Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 1, 2007

TO: Persons on the attached mailing list.

RE: TCB Rental, Inc.
TPDES Permit No. WQ0014725001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Harrie P. Woodson Memorial Library, 704 Highway 21, Caldwell, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
TCB Rental, Inc.
TPDES Permit No. WQ0014725001

FOR THE APPLICANT:

Carl A. Buckner
TCB Rental, Inc.
P.O. Box 1593
Brenham, Texas 77834

Shelley Young, P.E.
WaterEngineers, Inc.
17230 Huffmeister Road
Cypress, Texas 77429

FOR THE EXECUTIVE DIRECTOR:

Chris Ekoh, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Phillip B. Urbany, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

PROTESTANTS/INTERESTED PERSONS:

See attached list.

CONCERNED CITIZEN
1524 COUNTY ROAD 112
CALDWELL TX 77836-6884

CHARLES & MARY KAY JANNER
PO BOX 625
SOMERVILLE TX 77879-0625

AVIS MUNSON & ESTER WILSON
PO BOX 601
SNOOK TX 77878

NATHAN COOK
LANDOWNERS ALONG KOONTZ BAYOU
2107 FM 1362
CALDWELL TX 77836

CHARLES JANNER
1787 CR 444
SOMERVILLE TX 77879-7411

STEPHEN E OGDEN
STE 103
3740 COPPERFIELD DR
BRYAN TX 77802-5932

BILL EDWARDS
603 MCLENDON
SOMERVILLE TX 77879

DOUGLAS R KETTLER
10409 ST PETERS SCHOOL RD
BRENHAM TX 77833

THE HONORABLE STEPHEN E OGDEN
TEXAS SENATE
PO BOX 12068
AUSTIN TX 78711-2068

W H GIESENSCHLAG
9201 FM 2039
SOMERVILLE TX 77879

DOUGLAS & THERESA KETTLER
10409 ST PETERS SCHOOL RD
BRENHAM TX 77833

DOUGLAS PECORE
2222 SUL ROSS ST
HOUSTON TX 77098

CAMILLA J GODFREY
17302 COUNTY ROAD 438
SOMERVILLE TX 77879-4037

JEAN & LEONARD KILGORE
KOONZ BAYOU/OLD RIVER LANDOWNERS/LES
PO BOX 625
SOMERVILLE TX 77879-0625

LEON & LEON SCHWARTZ
TRIPLE SSS CATTLE CO
PO BOX 1888
BRENHAM TX 77834

DAVID GODFREY
17212 CR 438
SOMERVILLE TX 77879

JEAN KILGORE
PO BOX 625
SOMERVILLE TX 77879

MARK SICILIO
126 LEE AVE
COLLEGE STATION TX 77840

STEVE HALEY
PO BOX 1808
BRENHAM TX 77834-1808

JEAN KILLGORE
PO BOX 625
SOMERVILLE TX 77879-0625

FRANK & MARSHA STEIN
PO BOX 11
SNOOK TX 77878

DAVID HILDERBRAND & VINCENT SVEC JR
STE 306
100 W BUCK ST
CALDWELL TX 77836-1724

HELEN M LANDRY
1518 HARTWICK RD
HOUSTON TX 77093-1027

WILLIAM H TONN III
6310 DOGWOOD RD
BRENHAM TX 77833

HENRY & LYDIA R HILTON
4978 AFTON OAKS DR
COLLEGE STATION TX 77845-7666

JOHN J LANDRY
3807 BLACK LOCUST DR
HOUSTON TX 77088

NANCY URBANOSKY
PO BOX 656
SOMERVILLE TX 77879-0656

JOHNNIE HUDSON & AVIS MUNSON
CLAY
PO BOX 601
SNOOK TX 77878-0601

DAVID MOORE
PO BOX 585
SNOOK TX 77878

BARRY WILKERSON
12971 SHORT RD
COLLEGE STATION TX 77845-8577

ESTER WILSON
PO BOX 441
SNOOK TX 77878-0441

CHERYL WOOTEN
5341 FM 1361
SOMERVILLE TX 77879

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 SEP 24 PM 4:07

CHIEF CLERKS OFFICE

Proposed New TPDES Permit No. WQ0014725001

Application by	§	**Before the**
TCB Rental, Inc. for a New	§	**TEXAS COMMISSION ON**
TPDES Permit No. WQ0014725001	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application of TCB Rental, Inc. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00147254001, and the Executive Director's preliminary decision on the application. Pursuant to 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved and a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters and comments at the public meeting from the following persons: The Honorable Stephen E. Ogden (State Senator), Burleson County Commissioners Court (Mike Sutherland, Frank Kristof, Vincent Svec, David Hildebrand and John Landolt), Jean and Leonard Killgore, Douglas Pecore, Leon Schwartz, Camilla Godfrey, David Godfrey, Charles and Mary Kay Janner, William H. Tonn III, G.H. Giesenschlag, Douglas and Thersa Kettler, Mark Sicilio, Ester Wilson, Avis Munson, Barry Wilkerson, Cheryl Wooten, Henry and Lydia Hilton, John Landry, and Helen Landry. This Response addresses all timely public comments received, whether