200, 200
Trailer Park-Transient		
Mobile Home Park		
School with cafeteria and showers		
School with cafeteria, no showers		
Recreational Park, overnight use		
Recreational Park, day use		
Office Building of Factory		
Motel		
Restaurant		
Hospital		
Nursing Home		
Other		
	Total Flow: 0.18, 0.44, 0.7	Average BOD ₅ : 200, 200, 200

3. PROPOSED EFFLUENT QUALITY / PROPOSED DISINFECTION (Instructions, Page 30)

Phase:	Initial/existing	Intermediate	Final
BOD ₅ , mg/l	<u>10</u>	<u>10</u>	<u>10</u>
TSS, mg/l	<u>15</u>	<u>15</u>	<u>15</u>
NH ₃ -N, mg/l	<u>NA</u>	<u>NA</u>	<u>NA</u>
Total P, mg/l	<u>NA</u>	<u>NA</u>	<u>NA</u>
DO, mg/l	<u>NA</u>	<u>NA</u>	<u>NA</u>
Other: <u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>

Check the proposed method of disinfection.

Chlorine: 1 mg/l after 20 minutes detention time at peak flow
 Ultraviolet: _____ seconds contact time at peak flow Other: _____
 Dechlorination process: _____

4. DESIGN CALCULATIONS (Instructions, Page 30)

Indicate by a check mark that design calculations and plant features for each proposed phase are provided. Example 4 of the instructions includes example design calculations and plant features.

See Attachment F

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DOMESTIC WORKSHEET 3.0 - LAND DISPOSAL OF EFFLUENT

THE FOLLOWING IS FOR ALL PERMIT APPLICATIONS, RENEWAL, NEW AND AMENDMENTS

1. TYPE OF DISPOSAL SYSTEM (Instructions, Page 36)

- | | |
|---|--|
| <input type="checkbox"/> Surface Application | <input type="checkbox"/> Subsurface Application |
| <input type="checkbox"/> Evaporation | <input type="checkbox"/> Evapotranspiration beds |
| <input checked="" type="checkbox"/> Irrigation | <input type="checkbox"/> Subsurface soils absorption |
| <input type="checkbox"/> Other (describe below in detail) | |

NOTE: All applicant's authorized or proposing subsurface disposal MUST complete and submit Worksheet 7.0.

2. LAND APPLICATION AREA (Instructions, Page 35)

Effluent Application in GPD	Irrigation Acreage in Acres	Describe land use & indicate type of crop (alfalfa or wheat, bermuda grass, park, golf course, pastureland, etc.)	Public Access Y/N
Phase 1: 180,000	73.3	Rangeland with native grass, junipers, hardwood,	N
Phase 2: 440,000	179	and athletic fields	N
Phase 3: 700,000	285		N

3. STORAGE AND EVAPORATION PONDS (Instructions, Page 36)

See Attachment K

Pond Number	Surface Area (acres)	Storage volume (acre-feet)	Dimensions	Liner Type
1, Phase 1-3	2.5	64.5		Synthetic
2, Phase 2 & 3	2.5	64.5		Synthetic

4. FLOOD AND RUNON PROTECTION (Instructions, Page 36)

Is the existing/proposed application site within the 100-year frequency flood level? ___ Yes No

Source: FEMA Maps

If yes, describe how the site will be protected from inundation.

NA

Provide a description of tailwater controls and rainfall runon controls used for the irrigation site.

No structural controls will be provided. Application rate will be controlled to prevent runoff.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ DOMESTIC WASTEWATER PERMIT APPLICATION
DOMESTIC ADMINISTRATIVE REPORT

SUBMISSION CHECKLIST - SUBMIT THIS CHECKLIST WITH THE APPLICATION
DO NOT SUBMIT THE INSTRUCTIONS WITH THE APPLICATION
INDICATE IF THE FOLLOWING ARE INCLUDED IN THE APPLICATION.

APPLICANT Lazy Nine Municipal Utility District

PERMIT NUMBER _____

WORKSHEET	Y	N	WORKSHEET	Y	N
ADMINISTRATIVE REPORT 1.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	USGS MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATIVE REPORT 1.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	AFFECTED LANDOWNER MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SPIF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BUFFER ZONE MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TECHNICAL REPORT 1.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FLOW DIAGRAM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TECHNICAL REPORT 1.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SITE DRAWING	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 2.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ORIGINAL PHOTOGRAPHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 2.1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DESIGN CALCULATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 3.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DESIGN FEATURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 3.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOLIDS MANAGEMENT PLAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 4.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WATER BALANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 5.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	COPY OF APPLICATION FEE CHECK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 6.0 (required for all POTWs)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LANDOWNER DISK OR LABELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 7.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Please indicate by a check mark the amount submitted for the application fee:

Flow	New/Major Amendment	Renewals
< .05 MGD	_____ \$350.00	_____ \$315.00
≥ .05 but < .10 MGD	_____ \$550.00	_____ \$515.00
≥ .10 but < .25 MGD	_____ \$850.00	_____ \$815.00
≥ .25 but < .50 MGD	_____ \$1,250.00	_____ \$1,215.00
≥ .50 but < 1.0 MGD	<input checked="" type="checkbox"/> \$1,650.00	_____ \$1,615.00
≥ 1.0 MGD	_____ \$2,050.00	_____ \$2,015.00
Minor Amendment (any flow)	_____ \$115.00	

