

June 15, 2009

VIA HAND DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUN 15 PM 1:05
CHIEF CLERKS OFFICE

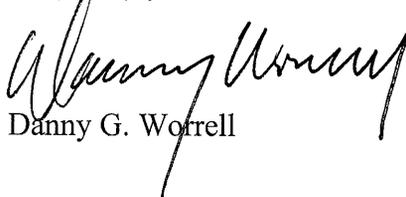
Re: Lerin Hills, Ltd.'s Revised Proposed Order in Re: Application
of Lerin Hills, Ltd. for TPDES Permit No. WQ0014712001;
TCEQ Docket No. 2007-1178-MWD

Dear Ms. Castañuela:

Enclosed for filing please find an original and seven copies of Lerin Hills, Ltd.'s ("Lerin Hills") revised proposed Order along with an original and seven copies of Lerin Hill's redline version of the same document showing the revisions to the Order proposed by the Administrative Law Judge in this case, which was attached to her Proposal for Decision. The attached revised proposed Order was prepared in accordance with the Commissioners' instructions given at their agenda meeting of May 20, 2009. In accordance with those instructions and in accordance with 30 TAC § 10.5, Lerin Hills attempted to reach an agreement among the parties on the form of the revised Order. The Executive Director agreed with the form of the attached, revised proposed Order. The Protestant and the Office of Public Interest Counsel ("OPIC") indicated that Conclusions of Law Nos. 6 and 7 and Ordering Paragraph No. 1 correctly support the outcome a majority of the Commission indicated it wants to reach. Nevertheless, neither the Protestant nor OPIC could agree as to other, unspecified, aspects of the revised Order, which Lerin Hills proposes here.

Thank you for your assistance on this matter, and if you have any questions, please do not hesitate to contact me.

Very truly yours,


Danny G. Worrell

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2009, a copy of Lerin Hills, Ltd.'s Revised Proposed Order was served on the following parties of record in this case via hand delivery, facsimile and/or regular mail.

FOR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

The Honorable Shannon Kilgore
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
(512) 475-4993 - Telephone
(512) 475-4994 - Facsimile

FOR THE PROTESTANT:

David Frederick, Attorney
Eric Allmon, Attorney
Lowerre & Frederick
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Austin, Texas 78701
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FOR THE PUBLIC INTEREST COUNSEL:

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Garrett Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
12100 Park 35 Circle
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FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys, Staff Attorney
Timothy J. Reidy, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
12100 Park 35 Circle
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Austin, Texas 78753
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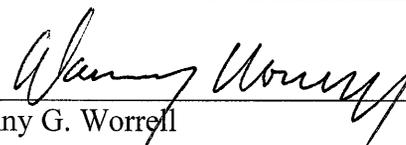
FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
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CHIEF CLERKS OFFICE

2009 JUN 15 PM 1:05

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY



Danny G. Worrell

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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CHIEF CLERKS OFFICE

**ORDER
CONCERNING THE APPLICATION BY LERIN HILLS, LTD.,
FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES)
PERMIT NO. WQ0014712001**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Lerin Hills, Ltd., (Lerin Hills) for a permit to discharge treated wastewater effluent in Kendall County, Texas. A Proposal for Decision (PFD) was presented by Shannon Kilgore, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

The following are parties to the proceeding: Lerin Hills; the Executive Director (ED); Rick Wood; and the Office of Public Interest Counsel (OPIC).

After considering the Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Lerin Hills, Ltd. (Lerin Hills or Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001.
2. The permit would authorize the discharge of treated wastewater effluent from a new proposed municipal wastewater facility that would be located in Kendall County, approximately four miles west of the City of Boerne.