or not withdrawn. If you would like more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a new TPDES permit, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility will be located on the west side of Farm-to-Market Road 50, approximately 1.5 miles south of the intersection of Farm-to-Market Road 50 and Farm-to-Market Road 1361 in Burleson County, Texas. The wastewater treatment facility will be an activated sludge processing plant operated in the extended aeration mode. Treatment units will include bar screens, flow equalization basin, activated sludge aeration basin, final clarifier, aerobic sludge digester and a chlorine contact chamber. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l $CBOD_5$ (five-day Carbonaceous Biochemical Oxygen Demand), 15 mg/l TSS (Total Suspended

Solids), 3 mg/l NH_3-N (Ammonia-Nitrogen), 4.0 mg/l DO (Minimum Dissolved Oxygen) and the pH shall not be less than 6.0 standard units nor greater than 9.0 standard units. The effluent shall be chlorinated in a chlorine contact chamber to a residual of 1.0 mg/l with a minimum detention time of 20 minutes based on peak flow. This Category C facility must be operated by a chief operator or an operator holding a Category 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. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week.

Procedural Background

The application was received on June 29, 2006 and declared administratively complete on July 20, 2006. Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 3, 2006 in the *Burleson County Tribune*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on December 21, 2006 in the *Burleson County Tribune*. A public meeting was held on April 17, 2007 and the comment period was extended from April 17, 2007 to May 17, 2007. Since this application was administratively complete after September 1, 1999, it is subject to the procedural requirements of House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1:

Senator Stephen E. Ogden commented that a public meeting should be held to inform the interested parties about the proposed permit and give them an opportunity to provide input. He requested that the public meeting be held at a location convenient for the residents of Burleson County.

RESPONSE 1:

A public meeting was held on April 17, 2007 at the American Legion Hall, Somerville, Texas. Presentation at the public meeting was bifurcated; an informal discussion period and a formal comment period. During the informal discussion period, the public was encouraged to ask questions of the Applicant and TCEQ staff concerning the application. During the formal comment period, members of the public stated their formal comments into the official record.

COMMENT 2:

Ms. Killgore commented that she went to the location (Harrie P. Woodson Memorial Library in Caldwell, Texas) where a copy of the application would be available for viewing and copying and that the documents were not there.

RESPONSE 2:

It is the Applicant's responsibility to ensure that the permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying. The Applicant's representative was contacted and she submitted postal documentation demonstrating that copies of the application and other documents related to this permit were forwarded to the library and that the library actually received them. The Applicant representative was instructed to resend copies of the documents to the library and to Ms. Killgore directly. On April 2, 2007, the representative complied with both requests (the information was sent to Harrie P. Woodson Memorial Library, 704 Highway 21, Caldwell, Texas via certified mail and to Ms. Killgore.) Additionally, the Executive Director extended the comment period by 30 days because the documents may or may not have been available for viewing and copying for a period of time at the library.

