

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 21, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

2009 APR 21 PM 2:23
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582-08-0690; TCEQ Docket No. 2007-1178-MWD; In the Matter of the Application by Lerin Hills, Ltd. for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001

Dear Mr. Trobman:

I have reviewed the exceptions and replies filed by the parties in this case. Upon a re-examination of the record, I agree with one argument put forward by Lerin Hills, Ltd., in its exceptions. Accordingly, I recommend the following changes to the Findings of Fact:

Addition of New Finding of Fact No. 45: "The concentrations of phosphorus and nitrogen in the receiving stream after commencement of the discharge would return to background levels upstream of Frederick Creek and Upper Cibolo Creek."

Addition of New Finding of Fact No. 46: "Lerin Hills has shown that Frederick Creek and Upper Cibolo Creek would not be degraded by nutrients in the proposed discharge."

Current Finding of Fact No. 45 (which will become Finding of Fact No. 47) should be altered to read: "Lerin Hills has failed to show that there would not be greater-than-*de minimis* lowering of water quality of the waters of Deep Hollow Creek as a result of the proposed discharge."

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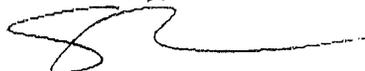
The Findings of Fact should be re-numbered to reflect these additions. Further, I recommend the following changes to the Conclusions of Law:

Conclusion of Law No. 6 should be altered to read: "The draft permit would ensure that the narrative standards applicable to the immediate receiving stream (the unnamed tributary) and to Frederick Creek and Upper Cibolo Creek would be met."

Conclusion of Law No. 7 should be altered to read: "The evidence fails to support a conclusion that, as to nutrients and their effects on surface water quality, the draft permit and proposed discharge would satisfy the requirements of the Commission's antidegradation rule in connection with the waters of Deep Hollow Creek. 30 TEX. ADMIN. CODE § 307.5.

These changes do not affect my recommended outcome in the case. The Proposal for Decision and Order are ready for the Commission's consideration.

Sincerely,



Shannon Kilgore
Administrative Law Judge

SK/ap
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: LERIN HILLS, LTD
SOAH DOCKET NUMBER: 582-08-0690
REFERRING AGENCY CASE: 2007-1178-MWD

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ SHANNON KILGORE

REPRESENTATIVE / ADDRESS

PARTIES

DOCKET CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3300 (PH)
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

GARRETT ARTHUR
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
MC-175 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-5757 (PH)
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

DAVID O FREDERICK
LOWERRE, FREDERICK, PERALES, ALLMON &
ROCKWELL
707 RIO GRANDE, SUITE 200
AUSTIN, TX 78701
(512) 469-6000 (PH)
(512) 482-9346 (FAX)

RICK WOOD

KATHY HUMPHREYS
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-3417 (PH)
(512) 239-0606 (FAX)

EXECUTIVE DIRECTOR

DANNY G WORRELL
ATTORNEY
BROWN MCCARROLL L.L.P.
111 CONGRESS, SUITE 1400
AUSTIN, TX 78701
(512) 479-1151 (PH)
(512) 479-1101 (FAX)

LERIN HILLS, LTD.

cc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

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REGARDING: EXCEPTIONS LETTER (BY AL)

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JUDGE SHANNON KILGORE

FAX TO:

FAX TO:

DANNY G WORRELL

(512) 479-1101

DAVID O FREDERICK

5124829346

GARRETT ARTHUR (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-6377

KATHY HUMPHREYS (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-0606

DOCKET CLERK (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-3311

TCEQ Docket Clerk, Fax Number 512/239-3311

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