Procedural History

3. Lerin Hills filed its application for a new TPDES permit on May 3, 2006.

4. The Commission's Executive Director (ED) declared the application administratively complete on May 26, 2006.
5. Lerin Hills published the Notice of Receipt of Application and Intent to Obtain Water Quality Permit on June 9, 2006.
6. The ED completed the technical review of the application and prepared an initial draft permit. The application was declared technically complete on August 16, 2006.
7. The combined Notice of Application and Preliminary Decision and Public Meeting was published on September 22, 2006.
8. A public meeting was held October 24, 2006, in Boerne.
9. Following receipt of several requests for a contested case hearing, the Commission considered the requests in an open meeting on October 24, 2007.
10. On October 26, 2007, the Commission referred this matter to the State Office of Administrative Hearings (SOAH) on October 24, 2007. The Commission established a nine-month deadline for the proposal for decision (from the date of the preliminary hearing), and referred seven issues.
11. The preliminary hearing was held on January 8, 2008, in Austin. After determining that proper notice had been given and that the Commission and SOAH have jurisdiction over this matter, the ALJ designated the following parties: Lerin Hills, represented by Danny Worrell and Jackson Battle; the ED, represented by Kathy Humphreys and Tim Reidy; the Commission's Office of Public Interest Counsel (OPIC), represented by Amy Swanholm; and protesting party Rick Wood, represented by David Frederick and Eric Allmon.

12. The hearing originally convened on June 30, 2008. On that date, at the outset of the hearing, the parties broke for negotiations and announced that they had reached an agreement in principle. The hearing was therefore abated.
13. On August 29, 2008, the parties informed the ALJ that their negotiations had failed to yield a final settlement, and they then proposed a hearing schedule, which the ALJ adopted. The parties waived the deadline established by the Commission for the completion of the hearing process.
14. The hearing on the merits was held in Austin on November 18, 19, and 20, 2008. The record closed on January 12, 2009, with the submission by the parties of their final closing arguments.

Proposed Facility and Draft Permit Conditions

15. The proposed wastewater treatment facility would serve a new development, and would be located approximately 4 miles west of Interstate 10, as measured along State Highway 46, and then approximately 200 feet due west from that point.
16. The draft permit would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.18 million gallons per day (MGD) in the Interim I Phase, 0.36 MGD in the Interim II Phase, and 0.5 MGD in the Final Phase.
17. The effluent would discharge into an unnamed tributary, then approximately 0.5 mile to the headwaters of an impoundment on Deep Hollow Creek (the SCS impoundment), then to Deep Hollow Creek, then to Frederick Creek, then to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin.
18. The immediate receiving stream, the unnamed tributary, is presumed intermittent due to its minimal watershed and steep gradient; the Lerin Hills discharge would probably comprise the total flow in the creek most of the time.

19. Deep Hollow Creek is an intermittent stream and has an estimated low flow of 0.1 cubic feet per second (cfs).
20. There is a pond on Deep Hollow Creek upstream of where the discharge route enters the creek.
21. There is a pond (the Hahnfeld pond) downstream of the SCS pond, prior to the confluence of Deep Hollow Creek with Frederick Creek; this pond is used by Mr. Wood and his family for swimming and fishing.
22. The plant would be an activated sludge process plant operated in the complete mix mode with nitrification. Treatment units would include bar screens, aeration basins, final clarifiers, aerobic sludge digesters, sand filters, and chlorine contact chambers.
23. The proposed wastewater treatment process will include coagulant addition facilities to precipitate phosphorus upstream of the clarifier and dechlorination facilities prior to discharge.
24. The draft permit includes the following daily average effluent limitations: 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand (CBOD), 5 mg/L total suspended solids (TSS), 1 mg/L ammonia nitrogen (NH₃-N), 0.5 mg/L (or 2.1 pounds per day) total phosphorus (P), and 6.0 mg/L minimum dissolved oxygen (DO). The draft permit also requires reporting of nitrate-nitrogen and total nitrogen levels.
25. The draft permit includes requirements that the effluent contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). Subsequent to disinfection, the effluent shall be dechlorinated to less than 0.1 mg/L chlorine residual.

26. The draft permit requires that pH shall not be less than 6.0 standard units, nor greater than 9.0 standard units.
27. The draft permit requires sludge to be taken to a recycling center wastewater treatment facility for disposal.
28. Operational Requirement No.4 on page 10 of the draft permit specifies that the permittee is responsible for installing, prior to plant setup, adequate safeguards to prevent discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
29. Other Requirement No. 1 on page 23 of the draft permit requires that the permittee employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the rules of the TCEQ. Because it would be a Category C facility, it must be operated by a chief operator or an operator holding a Class C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher, who must be available by telephone or pager seven days per week.

Surface Water Quality

30. The draft permit would ensure that the Commission's numerical standards applicable to all segments of the receiving stream would be met.
31. The draft permit would ensure that the narrative standards applicable to all segments of the receiving stream would be met.
32. Modeling of the effects of the proposed discharge indicates that the lowest DO level in Deep Hollow Creek would be between 5.03 mg/L and 5.27 mg/L.