COMMENT 3:

The **Burleson County Commissioners Court** (Mike Sutherland, Frank Kristof, Vincent Svec, David Hildebrand and John Landolt) adopted and filed a resolution recognizing the potential danger the wastewater treatment plant might pose to the health and safety of residents, landowners, livestock, native wildlife, crops, and the environment due to its location in the volatile flood plain of the Brazos River in Burleson County. The Commissioners Court also requested a contested case hearing on the application.

RESPONSE 3:

Since a hearing request was filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Unless the case is directly referred to the State Office of Administrative Hearings (SOAH), the Commission will make a determination on the contested case hearing requests. If the Commission grants the contested case hearing requests, the case will be referred to SOAH for a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in a district court.

Additionally, the Executive Director is aware of the concerns raised regarding the location of the wastewater treatment plant. Accordingly, the Applicant is required to comply with the site characteristics requirements in 30 TAC § 309.13. A wastewater treatment plant may not be located:

(a) in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during the flood event;

(b) wetlands;

(c) subject to limited exceptions, within 500 feet of a public water well, or 250 feet of a private water well; and

(d) a wastewater plant's "surface impoundment may not be located in areas overlying the recharge zones of major or minor aquifers . . . unless the aquifer is separated from the base of the containment structure by a minimum of three feet material with a hydraulic conductivity toward the aquifer . . ."

The Applicant is also required to comply with one of the nuisance odor control and buffer requirements of 30 TAC § 309.13(e).

The draft permit was developed to protect aquatic life, human health and the environment in accordance with the Texas Surface Water Quality Standards. As part of the permit application process, the Executive Director must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. In this case, the treated wastewater from the plant will be discharged into an unnamed drainage ditch; then to Koontz Bayou Drain; then to Koontz Bayou; then to Old River; and then to Brazos River above Navasota River in Segment No. 1242 of the Brazos River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed drainage ditch and Koontz Bayou Drain. The designated uses for Segment No. 1242 are high aquatic life uses, public water supply and contact recreation.

The proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand ($CBOD_5$), Total Suspended Solids (TSS), Ammonia Nitrogen, Dissolved Oxygen (DO), chlorine residual, and pH to ensure that discharges from the proposed wastewater treatment plant meet water quality standards for the protection of surface water, groundwater, and human health in accordance with TCEQ rules and policies. The proposed draft permit includes requirements for the disposal of domestic sludge generated from the wastewater treatment facility based on TCEQ rules. The Executive Director expects that human health and the environment will be protected if the Applicant operates and maintains the facility as permitted and in accordance with TCEQ rules. The Executive Director has determined that the proposed draft permit is protective of the environment, water quality, and human health in accordance with TCEQ rules and requirements. Any noncompliance with the terms of the proposed draft permit could result in enforcement action against the permittee.

COMMENT 4:

Jean and Leonard Killgore commented that the proposed location for the plant is in a flood plain and that the area experiences severe flooding. They expressed concerns about their health and safety, the health of their cattle, native wildlife, and the environment in the event the proposed facility is damaged by flood. They stated that they had observed the extreme flooding in the Koontz Bayou Basin and provided photographs of some of the flooding events. They indicated that Koontz Bayou floods easily and rapidly because of slow drainage problems caused by silting, debris, and vegetation growth. They stated that when Koontz Bayou floods, it backs up onto their road and lower pastures.

Charles and Mary Kay Janner commented that the wastewater treatment plant will be located in a flood plain. They own property which is often inundated by flood waters from Koontz Bayou. They expressed concerns that the Applicant will not be able to adequately protect against raw sewage and chemicals from mixing with flood waters during a flood event. They are concerned that flood waters mixed with raw sewage and chemicals could contaminate their "hay meadow," cattle fed with the hay, and ultimately humans. They wanted to know who will be responsible for the cleanup if flood waters carry sewage and other chemicals onto their property.

William H. Tonn, III. commented that the proposed site for the wastewater treatment plant is subject to frequent flooding. He is concerned that a flood event could overwhelm the proposed facility and result in effluent being transported by flood into his property. He indicated that the facility should be located in an area of higher elevation.