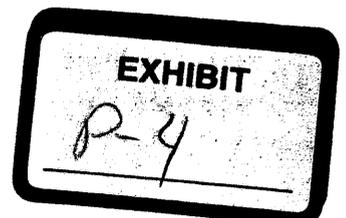
A COPY OF THE CHECK MUST BE SUBMITTED AS PART OF THE APPLICATION

For Commission Use Only:	
Segment Number _____	County <u>Travis</u>
Expiration Date _____	Region <u>11</u>
Proposed/Current Permit Number <u>14629-001</u>	

Received Page 1 of 11

JUN 08 2005

Water Quality Application Team



DOMESTIC WORKSHEET 3.0 - LAND DISPOSAL OF EFFLUENT

THE FOLLOWING IS FOR ALL PERMIT APPLICATIONS, RENEWAL, NEW AND AMENDMENTS

1. TYPE OF DISPOSAL SYSTEM (Instructions, Page 36)

- | | |
|---|--|
| <input type="checkbox"/> Surface Application | <input type="checkbox"/> Subsurface Application |
| <input type="checkbox"/> Evaporation | <input type="checkbox"/> Evapotranspiration beds |
| <input checked="" type="checkbox"/> Irrigation | <input type="checkbox"/> Subsurface soils absorption |
| <input type="checkbox"/> Other (describe below in detail) | |

NOTE: All applicant's authorized or proposing subsurface disposal MUST complete and submit Worksheet 7.0.

2. LAND APPLICATION AREA (Instructions, Page 35)

Effluent Application in GPD	Irrigation Acreage in Acres	Describe land use & indicate type of crop (alfalfa or wheat, bermuda grass, park, golf course, pastureland, etc.)	Public Access Y/N
731,266	374	Rangeland with native grass, junipers, hardwood,	N
(includes runoff)		and athletic fields	

3. STORAGE AND EVAPORATION PONDS (Instructions, Page 36)

Pond Number	Surface Area (acres)	Storage volume (acre-feet)	Dimensions	Liner Type
1	2.5	67.5		Synthetic
2	2.5	67.5		Synthetic

4. FLOOD AND RUNON PROTECTION (Instructions, Page 36)

Is the existing/proposed application site within the 100-year frequency flood level? ___ Yes No

Source: FEMA Maps

If yes, describe how the site will be protected from inundation.

NA

Provide a description of tailwater controls and rainfall runon controls used for the irrigation site.

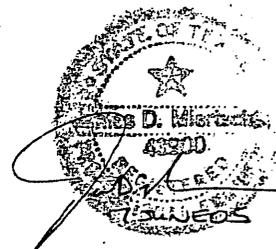
No structural controls will be provided. Application rate will be controlled to prevent runoff.

**SUPPLEMENTAL TECHNICAL REPORT
FOR IRRIGATION DISPOSAL
LAZY NINE MUNICIPAL UTILITY DISTRICT**

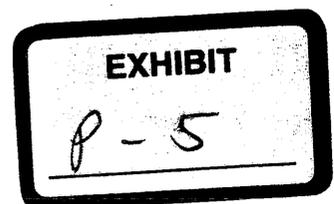
Prepared by:

**James Miertschin & Associates, Inc.
Austin, Texas**

June 2005



LNMIrrigation.wpd



As another check on the evapotranspiration characteristics, the average historic potential evapotranspiration (PET) on a monthly basis for the Austin area was obtained from the Texas A&M ET web site (<http://texaset.tamu.edu/pet.php>). For the Austin area the annual total PET is 62.69 inches. The PET is reduced to the ET rate by application of a crop coefficient and an allowable stress factor. For grazing pasture, an average crop coefficient of 0.95 was used. For the other factor, allowable stress, a value of 0.8 was used. This represents a low stress condition as would occur with frequent watering. Using this methodology, the ET for the native grass would be estimated to be 47.64 inches per year. This is greater than the ET estimated using the assumptions applied to Bulletin 6019, therefore, the preceding ET estimate of 43.78 inches per year is expected to be conservative.

Leaching

A leaching requirement was incorporated into the water balance. Leaching is necessary in order to prevent the build-up of salts in the soil. The leaching requirement was estimated empirically as a function of the effluent conductivity and the soil conductivity, in accordance with the method in 30 TAC Chapter 309.

Evaporation

Reservoir evaporation for the site was estimated from Texas Water Oriented Data Bank data for Quad 709, 1978-2002. The lowest net 25-year evaporation was used (1991).

Effluent Application Rate

From the water balance calculation for the site, it was determined that a total of 48.90 inches/year (4.08 feet/year) of wastewater would be consumed from the storage pond. This value for consumption from the pond is comprised of water used for irrigation and water that evaporates. This consumptive use of 48.90 inches/year (4.07 feet/year) also represents the calculated average allowable wastewater application rate for the site.

The calculated allowable application rate will be reduced to 33.0 inches/year (2.75 feet/year) for the proposed Lazy Nine MUD irrigation disposal site in order to provide conservative safeguards against over-watering. Restriction of the application rate to 33.0 inches/year (2.75 feet/year) is acceptable to the District from an operational standpoint.

Minimum Irrigation Area

The effluent application rate from the water balance analysis is used to determine the minimum irrigation area needed for a specific design flow. The proposed effluent flow from the subdivision is projected to be 700,000 gpd, which is equivalent to an annual volume of wastewater of 784 acre-feet. In addition, the irrigation system will be sized to accommodate first-flush storm water runoff from the subdivision. The captured runoff will add 35 acre-feet to be handled. The combined total volume will then be 819 acre-feet/year, which is equivalent to an average effluent flow of 731,266 gpd. Using the annual wastewater flow, an irrigation area of 201 acres would be required using the calculated effluent application rate of 4.07 feet/year.