33. Deep Hollow Creek, Frederick Creek, and Cibolo Creek are phosphorus-limited, meaning that the scarcity of phosphorus is what limits the growth of algae and aquatic plants,
34. Deep Hollow Creek, Frederick Creek, and Cibolo Creek have little assimilative capacity for nutrients.
35. The proposed Lerin Hills discharge could (at the maximum permitted concentration) add about 750 pounds per year of phosphorus to the stream system.
36. Predicted concentrations of phosphorus in the SCS impoundment would be 0.42 mg/L, 0.28 mg/L, 0.12 mg/L, and 0.05 mg/L (upstream to downstream).
37. Predicted concentrations of phosphorus in the Hahnfeld Pond would be 0.04 mg/L and 0.03 mg/L.
38. Lerin Hills' phosphorus modeling uses a uniform decay rate to attempt to reflect removal of phosphorus from the water column.
39. The proposed Lerin Hills discharge would also add nitrate-nitrogen, which has the potential to stimulate algal and plant growth, to the receiving stream.
40. An increase in plant and algal growth as a result of the proposed Lerin Hills discharge is likely, however, with the effluent limit of 0.5 mg/L (daily average) for total phosphorous, the increase will be *de minimis*.
41. Segment No. 1908 of Upper Cibolo Creek is presently on the draft 2008 305(b) list for concerns about orthophosphorus.
42. The concentrations of phosphorous and nitrogen in the receiving stream after commencement of the discharge would return to background levels upstream of Frederick Creek and Upper Cibolo Creek.

43. Lerin Hills has shown that Frederick Creek and Upper Cibolo Creek would not be degraded by nutrients in the proposed discharge.
44. Lerin Hills demonstrated that there would not be lowering of the water quality of Deep Hollow Creek, Frederick Creek, and Upper Cibolo Creek by more than a *de minimis* extent as a result of the proposed discharge.

Groundwater Quality

45. The proposed Lerin Hills plant and discharge site is situated over the upper Glen Rose formation, which has a depth of 400 to 500 feet and relatively low vertical hydraulic conductivity.
46. The principal local water supply, the Middle Trinity Aquifer, lies below the upper Glen Rose.
47. Wells W1 (on Rick Wood's property) and H2 (near the Hahnfeld pond) draw their water from the Middle Trinity Aquifer.
48. No expert in the case found, through personal observation or literature research, any recharge features in the area relating to the Trinity Aquifer.
49. The proposed Lerin Hills discharge site is at least 14 miles from the Edwards Aquifer recharge zone.
50. The effluent limitations in the draft permit for CBODs, TSS, ammonia nitrogen, and phosphorus are equal to or more stringent than those required in chapter 213 for dischargers located only up to five miles upstream of the Edwards Aquifer recharge zone.
51. The Lerin Hills discharge, assuming maximum flow and assuming that all of it reached Cibolo Creek, would constitute about 0.5% of the mean annual recharge volume to the Edwards over the length of Cibolo Creek.
52. Recharge from Cibolo Creek represents 16% total recharge to the Edwards Aquifer.

53. Cibolo Creek's "aquifer protection" use will not be impaired.
54. The area of Deep Hollow Creek has perched groundwater zones unconnected to the Trinity Aquifer.
55. Wells on the Webster property near the SCS impoundment and well H1 (near Deep Hollow Creek in the vicinity of the Hahnfeld pond) are sourced by shallow, perched groundwater zones.
56. Deep Hollow Creek in the area of the discharge is a "gaining stream," meaning that it is topographically lower than the nearby perched zones, and receives water from them but does not communicate surface water to them.
57. The siting of the Lerin Hills facility would minimize the contamination of groundwater.

Amount of Wastewater

58. The draft permit would allow Lerin Hills to discharge the appropriate amount of wastewater based on service area projections.

Siting Criteria

59. The proposed Lerin Hills facility site is a rocky location with limited topsoil.
60. The siting of the facility at the proposed location would minimize water contamination due to erosion.

Nuisance Odors

61. A plant like the proposed Lerin Hills facility would be required to maintain a 150-foot buffer from the nearest property line.
62. The planned facility will meet the 150-foot buffer requirement; the plant site and required buffer zone are owned by Lerin Hills and therefore Lerin Hills does not have to acquire easements or other property interests.