W. H. Giesenschlag commented that the proposed site for the wastewater treatment plant is "on low ground" and subject to frequent flooding during heavy rains and whenever the Brazos River overflows. Mr. Giesenschlag requested that TCEQ explore all environmental issues before permitting this facility to operate in the current proposed location.

Camilla Godfrey commented that the plant will be located in a flood plain; the flooding and drainage problem in the area; the possibility that sewage will be discharged into Koontz Bayou and her property during a severe flood event; interference with the recreational use and enjoyment of her property; the possibility of ecoli contamination and other health risks. **David Godfrey** commented about environmental stewardship, preservation, love and esthetic value of the land; long term effect of the plant on the people who love the land; flooding; and safety concerns.

Henry W. Hilton and **Lydia Hilton** expressed concerns about recent flooding of Koontz Bayou and that their land and crops will be contaminated by overflow from the plant during a flood event.

Helen Landry commented about the flood and the fact that the facility would be located in a flood prone area next to her property. She stated that her property would be flooded with raw sewage and chemicals from the facility when it floods.

John Landry commented about flooding in the area and the fact that he would be walking or driving through raw sewage if a flood event causes the facility to overflow. He stated that the facility has the potential to contaminate pasture land, surface, and ground water.

Mrs. Avis Munson & Mrs. Ester Wilson commented that the facility will be located in a flood plain. They commented that the communities of Clay and Wilcox experience floods that remain stagnant for about one to two weeks. They expressed concerns about flooding and the release of waste into the Koontz Bayou. They are concerned about the health effects on humans and livestock should an overflow during a flood event lead to sewer contamination.

Leon Schwartz stated that he owns 844 acres ranch within one mile of the proposed facility location. He commented about the flooding and drainage problem in the area. He stated that the area around Koontz Bayou and Old River floods frequently and it takes about seven to ten days for flood water to drain. He is concerned that the owner of the facility cannot prevent the plant from overflowing or being damaged by flood.

Douglas Kettler commented about flooding in the area. He was concerned that wastewater and chemicals could spill onto his field if the facility overflows during a flood event. He stated that the wastewater should be treated where it was generated. He stated that locating the facility in Burleson County would constitute an "unsightly environmental hazard."

RESPONSE 4:

TECQ rules do not prohibit an applicant from locating a wastewater treatment plant in a flood plain. As stated in Response No. 2, a wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event. 30 TAC § 309(a). In the application, the Applicant demonstrated using the Flood Insurance Rate Map (FIRM) that the plant site is located in Zone A which is a hazard area that is inundated by the 100-year flood. The United States Geological Services (USGS) map shows that the elevation in the area of the proposed site is 205 feet above sea level. The Applicant has proposed to construct the treatment tanks so that the top of the tanks would be at an elevation of 209 feet or above. All mechanical equipment will be mounted on top of the plant to avoid inundation by flood. Other Requirement No.6 in the proposed draft permit requires the Applicant to provide facilities for the protection of its wastewater treatment plant from a 100-year flood event. This provision and the proposed design requirements for the facility were added to protect the wastewater treatment plant from flooding related damages. Compliance with the design requirement will ensure that the facility will withstand a severe flood event. The Executive Director has determined that if the plant is built and operated as contemplated in the proposed draft permit, the danger posed by flooding will be greatly minimized.

COMMENT 5:

Ms. Killgore commented that drainage is critical and is currently hampered by overgrowth and silting. She stated that discharge of any quantity of water into the Bayou would add to the flooding. She commented that it only takes about 6-8 inches of rain area-wide for the water in the Bayou to start backing up onto the fields. **Ms. Godfrey** stated that there is a problem with flood control and that it is well documented that flooding occurs from the water that drains from the area around Snook. **Mr. Schwartz** stated that this would be a very bad location for a sewage treatment plant because of concerns regarding overflow, back up, and the drainage problem with the Bayou due to accumulation of debris and silt. He commented that there are already a number of low water crossings and bridges that keep the flood water from draining.

RESPONSE 5:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. In this case, the Applicant and the Executive Director are aware that the proposed facility will be located an area within the 100-year flood plain and the proposed draft permit includes Other Requirements No. 6 which requires the Applicant to provide protection for the facility from a 100-year flood. For flooding concerns, please contact the local flood plain administrator for your area. If you need help finding the local flood plain administrator, please call the TCEQ Resource Protection Team at 512-239-4691. The flood plain administrator for your area can request a low-interest loan for flood control protection from the Texas Water Development Board.