However, as discussed above, the Lazy Nine MUD proposes to employ a more conservative irrigation application rate of 2.75 feet/year. With the application rate of 2.75 feet/year, the minimum irrigation area required would be 298 acres. Additional area available on the 374 acre irrigation tract may also be used for irrigation, in excess of the minimum required. This additional acreage will provide the District with more operational flexibility for effluent disposal.

3.0 SUMMARY OF PROPOSED IRRIGATION SYSTEM

Parameters for the proposed effluent irrigation system for the Lazy Nine MUD are summarized below.

Irrigation Area

The District proposes a total irrigation area of 298 acres for disposal of up to 819 acre-feet of combined effluent and runoff.

Storage Pond

The District proposes a storage volume of 135 acre-feet.

A minimum 50 foot buffer will be maintained between the top of the storage pond berm and any adjacent property lines. The storage pond is not a wastewater treatment unit *per se* -- it only serves to store highly treated effluent.

Application System

The effluent will be used for irrigation of 298 acres of rangeland, out of an available tract acreage of 374 acres, as described above. Effluent from the storage pond will be pumped directly to the irrigation distribution system.

System Operation

The Lazy Nine MUD will operate the wastewater treatment plant and the pumping station at the effluent storage pond. Effluent from the treatment plant will be pumped to the storage pond. Effluent will accumulate in the storage ponds as a reservoir for irrigation of the tract of native grasses. Irrigation will be controlled by personnel of the Lazy Nine MUD. The irrigation needs will vary monthly, as illustrated by the water balance analysis presented previously in this report. In general, the storage pond will accumulate effluent during the winter months, when the native grass consumptive use is minimal. Irrigation needs will increase dramatically during the summer months, and this demand will result in draw-down of the contents of the storage pond.

The application of wastewater effluent will be carefully controlled by the personnel of the Lazy Nine MUD. There are no physical tailwater controls proposed for the irrigation site. Runoff of effluent during irrigation will be prevented by careful control of the application rate. Irrigation will not occur during wet weather storm events as a further operational precaution to prevent runoff of effluent.

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 29, 2005

Mr. Mike Willatt
Willatt & Flickinger
2001 North Lamar Blvd.
Austin, Texas 78705-4907

RE: Declaration of Administrative Completeness
Name: Lazy Nine Municipal Utility District and FC Sweetwater Partner, LLC
(CN602731572; CN602877847)
Permit Number: WQ0014629001 (RN104703186)
Type of Authorization: New

Dear Mr. Willatt:

We have declared the above referenced application, received on June 8, 2005, administratively complete on July 29, 2005.

You are now required to publish notice of your proposed activity. To help you meet the requirements associated with this notice, we have included the following items:

- Notice for Newspaper Publication
- Instructions for Public Notice
- Affidavit of Publication

Please note that it is VERY IMPORTANT that you follow ALL directions in the ENCLOSED INSTRUCTIONS. If you do not, you may be required to republish the notice. One of the most common mistakes we see is the unauthorized changing of notice wording or font. If you have any questions, please contact us before you proceed with publication.

The following items and time limitations are also described in the enclosed instructions. However, due to their importance, we want to highlight them for you.

1. Publish the enclosed notice within 30 calendar days after your application is declared administratively complete. (See this letter's first paragraph for the declaration date.)
2. Place a copy of your application in a public place in the county where the facility is or will be located. This copy must be accessible to the public for review and copying and remain in place throughout the comment period.

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: www.tceq.state.tx.us

Printed on recycled paper using soy-based ink

EXHIBIT

P-6

Mr. Mike Willatt
Page 2
Permit No. WQ0014629001

3. Return an original newspaper clipping of the notice, which shows publication date and newspaper name, to the Office of the Chief Clerk within 10 business days after notice is published in the newspaper.
4. Return the original enclosed Affidavit Of Publication to the Office of the Chief Clerk within 30 calendar days after the notice is published in the newspaper.

If you do not comply with all requirements described in the instructions, further processing of your application may be suspended or the agency may take other actions. Please note, as your application undergoes technical review, we may request additional information.

If you have any questions regarding publication requirements, please contact the Office of the Chief Clerk at 512-239-3300. If you have any other questions, please contact Adriene C. McClarron at 512-239-5137.

Sincerely,



Laurie J. Lancaster, Team Leader
Water Quality Applications Team
Permits Administrative Review Section
Registration, Review & Reporting Division

LJL:acm

Enclosures

cc: TCEQ Region 11, Water Program Manager

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN A WATER QUALITY PERMIT

PROPOSED PERMIT NO. WQ0014629001

APPLICATION. Lazy Nine Municipal Utility District and FC Sweetwater Partner, LLC, c/o Willatt & Flickinger, 2001 North Lamar Boulevard, Austin, Texas 78705, has applied to the Texas Commission on Environmental Quality (TCEQ) for a wastewater disposal Permit No. WQ0014629001 to authorize the disposal of treated wastewater at a volume not to exceed a daily average flow of 700,000 gallons per day via irrigation of 285 acres. The domestic wastewater treatment facility is located approximately 6.2 miles west of the Village of Bee Cave near State Highway 71, Travis County, Texas. The disposal site is located on the south side of State Highway 71, approximately 3 miles west of the Village of Bee Cave, also in Travis County. This application was submitted to the TCEQ on June 8, 2005. The permit application is available for viewing and copying at the Village of Bee Cave Municipal Building, 13333-A State Highway 71 West, Bee Cave, Texas.