63. If for some reason the entire buffer zone is not conveyed to the Lerin Hills MUD, then Lerin Hills will dedicate a buffer zone easement to the MUD.

Compliance History

64. The compliance history classification for Lerin Hills is "average by default," with a compliance rating of 3.1.

Other Requirement No.1 and Operational Requirement No. 4

65. That the Lerin Hills facility has not yet been designed is not justification for a higher level of operational attention mandated in the permit.
66. A Class C operator is appropriate for the proposed Lerin Hills facility.
67. Lerin Hills will install, prior to plant start-up, a standby generator sized to provide adequate power to the facility during electrical power failures.
68. Lerin Hills is agreeable to the inclusion in the permit of a provision requiring a standby electrical generator or generators.
69. Successful permit applicants are required to develop, in the context of their facility design, measures to prevent bypasses and unauthorized discharges.

Transcription Costs

70. Reporting and transcription of the hearing on the merits was warranted because the hearing lasted three days.
71. All parties fully participated in the hearing by presentation of witnesses and cross examination.
72. All parties benefited from preparation of a transcript.
73. There was no evidence that any party subject to allocation of costs was financially unable to pay a share of the costs.
74. Lerin Hills is a business partnership.

75. Mr. Wood is a private individual.
76. An unspecified amount of Mr. Wood's legal expenses in this case are being paid by Tapatio Springs, another development in Kendall County.

CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over this matter. TEXAS WATER CODE chs. 5 and 26.
2. SOAH has jurisdiction over this hearing process and the authority to issue a proposal for decision with findings of fact and conclusions of law. TEXAS WATER CODE §§ 5.311 and 26.021; TEXAS GOV'T CODE ch. 2003.

Notice

3. Notice of the Lerin Hills application and the hearing was properly provided to the public and to all parties. TEXAS WATER CODE §§ 5.115 and 26.028; TEXAS GOV'T CODE §§ 2001.051 and 2001.052; 30 TEX. ADMIN. CODE §§ 39.405 and 39.551.

Burden of Proof

4. Applicant had the burden to prove, by a preponderance of the evidence, that the proposed discharge permit will comply with the applicable statutes and rules. 30 TEX. ADMIN. CODE § 80.17(a).

Surface Water Quality

5. The draft permit and proposed Lerin Hills discharge would satisfy the requirements of the Commission's numerical stream standards. 30 TEX. ADMIN. CODE ch. 307.
6. The draft permit would ensure that the narrative standards applicable to the immediate receiving stream (the unnamed tributary), and to Deep Hollow Creek, Frederick Creek and Upper Cibolo Creek would be met. 30 TEX. ADMIN. CODE § 307.4.

7. The evidence supports 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, Frederick Creek, and Cibolo Creek. 30 TEX. ADMIN. CODE § 307.5.

Groundwater Quality

8. The draft permit and proposed Lerin Hills discharge would satisfy the Commission's requirements as to groundwater protection. 30 TEX. ADMIN. CODE §§ 307.5, 309.12, 309.313.

Amount of Wastewater

9. The draft permit authorizes an appropriate amount of wastewater to be discharged based on service area projections.

Siting Criteria

10. The proposed Lerin Hills facility meets the siting requirements for domestic wastewater effluent and plants. 30 TEX. ADMIN. CODE § 309.12.

Nuisance Odors

11. The proposed Lerin Hills facility would comply with the requirements intended to reduce nuisance odor conditions. 30 TEX. ADMIN. CODE § 309.13(e).

Compliance History

12. The compliance history of Lerin Hills is suitable for issuance of the permit sought in this case.

Other Requirement No.1 and Operational Requirement No.4

13. Other Requirement No. 1 of the draft permit is adequate to ensure compliant plant operations.
14. Operational Requirement No.4 is adequate to ensure compliant plant operations.

Transcription Costs

15. Allocating 85 percent of reporting and transcription costs for the hearing on the merits to Lerin Hills and 15 percent of the costs to Rick Wood is a reasonable allocation of costs under the factors set forth in 30 TEX. ADMIN. CODE § 80.23(d).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of Lerin Hills, Ltd., for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001 is APPROVED and the permit ISSUED in the form as shown in the draft permit prepared by the Executive Director.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by Tex. Gov't Code § 2001.144 and 30 Tex. Admin. Code § 80.273.
4. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

5. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**Buddy Garcia, Chairman
For the Commission**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2007 JUN 15 PM 1:06

CHIEF CLERKS OFFICE

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FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES)
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The following are parties to the proceeding: Lerin Hills; the Executive Director (ED); Rick Wood; and the Office of Public Interest Counsel (OPIC).