COMMENT 6:

Ms. Killgore commented about the health and safety of her family, cattle, and environmental contamination that would be caused by the proposed wastewater treatment plant. **Mr. Pecore** commented about what would be deposited in the waterways and pastures if the facility is breached by flood. **Ms. Godfrey** commented that this plant will allow human waste to overflow and spread onto her field used to graze cattle. **Mr. and Ms. Janner** expressed concerns that flood water could transport raw sewage and chemicals from the open treatment tanks and contaminate the hay feed for their cattle. **Mr. and Ms. Kettler** stated that their property borders the proposed site and that wastewater would spill out in times of floods and contaminate their cattle feed. **Mr. and Ms. Hilton** commented that the overflow from the plant during flooding would contaminate their land and affect the quality of their crops. **Mr. Landry** commented that he does not want to drive or walk through raw sewage and that raw sewage from the treatment plant would contaminate their pasture land, surface and groundwater. **Ms. Landry** stated that raw sewage and chemicals from the proposed facility will contaminate their land. **Mr. Geisenschlag** commented that flood water carrying pollutants from the proposed facility would contaminate their land.

RESPONSE 6:

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement 1 in the proposed draft permit states that the Applicant must maintain adequate safeguards to prevent the 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. In addition, the plans and specifications for domestic sewage treatment works associated with any domestic wastewater permit must be approved by TCEQ.

Permit Condition 2(d) in the proposed draft permit requires the Applicant to take all reasonable steps to minimize or prevent any discharge, disposal or other permit violation which has a reasonable likelihood of adversely affecting human health and the environment. Permit Condition 2(g) in the proposed draft permit states that there shall be no unauthorized discharge

of wastewater or any other waste. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge to TCEQ within the prescribed time period, the Applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities will determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

The draft permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The draft permit was established to be protective of human health and the environment provided the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the permit. The Executive Director has determined that this draft permit would be protective of the environment, water quality, aquatic and terrestrial life, and human health. The draft permit includes effluent limitations and monitoring requirements designed to ensure that treated effluent meets the Texas Surface Water Quality Standards for the protection of surface water and human health according to TCEQ rules and policies.

As part of the application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses, including aquatic life and contact recreation. The Commission does not have water-quality based effluent limitations for cattle water. However, the TCEQ Water Quality Assessment Section has determined that the proposed draft permit for the facility meets the requirements of the Texas Surface Water Quality Standards, which are established to protect human health and terrestrial and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. In accordance with 30 TAC §307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. This review has preliminarily determined that no significant degradation of high quality waters is expected and that existing uses will be maintained and protected.

The Texas Water Code, Section 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The Executive Director does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. The Executive Director evaluates applications for wastewater treatment plants based on the information provided in the application. The Executive Director can recommend issuance or denial of an application based on whether the application complies with TCEQ regulations and water quality standards.

If this permit is issued, it does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire all property rights necessary to use the discharge route. The proposed draft permit does not authorize trespass by the Applicant on any nearby landowner's property. Accordingly, Permit Condition 8 in the proposed draft permit states that a permit does not convey any property rights of any sort, or any exclusive privilege.

COMMENT 7:

Barry Wilkerson commented that the plant site would be inaccessible to the plant operator in times of floods.

RESPONSE 7:

Under Section 317.7(e) of the Commission rules, the plant "shall have at least one all-weather access road with the driving surface situated above the 100-year flood plain or be provided by an alternate method of access approved by the commission." After the permit is issued, the Applicant must construct an all weather road prior to operations.

COMMENT 8:

Mr. Janner stated that in his experience working in the oil fields, he knows that the "oil field" is not to be trusted and that they might "pour things" into the domestic waste just to get rid of them. **Mr. Sicilio** commented that as a pediatrician, he is aware of the amount of cancer in the Galveston/Houston area because of the refineries there and that many of these products would be brought in from the drilling sites across the state. He wanted to know about wastewater management programs and cancer rates in Texas and how they compare with other states.