The TCEQ executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the TCEQ will issue a Notice of Application and Preliminary Decision.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments or requests for public meeting must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087.

ADDITIONAL NOTICE. After technical review of the application is complete, the executive director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the executive director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Lazy Nine Municipal Utility District and FC Sweetwater Partner, LLC at the address stated above or by calling Mike Willatt, Willatt & Flickinger, at 512-476-6604.

Issued: July 29, 2005

TCEQ-OFFICE OF THE CHIEF CLERK

Applicant Name: Lazy Nine Municipal Utility District
and FC Sweetwater Partner, LLC

MC-105 Arm: Notice Team
PO BOX 13087
AUSTIN TX 78711-3087

Permit No.: W00014629001
Notice of Intent to Obtain Permit

**AFFIDAVIT OF PUBLICATION FOR
A NEWSPAPER WITHIN A MUNICIPALITY
WATER QUALITY PERMITS**

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me, the undersigned authority, on this day personally appeared

FRANK PUCKETT, who being by me duly
(name of newspaper representative)

sworn, deposes and says that (s)he is the Legal Notice Rep
(title of newspaper representative)

of the Austin American Statesman; that said newspaper is
(name of newspaper)

a newspaper of general circulation in
Lazy Nine Municipal Utility District, Texas;
(Name of Municipality)

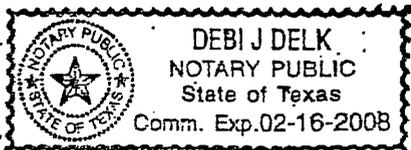
and that the attached notice was published in said newspaper on the following
date(s): August 4, 2005

Frank Puckett
Newspaper Representative's Signature

Subscribed and sworn to before me this the 4 day of Aug,
20 05, to certify which witness my hand and seal of office:

Debi J Delk

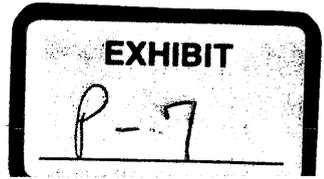
(Seal)



Notary Public in and for the State of Texas

Debi J Delk
Print or Type Name of Notary Public

My Commission Expires 2-16-08



NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN A WATER QUALITY PERMIT
PROPOSED PERMIT NO. W0001429001

APPLICATION: Lady Nire Municipal Utility District and FC Sweetwater Partner, LLC c/o Willa & Flickinger, 2001 North Lamar Boulevard, Austin, Texas 78705 has applied to the Texas Commission on Environmental Quality (TCEQ) for a wastewater disposal Permit No. W0001429001 to authorize the disposal of treated wastewater at a volume not to exceed 8 daily average flow of 700,000 gallons per day plus irrigation of 285 acres. The domestic wastewater treatment facility is located approximately 6.2 miles west of the Village of Bee Cave near State Highway 71, Travis County, Texas. The disposal site is located on the south side of State Highway 71, approximately 3 miles west of the Village of Bee Cave, also in Travis County. This application was submitted to the TCEQ on June 8, 2005. The permit application is available for viewing and copying at the Village of Bee Cave Municipal Building, 13331-A State Highway 71, West Bee Cave, Texas 78008.

The TCEQ executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the TCEQ will issue a Notice of Application and Preliminary Decision.

PUBLIC COMMENT / PUBLIC MEETING: You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator or public meeting. If not a contested case hearing.

Written public comments or requests for public meeting must be submitted to the Office of the Chief Clerk, TCEQ, 1705 R.L. Brister Blvd., Austin, TX 78711-5087.

ADDITIONAL NOTICE: After technical review of the application is complete, the executive director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING: After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response is submitted along with the executive director's decision on the application. If you are on the mailing list for this application and you wish to request a contested case hearing, you must do so by the deadline for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn.

MAILING LIST: In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to the mailing list for the specific application. (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION: If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en español, llame al 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

Further information may also be obtained from Lady Nire Municipal Utility District and FC Sweetwater Partner, LLC at the address stated above or by calling Mike Willa, Willa & Flickinger, at 512-476-4604.

Issued: July 29, 2005

TCEQ-OFFICE OF THE CHIEF CLERK
MC-105 ATTN: CARMELLO MANNING
PO BOX 13087
AUSTIN TX 78711-3087

APPLICANT NAME: Lazy Nine MUD
PERMIT NO.: WQ0014629001
NOTICE OF PUBLIC MEETING

49571 = call = 04:36 - null
541-24-7370

AFFIDAVIT OF PUBLICATION
FOR WATER QUALITY APPLICATION PUBLIC MEETING

STATE OF TEXAS §
COUNTY OF Travis §

Before me, the undersigned authority, on this day personally appeared

Shirley Fowler

(name of newspaper representative)

, who being by me duly

sworn, deposes and says that (s)he is the

Legal Notices Rep

(title of newspaper representative)

of the Austin American Statesman

(name of newspaper)

; that said newspaper is

regularly published in Travis County, Texas, and is the newspaper
of largest circulation that is published in Travis County;

and that the attached notice was published in said newspaper on the following date(s):

June 23, 2006

[Signature]

Newspaper Representative's Signature

Subscribed and sworn to before me this the 27 day of June
20 06, to certify which witness my hand and seal of office.