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2. The permit would authorize the discharge of treated wastewater effluent from a new proposed municipal wastewater facility that would be located in Kendall County, approximately four miles west of the City of Boerne.

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19. Deep Hollow Creek is an intermittent stream and has an estimated low flow of 0.1 cubic feet per second (cfs).
20. There is a pond on Deep Hollow Creek upstream of where the discharge route enters the creek.
21. There is a pond (the Hahnfeld pond) downstream of the SCS pond, prior to the confluence of Deep Hollow Creek with Frederick Creek; this pond is used by Mr. Wood and his family for swimming and fishing.
22. The plant would be an activated sludge process plant operated in the complete mix mode with nitrification. Treatment units would include bar screens, aeration basins, final clarifiers, aerobic sludge digesters, sand filters, and chlorine contact chambers.
23. The proposed wastewater treatment process will include coagulant addition facilities to precipitate phosphorus upstream of the clarifier and dechlorination facilities prior to discharge.
24. The draft permit includes the following daily average effluent limitations: 5 milligrams per liter (mg/L) 5-day carbonaceous biochemical oxygen demand (CBOD), 5 mg/L total suspended solids (TSS), 1 mg/L ammonia nitrogen (NH₃-N), 0.5 mg/L (or 2.1 pounds per day) total phosphorus (P), and 6.0 mg/L minimum dissolved oxygen (DO). The draft permit also requires reporting of nitrate-nitrogen and total nitrogen levels.
25. The draft permit includes requirements that the effluent contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). Subsequent to disinfection, the effluent shall be dechlorinated to less than 0.1 mg/L chlorine residual.

26. The draft permit requires that pH shall not be less than 6.0 standard units, nor greater than 9.0 standard units.
27. The draft permit requires sludge to be taken to a recycling center wastewater treatment facility for disposal.
28. Operational Requirement No.4 on page 10 of the draft permit specifies that the permittee is responsible for installing, prior to plant setup, adequate safeguards to prevent discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
29. Other Requirement No. 1 on page 23 of the draft permit requires that the permittee employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the rules of the TCEQ. Because it would be a Category C facility, it must be operated by a chief operator or an operator holding a Class C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher, who must be available by telephone or pager seven days per week.

Surface Water Quality

30. The draft permit would ensure that the Commission's numerical standards applicable to all segments of the receiving stream would be met.
31. The draft permit would ensure that the narrative standards applicable to ~~the immediate all~~ segments of the receiving stream, the unnamed tributary, would be met.

32. Modeling of the effects of the proposed discharge indicates that the lowest DO level in Deep Hollow Creek would be between 5.03 mg/L and 5.27 mg/L, ~~compared to a presumed background of 6.25 mg/L or 6.45 mg/L.~~
33. Deep Hollow Creek, Frederick Creek, and Cibolo Creek are phosphorus-limited, meaning that the scarcity of phosphorus is what limits the growth of algae and aquatic plants,
34. Deep Hollow Creek, Frederick Creek, and Cibolo Creek have little assimilative capacity for nutrients.
35. The proposed Lerin Hills discharge could (at the maximum permitted concentration) add about 750 pounds per year of phosphorus to the stream system.
36. Predicted concentrations of phosphorus in the SCS impoundment would be 0.42 mg/L, 0.28 mg/L, 0.12 mg/L, and 0.05 mg/L (upstream to downstream), ~~compared to the measured background of 0.035 mg/L or the presumed background of 0.05 mg/L.~~
37. Predicted concentrations of phosphorus in the Hahnfeld Pond would be 0.04 mg/L and 0.03 mg/L, ~~compared to the measured background of less than the detectable limit of 0.02 mg/L.~~
- ~~38. The phosphorus concentrations in the Hahnfeld pond and SCS impoundment after the commencement of the proposed discharge could be as much as 150% to 1,200% of measured background.~~
- 39.38. Lerin Hills' phosphorus modeling uses a uniform decay rate to attempt to reflect removal of phosphorus from the water column, ~~but the modeling does not attempt to reflect cumulative phosphorus loading over time.~~

~~40. The record in this case includes no attempt to estimate quantitatively the amounts of phosphorus that will be biologically available in the stream system over time as the discharge continues.~~

41.39. The proposed Lerin Hills discharge would also add nitrate-nitrogen, which has the potential to stimulate algal and plant growth, to the receiving stream.