RESPONSE 8:

The proposed discharge would consist of domestic wastewater similar to wastewater discharged by a municipal wastewater treatment facility. The permit application indicates that the plant will treat only domestic wastewater from temporary residences located at drilling sites. The domestic wastewater will be deposited into holding tanks containing only domestic waste. Drilling related wastewater or process water will not be accepted or processed at the facility. Permit Condition 4(d) in the proposed draft permit contains the following provision: "prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit." This facility will be permitted to accept, store and process only domestic wastewater. Acceptance of any other waste is unauthorized.

The proposed activated sludge treatment process for the plant is a biological treatment system that is sensitive to any harmful chemicals. For efficient treatment, the plant operator would want to ensure that the wastewater received is treatable by the activated sludge.

The proposed draft permit does not authorize the facility to accept refinery waste. Acceptance of such waste would be a violation of the permit. The Commission has not studied the relationship between cancer rates and wastewater management programs in Texas.

COMMENT 9:

Ms. Godfrey stated that her home is close to the proposed facility and that she will be impacted by the odor from operation of the facility particularly when the wind is blowing in a southernly direction. **Mr. Tonn** commented about odors that could be generated as a result of the operation of the facility. His property is located downwind from the proposed location of the facility. He owns rental property in the area, and he is concerned that the odor from the facility will affect his rental income. **Mr. Wilkerson** is concerned that the hydrogen sulfide that is going to be contained in the holding tanks will have to be vented somewhere and that there will be prolonged exposure downwind to the gas. **Mr. Sicilio** commented that a wastewater treatment plant at the bottom of the hill with the ambient and the odors is in no way appealing. **Mrs. Munson** and **Mrs. Wilson** expressed concerns about the fumes and odors that will be released as a result of operation of the facility.

RESPONSE 9:

Section 309.13(e) of the Commission rules require an Applicant to use one of the following alternatives to demonstrate compliance with the nuisance odor abatement and control requirement prior to the construction of a new wastewater treatment plant:

1. The Applicant must meet the buffer zone requirements that are established to help minimize the impact of odors on nearby residents and property owners. "Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc) may not be located [within] 500 feet [of] the nearest property line. All other wastewater treatment plant units may not be located [within] 150 feet [of] the nearest property line." The Applicant may meet the buffer zone requirement by owning the buffer zone area or by obtaining sufficient property interests in all adjacent land necessary to meet the distance requirement;

2. "The applicant must submit a nuisance odor prevention request for approval by the executive director. A request for nuisance odor prevention must be in the form of an engineering report, prepared and sealed by a licensed professional engineer in support of the request. At a minimum, the engineering report shall address existing climatological conditions such as wind velocity and atmospheric stability, surrounding land use which exists or which is anticipated in the future, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions shall be supported by actual test data or appropriate calculations. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed; or

3. The Applicant "must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

According to the permit application, the Applicant intends to meet the buffer zone requirements on the existing site by owning the land.

Air emission authorizations are handled by a separate program in the air permits division. In accordance with 30 TAC §§106.531-32, air emissions from sewage treatment facilities are permitted by rule. 30 TAC Chapter 106 identifies certain types of facilities, including sewage treatment facilities, which the Commission has determined "will not make a significant contribution of air contaminants to the atmosphere" under the Texas Clean Air Act, Sections 382.057 and 382.05196.

The draft permit was developed to minimize nuisance odor. If the plant is designed and operated in accordance with the draft permit, nuisance odor will be significantly curtailed.

COMMENT 10:

Ms. Godfrey commented that Highway 50 has a very high amount of traffic accidents because it is like a Farm-to-Market Road that is narrow with no shoulders. She indicated that she does not want 18-wheelers on Highway 50 much less worry about one tipping over. She was also concerned about wastewater being trucked to the plant by eighteen wheelers and the risk of traffic accident and sewage spills. **Mr. and Ms. Kettler** commented about increased truck traffic on a small Farm-to-Market Road.