[Signature]

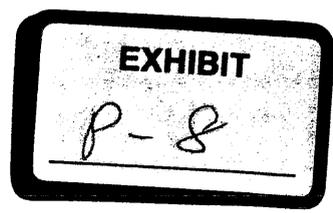
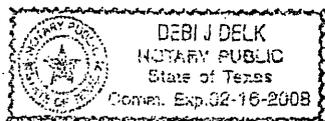
Notary Public in and for the State of Texas

Debi J Delk

Print or Type Name of Notary Public

My Commission Expires 2-16-08

(Seal)





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

NOTICE OF PUBLIC MEETING ON AN APPLICATION FOR
WATER QUALITY LAND APPLICATION PERMIT FOR
MUNICIPAL WASTEWATER

PROPOSED PERMIT NO. WQ0014629001

APPLICATION: Lazy Nine Municipal Utility District and Forest City Sweetwater Limited Partnership, c/o Willatt & Flickinger, 2001 North Lamar Boulevard, Austin, Texas 78705, have applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. WQ0014629001, to authorize the disposal of treated domestic wastewater at a daily flow not to exceed 700,000 gallons per day via surface irrigation of 285 acres of non-public access rangeland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility will be located approximately 6.2 miles west of the Village of Bee Cave near State Highway 71 in Travis County, Texas. The disposal site will be located on the south side of State Highway 71, approximately 3 miles west of the Village of Bee Cave in Travis County, Texas. The facility is located in the Bee Creek drainage basin in Segment No. 1404 of the Colorado River Basin and the disposal site is located in the Little Barton Creek drainage basin in Segment No. 1430 of the Colorado River Basin.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING: A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application and the Executive Director's preliminary decision, but these informal comments made during the informal period will not be considered by the Commissioners before reaching a decision on the permit and no formal response will be made. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and provides an address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted.

The Public Meeting is to be held:
Tuesday, July 25, 2006 at 7:00 p.m.
Travis County West Rural Community Center
8656-A Highway 71 West
Austin, Texas 78735

INFORMATION: Citizens are encouraged to submit written comments anytime during the meeting or by mail before the meeting to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, TX 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. *Si desea información en Español, puede llamar 1-800-687-4040.* General information about the TCEQ can be found at our web site at: www.tceq.state.tx.us.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Village of Bee Cave Municipal Building, 13333-A State Highway 71 West, Bee Cave, Texas. Further information may also be obtained from Lazy Nine Municipal Utility District and Forest City Sweetwater Limited Partnership, c/o Willatt & Flickinger, 2001 North Lamar Boulevard, Austin, Texas 78705, or by calling Mr. Mike Willatt at (512) 476-6604.

Issued: June 15, 2006

TCEQ-OFFICE OF THE CHIEF CLERK
MC-105 Attn: Notice Team
PO BOX 13087
AUSTIN TX 78711-3087

APPLICANT NAME: FOREST CITY SWEETWATER LIMITED PARTNERSHP
PERMIT NO.: WQ0014629001 CCO# 49571
NOTICE OF APPLICATION AND PRELIMINARY DECISION

CHIEF CLERK OFFICE
APR 13 11 30 AM '06
OFFICE OF THE CHIEF CLERK
TCEQ

AFFIDAVIT OF PUBLICATION
FOR ALL APPLICATIONS OTHER THAN RENEWALS

STATE OF TEXAS §

COUNTY OF Travis §

Before me, the undersigned authority, on this day personally appeared
Shary Fowler, who being by me duly

(name of newspaper representative)

sworn, deposes and says that (s)he is the Legal Notices Rep

(title of newspaper representative)

of the Austin American Statesman; that said newspaper is

(name of newspaper)

regularly published or circulated in Travis County/Countries,
Texas;

that the attached notice was published in said newspaper on the following date:

April 23, 2006

[Signature]
Newspaper Representative's Signature

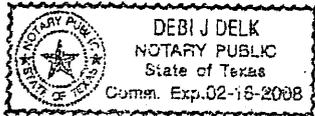
Subscribed and sworn to before me this the 23 day of April,
2006, to certify which witness my hand and seal of office.

(Seal)

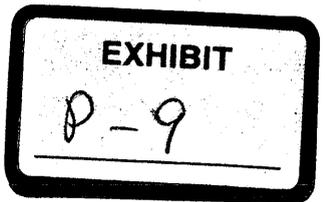
[Signature]
Notary Public in and for the State of Texas

Debi J Delk
Print or Type Name of Notary Public

My Commission Expires 2-16-08



[Handwritten signature]



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR WATER QUALITY LAND APPLICATION PERMIT FOR MUNICIPAL WASTEWATER TREATMENT PLANT

NO. WQ001462900

PROPOSED PERMIT NO. WQ001462900

APPLICATION AND PRELIMINARY DECISION, Lazy Nine Municipal Utility District and Forest City Sewerwater Limited Partnership, c/o WILAN & Fickinger, 2301 North Lamar Boulevard, Austin, Texas 78705, have applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. WQ001462900, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day via surface impoundment of 285 acres of non-public access rangeland. This permit will not authorize discharge of pollutants into waters in the State. TCEQ received this application on June 8, 2006. The wastewater treatment facility will be located approximately 0.2 miles west of the Village of Bee Cave near State Highway 71 in Travis County, Texas. The disposal site will be located on the south side of State Highway 71, approximately 3 miles west of the Village of Bee Cave in Travis County, Texas. The facility is located in the Bee Creek drainage basin in Segment No. 1404 of the Colorado River Basin. The disposal site is located in the Little Barton Creek drainage basin in Segment No. 1404 of the Colorado River Basin.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made preliminary decisions that the permit issued meets all regulatory and regulatory requirements. The Executive Director's preliminary decision and draft permit are available for public review and comment at the Village of Bee Cave Municipal Building, 13305 State Highway 71 West, Bee Cave, Texas 78008, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