42.40. An increase in plant and algal growth as a result of the proposed Lerin Hills discharge is likely, however, with the effluent limit of 0.5 mg/L (daily average) for total phosphorous, the increase will be *de minimis*.

~~43. The record in this case includes no attempt to estimate quantitatively the amounts of algal and plant growth that may result from the increased nutrient loading from the proposed discharge.~~

44.41. Segment No. 1908 of Upper Cibolo Creek is presently on the draft 2008 305(b) list for concerns about orthophosphorus.

42. The concentrations of phosphorous and nitrogen in the receiving stream after commencement of the discharge would return to background levels upstream of Frederick Creek and Upper Cibolo Creek.

43. Lerin Hills has shown that Frederick Creek and Upper Cibolo Creek would not be degraded by nutrients in the proposed discharge.

45.44. Lerin Hills ~~demonstrated~~ has failed to show that there would not be lowering of the water quality greater than *de minimis* degradation of the waters of Deep Hollow Creek, Frederick Creek, and Upper Cibolo Creek by more than a *de minimis* extent as a result of the proposed discharge.

~~46. Lerin Hills has not shown that any lowering of water quality resulting from the proposed discharge would be necessary for an important economic or social development.~~

Groundwater Quality

47.45. The proposed Lerin Hills plant and discharge site is situated over the upper Glen Rose formation, which has a depth of 400 to 500 feet and relatively low vertical hydraulic conductivity.

48.46. The principal local water supply, the Middle Trinity Aquifer, lies below the upper Glen Rose.

49.47. Wells W1 (on Rick Wood's property) and H2 (near the Hahnfeld pond) draw their water from the Middle Trinity Aquifer.

50.48. No expert in the case found, through personal observation or literature research, any recharge features in the area relating to the Trinity Aquifer.

51.49. The proposed Lerin Hills discharge site is at least 14 miles from the Edwards Aquifer recharge zone.

52.50. The effluent limitations in the draft permit for CBODs, TSS, ammonia nitrogen, and phosphorus are equal to or more stringent than those required in chapter 213 for dischargers located only up to five miles upstream of the Edwards Aquifer recharge zone.

53.51. The Lerin Hills discharge, assuming maximum flow and assuming that all of it reached Cibolo Creek, would constitute about 0.5% of the mean annual recharge volume to the Edwards over the length of Cibolo Creek.

54.52. Recharge from Cibolo Creek represents 16% total recharge to the Edwards Aquifer.

55.53. Cibolo Creek's "aquifer protection" use will not be impaired.

56.54. The area of Deep Hollow Creek has perched groundwater zones unconnected to the Trinity Aquifer.

57.55. Wells on the Webster property near the SCS impoundment and well H1 (near Deep Hollow Creek in the vicinity of the Hahnfeld pond) are sourced by shallow, perched groundwater zones.

58.56. Deep Hollow Creek in the area of the discharge is a "gaining stream," meaning that it is topographically lower than the nearby perched zones, and receives water from them but does not communicate surface water to them.

59.57. The siting of the Lerin Hills facility would minimize the contamination of groundwater.

Amount of Wastewater

60.58. The draft permit would allow Lerin Hills to discharge the appropriate amount of wastewater based on service area projections.

Siting Criteria

61.59. The proposed Lerin Hills facility site is a rocky location with limited topsoil.

62.60. The siting of the facility at the proposed location would minimize water contamination due to erosion.

Nuisance Odors

63.61. A plant like the proposed Lerin Hills facility would be required to maintain a 150-foot buffer from the nearest property line.

64.62. The planned facility will meet the 150-foot buffer requirement; the plant site and required buffer zone are owned by Lerin Hills and therefore Lerin Hills does not have to acquire easements or other property interests.

65.63. If for some reason the entire buffer zone is not conveyed to the Lerin Hills MUD, then Lerin Hills will dedicate a buffer zone easement to the MUD.