RESPONSE 10:

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. Chapter 26 provides TCEQ with authorization to consider issues that directly affect water quality, but it does not provide authorization for TCEQ to consider issues such as traffic congestion. The TCEQ does not have jurisdiction over traffic issues in the wastewater permitting process. In the event that someone is adversely affected by the Applicant's transportation of wastewater, the draft permit does not limit the ability of nearby landowners to use remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property.

Transporters of sewage sludge, water treatment sludge, and domestic septage are regulated by the Commission under 30 TAC Chapter 312. Section 312.142(a) requires sewage sludge transporters to register with the Commission. Under Section 312.144(a), all vehicles used to transport wastewater must be registered and prominently marked with the company name, telephone number, authorization sticker, and the Commission assigned registration number. In accordance with Section 312.144(b), all "vehicles and equipment used for the collection and transportation of . . . [sewage sludge, water treatment sludge, and domestic septage] shall be constructed, operated, and maintained to prevent loss of liquid or solid waste materials and to prevent health nuisance and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude nuisance conditions such as odors and insect breeding." Section 312.146 states that in "the event of a discharge or spill of waste during collection or transportation, the collector or transporter must take appropriate action to protect human health and the environment, e.g., notify local law enforcement and health authorities; dike the discharge area; clean up any waste discharge that occurs during transportation; or take such action as may be required or approved by federal, state, or local officials having jurisdiction so that the waste discharge no longer presents a public health or environmental problem." These regulations are promulgated to ensure that domestic waste transporters employ all reasonable means to avoid harm to humans and the environment. Accordingly, the Executive Director has added a special provision requiring the permittee to comply with the provisions of 30 TAC Chapter 312, Subchapter G, to the draft permit.

COMMENT 11:

Mr. Tonn, III noted that much of the wastewater will be trucked in from drilling sites in the Ft. Worth area, and asked why the applicant did not site the facility in Ft. Worth, Texas where the wastewater originated. **Mr. Wilkerson** commented that the Applicant will not be able to operate the facility year round because of the flooding concerns in the area and asked why the Applicant would build the plant if he cannot operate it year-round.

RESPONSE 11:

Under the Texas Water Code, TCEQ is tasked with protecting the quality of water in the state. To implement this statutory mandate, TCEQ issues permits that must be consistent with applicable law. Under this authority, TCEQ requires that a discharge must meet both statutory and regulatory criteria designed to protect water quality. However, the TCEQ cannot require an applicant to consider an alternate facility location if the proposed location is otherwise consistent with applicable law. The Executive Director has reviewed the proposed site for this facility and has determined that the application complies with the unsuitable site characteristics requirements contained in Section 309.13 of the Commission rules as it relates to the 100-year flood plain, wetlands, public and private water wells, recharge zones for minor and major aquifers; and odor control buffer requirements.

COMMENT 12:

Mrs. Wilson stated that she represented the community of Clay which is about 98% black and is downstream of the discharge. **Mrs. Munson and Mrs. Wilson** commented that it is morally unethical for their community to become the dumping ground for waste from other counties. They commented about environmental racism. They stated that the citizens of Clay are predominantly African-American, poor, and "do not own large homes, huge amounts of land, or large herds of livestock." They stated that they were denied grants for sewer systems because they were told Clay is located in a flood plain. They question why this facility could be located in a flood plain when they were denied grant for a sewer system on the basis that the system would be located in a flood plain. **Ms. Godfrey** commented that rural areas are being taken advantage of and that waste from other parts of the state should not be brought to Burleson County. **Mr. and Ms. Kettler** stated that the wastewater business should not be located in Washington County. They do not want the unsightly environmentally hazardous wastewater business in Burleson County.