PUBLIC COMMENT MEETING: You may submit public comment or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity for public comment or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application and that a public meeting is warranted. A public meeting may be held at the local level. The Executive Director will consider all timely comments and request a public hearing if necessary. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing list will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:

your name, address, phone number, e-mail address, and permit number; the location and distance of your property/facility relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement of the request for a contested case hearing. If the request for a contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving correspondence. Correspondence identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION:

The Executive Director may decide to grant approval of the application, unless a timely contested case hearing request is received for reconsideration of the permit. If the Executive Director grants the final approval of the permit and will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. MAILING LIST: If you submit public comments, a request for a public meeting, or request a contested case hearing, you will be added to the mailing list for this permit application. The future public notices mailed by the Office of the Chief Clerk in connection with this permit will be placed on the mailing list. The mailing list will include the permit number and the mailing list for a specific county. If you wish to be added to the mailing list, please clearly specify which TCEQ Office you request to be added to the mailing list. MAILING LIST: If you submit public comments and public hearing requests, they must be submitted to the Office of the Chief Clerk, MC 1051, TCEQ, P.O. Box 13087, Austin, TX 78711-3087, within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION:

If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, 1-800-687-4040. For general information on EPCRA, please contact 1-800-687-4040. General information about the TCEQ can be found on our website at www.tceq.state.tx.us.

Further information may also be obtained from Lazy Nine Municipal Utility District and Forest City Sewerwater Partner, LLC at the address listed above or by calling Mr. Mike Wilan at 512-476-0504.

Issuance Date: April 12, 2006

NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR WATER QUALITY LAND APPLICATION PERMIT FOR MUNICIPAL WASTEWATER

NEW PROPOSED PERMIT NO. WQ0014828001

APPLICATION AND PRELIMINARY DECISION: Lazy Nine Municipal Utility District and Forest City Sweetwater Limited Partnership, c/o: Wilbur & Fitzinger, 2001 North Lamar Boulevard, Austin, Texas 78705, have applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit. Proposed Permit No. WQ0014828001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day via surface impaction of 285 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on June 8, 2005. The wastewater treatment facility will be located approximately 6.2 miles west of the Village of Bee Cave near State Highway 71 in Travis County, Texas. The disposal site will be located on the south side of State Highway 71, approximately 3 miles west of the Village of Bee Cave in Travis County, Texas. The facility is located in the Bee Creek drainage basin in Segment No. 1404 of the Colorado River Basin and the disposal site is located in the Little Barton Creek drainage basin in Segment No. 1430 of the Colorado River Basin.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Village of Bee Cave Municipal Building, 13333 State Highway 71 West, Bee Cave, Texas.

PUBLIC COMMENT PERIOD: The TCEQ Executive Director is holding a public meeting to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local resident. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING: After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement, "I/we request a contested case hearing" if the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence. Identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION: The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST: If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant's name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 12087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION: If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance. Toll Free at 1-800-687-4040. Si desea información en Español, llame al 1-800-687-4040. General information about the TCEQ can be found at our web site: www.tceq.state.tx.us. Further information may also be obtained from Lazy Nine Municipal Utility District and FC Sweetwater Partner, LLC at the address stated above or by calling Mr. Mike Wilbur at 512-476-6604.

Issuance Date: April 12, 2006

Austin American-Statesman ■ statesman.com
 9980 Legal Notices

F14 Sunday, April 23, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 TCEQ DOMESTIC WASTEWATER PERMIT APPLICATION
 DOMESTIC ADMINISTRATIVE REPORT

SUBMISSION CHECKLIST - SUBMIT THIS CHECKLIST WITH THE APPLICATION
 DO NOT SUBMIT THE INSTRUCTIONS WITH THE APPLICATION
 INDICATE IF THE FOLLOWING ARE INCLUDED IN THE APPLICATION.

APPLICANT Lazy Nine Municipal Utility District

PERMIT NUMBER _____

WORKSHEET	Y	N	WORKSHEET	Y	N
ADMINISTRATIVE REPORT 1.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	USGS MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATIVE REPORT 1.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	AFFECTED LANDOWNER MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SPIF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BUFFER ZONE MAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TECHNICAL REPORT 1.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FLOW DIAGRAM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TECHNICAL REPORT 1.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SITE DRAWING	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 2.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ORIGINAL PHOTOGRAPHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 2.1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DESIGN CALCULATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 3.0	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DESIGN FEATURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 3.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOLIDS MANAGEMENT PLAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 4.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WATER BALANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 5.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	COPY OF APPLICATION FEE CHECK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 6.0 (required for all POTWs)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LANDOWNER DISK OR LABELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WORKSHEET 7.0	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Please indicate by a check mark the amount submitted for the application fee:

Flow	New/Major Amendment	Renewals
< .05 MGD	_____ \$350.00	_____ \$315.00
≥ .05 but < .10 MGD	_____ \$550.00	_____ \$515.00
≥ .10 but < .25 MGD	_____ \$850.00	_____ \$815.00
≥ .25 but < .50 MGD	_____ \$1,250.00	_____ \$1,215.00
≥ .50 but < 1.0 MGD	_____ \$1,650.00	_____ \$1,615.00
≥ 1.0 MGD	_____ \$2,050.00	_____ \$2,015.00
Minor Amendment (any flow)	_____ \$115.00	

