Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 20, 2008

TO: Persons on the attached mailing list.

RE: South Central Water Company
TPDES Permit No. WQ0014804001

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 Moore Memorial Public Library, 1701 9th Avenue North, Texas City, 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

LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
South Central Water Company
TPDES Permit No. WQ0014804001

FOR THE APPLICANT:

Jeff Goebel
South Central Water Company
P.O. Box 570177
Houston, Texas 77257

PROTESTANTS/INTERESTED PERSONS:

Phillip Livingston
Livingston & Livingston
1770 St. James Place, Suite 100
Houston, Texas 77056-3405

FOR THE EXECUTIVE DIRECTOR:

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

Larry Diamond, 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 FEB 12 PM 4: 2
CHIEF CLERKS OFFICE

TCEQ TPDES PROPOSED PERMIT NO. WQ0014804001

APPLICATION BY	§	**BEFORE THE**
SOUTH CENTRAL WATER	§	**TEXAS COMMISSION ON**
COMPANY	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the South Central Water Company (Applicant) application new Texas Pollutant Discharge Elimination System (TPDES) permit no. WQ0014804001 and on the ED's preliminary decision. As required by Title 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: Richard T. Gustafson and Roy and Kathleen Robinson. This response addresses all such timely public comments received, whether or not withdrawn.

If you need 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 TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day (gpd) in Phase I, a daily average flow not to exceed 150,000 gpd in Phase II, and a daily average flow not to exceed 950,000 gpd in the final phase. The wastewater treatment plant will serve the Dolphin Cove development service area.

The treated effluent will be discharged to an unnamed tidal tributary; then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are high aquatic life use for the unnamed tidal tributary. The designated uses for Segment No. 1103 are high aquatic life uses and contact recreation. The facility will be located approximately 300 yards east of the intersection of 29th Street and Avenue S, on the north side of Avenue S in Galveston County, Texas

Procedural Background

The permit application was received on May 8, 2007 and declared administratively complete on July 10, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Houston Chronicle* on August 16, 2007. The alternative language NORI was

published in *La Voz De Houston* on August 15, 2007. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in the *Houston Chronicle* on October 18, 2007. The alternative language NAPD was published in *La Voz De Houston* on October 17, 2007. The public comment period ended on November 19, 2007. This application is subject to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Richard Gustafson states that his property is less than ½ mile from the projected treatment plant site, but that he has not received any notice or included on any service list regarding the proposed wastewater treatment system or any notice regarding the inclusion of part of his property within the proposed service area of the facility. Also, he states that he is aware of other properties within or partially within the service area who did not receive notification of the proposed facility.

RESPONSE 1:

TCEQ rules do not require mailed notice to properties based on whether they will be served by the proposed facility. TCEQ's permit application for this type of facility requires the Applicant to send mailed notice to property owners who either own property adjacent to the proposed facility or who own property adjacent to the discharge route within one mile downstream of the discharge point. This permit application requirement was developed pursuant to the requirements of 30 TAC § 305.48(a)(6)(D).

COMMENT 2:

Richard T. Gustafson comments that he has property directly downwind in the prevailing wind direction from the proposed site and is concerned about potential odor problems from the facility.

RESPONSE 2:

30 TAC § 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. Those options are:

1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. The Applicant must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation;

2) The Applicant must submit a nuisance odor prevention request for approval by the ED.

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.

According to the permit application, the Applicant is meeting the buffer zone requirements by ownership. If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints. If the Applicant fails to comply with all requirements of the permit, it is subject to administrative enforcement action, fines, and penalties.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 3:

Roy and Kathleen Robinson are concerned that treated effluent must flow over their property, changing the flow patterns and conditions of wetlands on their property.

RESPONSE 3:

When deciding to issue a wastewater discharge application, the ED does not consider or adjudicate property right issues. However, the issuance of this permit does not grant the Applicant the right or authorization to use another person's property without their consent. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of state, federal, or local laws or regulations. If the permit is issued by TCEQ, it is the responsibility of the Applicant to acquire any necessary property rights needed to utilize this permit.