Compliance History

66.64. The compliance history classification for Lerin Hills is "average by default," with a compliance rating of 3.1.

Other Requirement No.1 and Operational Requirement No. 4

67.65. That the Lerin Hills facility has not yet been designed is not justification for a higher level of operational attention mandated in the permit.

68.66. A Class C operator is appropriate for the proposed Lerin Hills facility.

69.67. Lerin Hills will install, prior to plant start-up, a standby generator sized to provide adequate power to the facility during electrical power failures.

70.68. Lerin Hills is agreeable to the inclusion in the permit of a provision requiring a standby electrical generator or generators.

71.69. Successful permit applicants are required to develop, in the context of their facility design, measures to prevent bypasses and unauthorized discharges.

Transcription Costs

72.70. Reporting and transcription of the hearing on the merits was warranted because the hearing lasted three days.

73.71. All parties fully participated in the hearing by presentation of witnesses and cross examination.

74.72. All parties benefited from preparation of a transcript.

75.73. There was no evidence that any party subject to allocation of costs was financially unable to pay a share of the costs.

76.74. Lerin Hills is a business partnership.

77.75. Mr. Wood is a private individual.

78.76. An unspecified amount of Mr. Wood's legal expenses in this case are being paid by Tapatio Springs, another development in Kendall County.

CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over this matter. TEXAS WATER CODE chs. 5 and 26.
2. SOAH has jurisdiction over this hearing process and the authority to issue a proposal for decision with findings of fact and conclusions of law. TEXAS WATER CODE §§ 5.311 and 26.021; TEXAS GOV'T CODE ch. 2003.

Notice

3. Notice of the Lerin Hills application and the hearing was properly provided to the public and to all parties. TEXAS WATER CODE §§ 5.115 and 26.028; TEXAS GOV'T CODE §§ 2001.051 and 2001.052; 30 TEX. ADMIN. CODE §§ 39.405 and 39.551.

Burden of Proof

4. Applicant had the burden to prove, by a preponderance of the evidence, that the proposed discharge permit will comply with the applicable statutes and rules. 30 TEX. ADMIN. CODE § 80.17(a).

Surface Water Quality

5. The draft permit and proposed Lerin Hills discharge would satisfy the requirements of the Commission's numerical stream standards. 30 TEX. ADMIN. CODE ch. 307.
6. The draft permit would ensure that the narrative standards applicable to the immediate receiving stream (the unnamed tributary), and to Deep Hollow Creek, Frederick Creek and Upper Cibolo Creek would be met. 30 TEX. ADMIN. CODE § 307.4.

7. The evidence ~~fails to support~~supports 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, Frederick Creek, and Cibolo Creek. 30 TEX. ADMIN. CODE § 307.5.

Groundwater Quality

8. The draft permit and proposed Lerin Hills discharge would satisfy the Commission's requirements as to groundwater protection. 30 TEX. ADMIN. CODE §§ 307.5, 309.12, 309.313.

Amount of Wastewater

9. The draft permit authorizes an appropriate amount of wastewater to be discharged based on service area projections.

Siting Criteria

10. The proposed Lerin Hills facility meets the siting requirements for domestic wastewater effluent and plants. 30 TEX. ADMIN. CODE § 309.12.

Nuisance Odors

11. The proposed Lerin Hills facility would comply with the requirements intended to reduce nuisance odor conditions. 30 TEX. ADMIN. CODE § 309.13(e).

Compliance History

12. The compliance history of Lerin Hills is suitable for issuance of the permit sought in this case.

Other Requirement No.1 and Operational Requirement No.4

13. Other Requirement No. 1 of the draft permit is adequate to ensure compliant plant operations.

14. Operational Requirement No.4 is adequate to ensure compliant plant operations.

Transcription Costs

15. Allocating 85 percent of reporting and transcription costs for the hearing on the merits to Lerin Hills and 15 percent of the costs to Rick Wood is a reasonable allocation of costs under the factors set forth in 30 TEX. ADMIN. CODE § 80.23(d).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of Lerin Hills, Ltd., for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014712001 is ~~denied~~ APPROVED and the permit ISSUED in the form as shown in the draft permit prepared by the Executive Director.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by Tex. Gov't Code § 2001.144 and 30 Tex. Admin. Code § 80.273.
4. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

5. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**Buddy Garcia, Chairman
For the Commission**