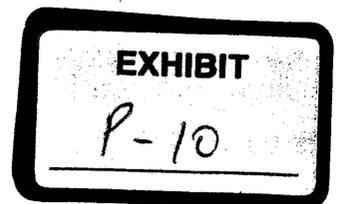
A COPY OF THE CHECK MUST BE SUBMITTED AS PART OF THE APPLICATION

For Commission Use Only:	
Segment Number _____	County <u>Texas</u>
Expiration Date _____	Region <u>11</u>
Proposed/Current Permit Number <u>14-29-001</u>	

Received Page 1 of 11

JUN 08 2005

Water Quality Application Team



DOMESTIC TECHNICAL REPORT 1.1

THE FOLLOWING IS REQUIRED FOR NEW AND AMENDMENT APPLICATIONS

1. PERMITTED AND/OR PROPOSED FLOWS (Instructions, Page 29)

a. Complete the following chart.

PERMITTED AND /OR PROPOSED FLOW:	Initial/existing Phase	Intermediate Phase	Final Phase
Design Flow (MGD)	0.18	0.44	0.7
2-Hr Peak Flow (MGD)	0.9	2.2	3.5
Construction estimated to start	August 2006	August 2007	August 2011
Date waste disposal to start	December 2006	August 2008	August 2012

Phase currently in operation: NA

b. Provide a detailed discussion regarding the need for the proposed permit or proposed phase(s). Failure to provide sufficient justification may result in the Executive Director recommending denial of the proposed phase(s) or permit.

A new subdivision will be constructed upon approval of this permit application. The initial phase will be sufficient to handle the wastewater loading.

c. Are there any wastewater treatment and/or collection systems located within three (3) miles of the areas to be serviced by the proposed facility? Yes No

If yes, is a list of these systems and area map attached? Yes No **See Attachment I**

Does a wastewater treatment plant with as collection system within 3 miles of the proposed facility currently have the capacity to accept the volume of wastewater proposed in this application? Yes No

If yes, is an analysis of expenditures required to connect to any existing wastewater collection systems located within 3 miles attached? Yes No

Provide copies of all correspondence with the owners/authorities of existing facilities within 3 miles of the existing/proposed facility concerning connection with their system. **See Attachment I**

2. PROPOSED ORGANIC LOADING (Instructions, Pages 29-30)

a. Is this a new permit application? Yes No

b. If no, and the application is to amend an existing permit, provide the following information.

Facility Design Flow (flow being requested in application) _____
 Average Organic Strength or BOD₅ Concentration in mg/l _____
 Average Loading (lbs/day=total average flow x average BOD₅ conc. X 8.34) _____
 Provide the source of the average organic strength or BOD₅ concentration _____

If the increased flow will impact the existing organic strength, the following table must be completed.

LAKEWAY MUNICIPAL UTILITY DISTRICT
1097 Lohmans Crossing • Lakeway, TX • 78734-4459
(512) 261-6222 • Fax (512) 261-6681



December 9, 2004

Ms. Michelle Abrams, Team Leader
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087

RE: Application from Lazy Nine MUD to Obtain a Sewer Certificate of
Convenience and Necessity (CCN) in Travis County, Application No. 34753-C
CN: Pending; RN: Pending

Dear Ms. Abrams:

Lakeway Municipal Utility District has discussed the possibility of providing wastewater utility service to the Lazy Nine Municipal Utility District with representatives of that MUD. Although the two (2) MUD's are in relative proximity to one another, the topographic conditions and construction constraints appear to be prohibitively difficult and expensive to overcome. In addition, existing Lakeway MUD wastewater system facilities would need to be significantly expanded to provide out-of-district service to Lazy Nine MUD. It does not appear to be very practical or reasonable for Lakeway MUD to undertake such effort.

Accordingly, Lakeway MUD has no interest in, nor any desire to provide wastewater utility services to Lazy Nine MUD on either a wholesale or retail basis. Lakeway MUD supports the CCN application of Lazy Nine MUD.

If you have questions or need additional information, please feel free to contact us at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Eason".

Richard Eason
General Manager

Cc: Malone/Wheeler, Inc.

Use Water Wisely  Every Drop Counts

www.Lakewaymud.org

TOTAL P. 02

EXHIBIT

P-11



May 10, 2005

RECEIVED
MAY 11 2005
BY: _____

Mr. Richard A. Miller, P.E.
Malone/Wheeler, Inc.
7500 Rialto Blvd.
Bldg. 1, Suite 240
Austin, TX 78735

Dear Mr. Miller,

This is in reply to your e-mail to Mr. Mike Tomme of LCRA on April 22, 2005. In that e-mail, you asked if the LCRA can provide wastewater service to the Lazy Nine MUD at a flow of 900,000 gallons per day.

The only available LCRA wastewater facility in the area is the Lake Pointe WWTP (the Lake Pointe Plant) which currently has a capacity of 575,000 gallons per day at the existing Lake Pointe Plant site. LCRA is currently in the process of seeking a permit amendment from the Texas Commission on Environmental Quality to increase the permitted flow to 1,000,000 gallons per day. The permit amendment would seek to have the existing Lake Pointe Plant site capacity maximized at 675,000 gallons per day and have an additional 375,000 gallons per day at a separate plant location at the Bohls Tract (collectively, the Lake Pointe Plant System).

The current flows to the Lake Pointe Plant are in excess of 200,000 gallons per day. Should LCRA be successful in obtaining the requested increase in capacity at the Lake Pointe Plant System that would only leave approximately 800,000 gallons per day of available capacity.