RESPONSE 12:

When evaluating permit applications, the Commission considers the surrounding community without regard to its socioeconomic or racial status. However, the Commission has a structure in place to deal with environmental justice concerns. The Commission's Environmental Equity Program (EEP) was designed to assist the community with environmental justice issues. The goals of the EEP include helping "citizens and neighborhood groups to participate in regulatory processes; serv[ing] as the agency contact to address allegations of environmental injustice; serv[ing] as a link for communications between the community, industries, and the government; ensur[ing] that agency programs that substantially affect human health or the environment operate without discrimination; promot[ing] greater use and analysis of demographic information for areas surrounding proposed facilities or sites; giv[ing] greater attention to the environmental and human health conditions in affected minority and low-income communities; and thoroughly consider[ing] all citizens' concerns and handl[ing] them fairly." Individuals may raise environmental equity or environmental justice concerns with the TCEQ by calling a toll-free number, 1-800-687-4040, or at the following address, telephone and facsimile numbers:

Environmental Equity (MC-108)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Telephone No. 512/239-4000
Facsimile No. 512/239-4007
opa@tceq.state.tx.us (E-mail)

Additional information can be found at www.tceq.state.tx.us/comm_exec/opa/envequ.html.

COMMENT 13:

Mr. Wilkerson commented that lightening could knock out the electricity and that the pumps will not run if the breakers trip. He stated that unless there is a telemetry system in place, the treatment system will not get air. He stated that it would take six hours for the system to go anaerobic and in six hours there would be large quantities of hydrogen sulfide gas.

RESPONSE 13:

The permittee shall 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 requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations, and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies. This Category C facility must be operated by a chief operator or an operator holding a Category 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. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Section 317.4 (g) of the Commission rules contains the requirements for aeration of activated sludge facilities. Under Section 317.4(g)(B)(iii), "blower/compressor units shall automatically restart after a period of power outage or the operator or owner shall be notified by some method such as telemetry or an auto-dialer."

COMMENT 14:

Mrs. Wilson commented about the effects an overflow of domestic waste from the plant might have on water supply systems in Burleson County during a flood event. She expressed concerns about the health impact the plant might have on the elderly, children, cattle and other animals. **Ms. Wooten** expressed concerns about the impacts the plant might have on her only source of water which is from a residential well.

RESPONSE 14:

A wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. 30 TAC §309.13(c). The following horizontal separation distances apply to a facility used for the storage, processing, or disposal of domestic wastewater. A wastewater treatment plant unit must be located a minimum horizontal distance of:

1. 150 feet from a private water well;

2. 500 feet from an elevated or portable-water storage tank;

3. 500 feet from a public water well;

4. 500 feet from a surface water treatment plant; and

5. a wet well or pump station at a wastewater treatment plant must be located a minimum horizontal distance of 300 feet from a public water well.

See 30 TAC §309.13(c). The Executive Director has determined that the Applicant complied with the separation distance requirements of the Commission rules.

In addition, groundwater contamination is typically not a concern for the discharge of treated effluent to surface water. Under the proposed draft permit, Monitoring and Reporting Requirement 7, the permittee will be required to report any unauthorized discharge, unanticipated bypass which exceeds any effluent limitation in the permit, or violation of the maximum daily discharge limitation for pollutants to TCEQ within 24 hours. If the applicant fails to report the unauthorized discharge, bypass or exceedance of effluent limitation to TCEQ within the prescribed time period, the applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

Other Requirement No. 7 was revised as follows in response to public comments relating to flooding and access to the plant by the plant operator during a flood event:

> Prior to construction of the facility, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 317.1. If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 317, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the permitted effluent limitations required on Page 2 of the permit. In addition, and as a condition to the approval of this application, the permittee is specifically required to submit plans, specifications, and a final engineering design report which comply with 30 TAC Chapter 317.7(e).

Other Requirement No. 8: The following provision is added to the draft permit in response to public comments to address concerns regarding transportation of domestic wastewater to the facility:

> Prior to transporting domestic wastewater to the facility, the permittee shall comply with the requirements in 30 TAC Chapter 312, Subchapter G relating to registration of persons who transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste. Additionally, the permittee shall only accept domestic wastewater that is

transported by a person licensed under 30 TAC Chapter 312, Subchapter G.

Respectfully submitted,

Texas Commission on Environmental Quality

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Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on September 24, 2007, the "Executive Director's Response to Public Comment" for TPDES Permit No. WQ0014725001 was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality.

Chris Ekoh, Staff Attorney
Environmental Law Division
State Bar No. 06507015

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