COMMENT 4:

Roy and Kathleen Robinson comment that due to the tidal flow from Dickinson Bay into Dickinson Bayou, the ditch the Applicant proposes to discharge to will not have consistent drainage into Dickinson Bayou.

RESPONSE 4:

The tidal nature of the ditch receiving the proposed discharge was recognized during

review of the permit application. Based on information available to TCEQ staff during the review of this application, the ditch receiving this proposed discharge follows a well defined path to Dickinson Bayou. Dissolved oxygen modeling of the ditch was performed consistent with its character in order to set effluent limits protective of the ditch and Dickinson Bayou.

The effluent limitations for Phase I and II, based on a 30-day average, are 10 mg/l 5-day carbonaceous biochemical oxygen demand ($CBOD_5$), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia nitrogen (NH_3-N), and 4.0 mg/l minimum dissolved oxygen. The effluent limitations for the final phase, based on a 30-day average, are 10 mg/l $CBOD_5$, 15 mg/l TSS, 3 mg/l NH_3-N, and 6.0 mg/l minimum dissolved oxygen in the final phase.

The effluent in all phases should contain a chlorine residual of at least 1.0 mg/l and should not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The draft permit also includes pretreatment requirements that are appropriate for a facility of this size and complexity.

COMMENT 5:

Roy and Kathleen Robinson are concerned about the harmful effects the discharge may have to fish, oyster beds, and other sea life in the area.

RESPONSE 5:

The draft permit was developed to protect a variety of existing and potential uses of the receiving waters in accordance with the Texas Surface Water Quality Standards. These uses include high aquatic life use and contact recreation. The requirements in the draft permit were established to maintain and protect these uses as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements of the draft permit.

As identified in the Texas Surface Water Quality Standards, the unnamed tidal tributary designated use is for high aquatic life use. The designated uses for Segment No. 1103 are high aquatic life uses and contact recreation. In accordance with 30 TAC § 307.5 and TCEQ implementation procedures for the Texas Surface Water Quality Standards, TCEQ's Water Quality Standards Team performed a Tier 1 anti-degradation review that preliminarily determined that existing water quality uses should not be impaired by the proposed discharge and that numerical and narrative criteria to protect existing uses will be maintained.[1]

TCEQ's Water Quality Standards Team also performed a Tier 2 anti-degradation review that preliminarily determined that no significant degradation of water quality is expected

[1] A Tier 1 antidegradation review ensures that existing water quality uses are not impaired by increases in pollution loading. A Tier 1 review applies to all water bodies.

in the unnamed tidal tributary or Dickinson Bayou Tidal, which have been identified as having high aquatic life uses and that existing uses should be maintained and protected. [2]

COMMENT 6:

It was noted that the address contained in the Notice of Application contained an incomplete ZIP code for the TCEQ address and that this incomplete ZIP code may affect the ability of some commentators or requestors to properly deliver their comments in a timely manner.

RESPONSE 6:

Thank you for pointing out the incomplete zip code. However, a review of the actual published notices in both English and Spanish noted on page one of this document indicated that the correct zip code for TCEQ (78711-3087) was included in all four of the public notices.

No changes to the draft permit were made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

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[2] A Tier 2 antidegradation review ensures that where water quality exceed the normal range of fishable/swimmable criteria, such water quality will be maintained, unless lowering is a necessity for important economic or social benefit. Tier 2 generally applies to water bodies that have existing, designated, or presumed uses of contact recreation and intermediate, high, or exceptional aquatic life waters. A Tier 2 review applies to all applicable water bodies.

Robert Brush, Staff Attorney
Environmental Law Division
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P.O. Box 13087, MC 173
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(512) 239-5600
REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on February 12, 2008 the "Executive Director's Response to Public Comments" for Permit No.WQ0014804001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772