Best on the capacity available should LCRA obtain its permit amendment, LCRA, there would be insufficient capacity in the Lake Pointe Plant to honor and serve a request for a projected flow of 900,000 gallons per day.

Sincerely,

Janet Stephenson
Regional Manager West Travis County Region

EXHIBIT
P-12

**HURST CREEK
MUNICIPAL UTILITY DISTRICT**

102 TROPHY DRIVE
AUSTIN, TEXAS 78738
(512) 261-6281 FAX 261-4810

April 13, 2005

Mr. C. A. Elder
President, Board of Directors
Lazy Nine Municipal Utility District
c/o Willshire Homes
8200 North MoPac Expressway, #300
Austin, Texas 78759

RE: Lazy Nine Municipal Utility District

Dear Mr. Elder:

Hurst Creek Municipal Utility District (MUD) has discussed the possibility of providing wastewater utility service to the Lazy Nine MUD with representatives of that MUD. Although the two MUD's are in relative proximity to one another, the topographic conditions and construction constraints appear to be prohibitively difficult and expensive to overcome. In addition, existing Hurst Creek MUD wastewater system facilities would need to be significantly expanded to provide service to Lazy Nine MUD. It does not appear to be very practical or reasonable for Hurst Creek MUD to undertake such effort.

Accordingly, Hurst Creek MUD has no interest in, nor any desire to provide wastewater utility services to Lazy Nine MUD on either a wholesale or retail basis.

Sincerely,


Dan Roark
General Manager

cc: Richard A. Miller, P.E., Malone/Wheeler, Inc.

EXHIBIT

P-13



**TRAVIS COUNTY WATER CONTROL
& IMPROVEMENT DISTRICT 17**

3812 ECK LANE • AUSTIN, TEXAS 78734
PHONE (512) 266-1111 • FAX (512) 266-2790

July 20, 2005

Mr. Richard Wheeler, P.E.
Malone/Wheeler, Inc.
7500 Rialto Blvd., Bldg. 1, Suite 240
Austin, Texas 78735

Re: Wastewater Service to Lazy Nine MUD

Dear Mr. Wheeler,

Travis County WCID 17 has looked into the possibility of providing wastewater service to Lazy Nine MUD. Although District 17 is in proximity to the MUD, District systems would have to be significantly expanded to provide service to the MUD, and it does not appear to be feasible to undertake this effort.

WCID 17 does not currently have capacity to serve Lazy Nine MUD, however, the District would be willing to work with the MUD to provide service to the area should that option be feasible.

If you need any further information, please contact me at (512) 266-1111 Ext. 13, or dobbicgenes@wcid17.org.

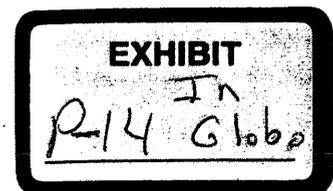
Sincerely,


Deborah S. Gernes
General Manager

Received

JUL 25 2005

Water Quality Application Team



Malone/
Wheeler, Inc.
Engineering & Development Consultants

June 14, 2005

Ms. Deborah S. Gernes, General Manager
Travis County WCID No. 17
3812 Eck Lane
Austin, TX 78734

RE: Lazy Nine MUD
TCEQ Non-discharge Wastewater Permit Application

Dear Ms. Gernes:

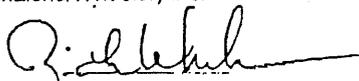
Lazy Nine MUD has recently submitted an application for a non-discharge wastewater permit to TCEQ. During the course of a discussion at a preliminary review meeting, TCEQ requested that we obtain a letter from Travis County WCID No.17 that indicates that the District either does not have the capacity to serve Lazy Nine or has no intention of serving Lazy Nine. Similar letters were previously obtained from Lakeway MUD, Hurst Creek MUD and LCRA. Copies are attached for your information and review.

We recognize that this is an imposition on your time. However, we would respectfully request that WCID No.17 provide a letter for the wastewater permit application. The Hurst Creek MUD letter is probably the best example.

As a point of information, Lazy Nine MUD was granted CCN No's.13075 for water and 20970 for sewer by the TCEQ on May 13, 2005. Copies of each are also included for information.

If you have question or need additional information, please call me at your earliest convinces. We appreciate your consideration of this request and look forward to receipt of the letter shortly.

Very truly yours,
Malone/Wheeler, Inc.



Richard J. Wheeler, P.E.
President

RECEIVED
JUL 21 2005
Water Quality
Applications Team

MMalone/
WWheeler, Inc.

Engineering & Development Consultants

MEMORANDUM

TO: Lazy Nine MUD; Willatt & Flickinger

FROM: Rick Wheeler *RW*

SUBJECT: TCEQ Permit No. WQ 0014629001
Lazy Nine MUD CN 602731572

DATE: July 19, 2005

A phone conversation was conducted with Ms. Debbie Gernes, General Manager of Travis County WCID No. 17 on Tuesday July 19, 2005 concerning our letter dated June 14, 2005. Ms. Gernes indicated that she had indeed received and read the letter and was apologetic that she had not yet provided a response. She further stated that the WCID No. 17 had no problem with providing a letter stating that WCID No. 17 had no interest in or desire to provide wastewater service to Lazy Nine MUD. Ms. Gernes also stated that we could expect to receive such a letter "shortly".

RECEIVED
JUL 21 2005
Water Quality
Applications Team

HD4-02661P/M050523

7500 Rialto Blvd., Bldg. 1, Suite 240, Austin, TX 78735
Phone: 512-899-0601 Fax: 512-899-0655