

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 4, 2011

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

Re: SOAH Docket No. 582-08-4290; TCEQ Docket No. 2008-0473-MWD; In the Matter of the Application of South Central Water Company for Proposed Texas Pollutant Discharge Elimination System, Permit No. WQ0014804001

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Remand Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than April 25, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than May 5, 2011.

This matter has been designated **TCEQ Docket No. 2008-0473-MWD; SOAH Docket No. 582-08-4290**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Michael J. O'Malley".

Michael J. O'Malley  
Administrative Law Judge

MJO/pp  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS  
WILLIAM P. CLEMENTS BUILDING  
300 West Fifteenth Street  
Austin, Texas 78701  
Phone (512) 475-4993  
Facsimile (512) 322-2061**

**SERVICE LIST**

**AGENCY:** TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

**STYLE/CASE:** IN THE MATTER OF THE APPLICATION OF SOUTH CENTRAL WATER COMPANY FOR PROPOSED TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM, PERMIT NO. WQ0014804001

**SOAH DOCKET NUMBER:** 582-08-4290  
**TCEQ DOCKET NUMBER:** 2008-0473-MWD

<b>STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>	<b>MICHAEL O'MALLEY ADMINISTRATIVE LAW JUDGE</b>
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**PARTIES**

**REPRESENTATIVE/ADDRESS**

<b>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>	<b>Robert D. Brush</b> Staff Attorney Texas Commission on Environmental Quality MC-175 P.O. Box 13087 Austin, TX 78711-3087 Tel 512/239-5600 Fax 512/239-0606 512/239-0606
<b>OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>	<b>Amy Swanholm</b> Office of the Public Interest Counsel Texas Commission on Environmental Quality MC-103 P.O. Box 13087 Austin, TX 78711-3087 Tel 512/239-6823 Fax 512/239-6377

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<b>SOUTH CENTRAL WATER COMPANY</b>	<b>Mark Zeppa</b> <b>Attorney</b> <b>Law Offices of Mark H. Zeppa, P.C.</b> <b>3833 Spicewood Springs Road, #202</b> <b>Austin, TX 78759-8435</b> <b>Tel 346-4011</b> <b>Fax 512/346-6847</b>

**SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD**

<b>IN THE MATTER OF THE APPLICATION OF SOUTH CENTRAL, WATER COMPANY FOR PROPOSED TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM, PERMIT NO. WQ0014804001</b>	<b>§ § § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**REMAND PROPOSAL FOR DECISION**

**I. INTRODUCTION**

South Central Water Company (South Central) applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a new Texas Pollutant Discharge Elimination System (TPDES) permit authorizing the discharge of treated 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 treated effluent would be discharged to an unnamed tidal tributary; then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The TCEQ Executive Director (ED) has determined that the unclassified receiving water use is high aquatic life. The designated uses for Segment No. 1103 are high aquatic life and contact recreation. The facility would be located approximately 300 yards east of the intersection of 29<sup>th</sup> Street and Avenue S, on the north side of Avenue S in Galveston, County, Texas.

South Central, the ED, the Office of Public Interest Counsel (OPIC), and Roy and Kathleen Robinson, through their attorney, participated at the hearing. Based on the evidence presented at the November 10, 2009 hearing and at the January 26, 2011 remand hearing, the Administrative Law Judge (ALJ) recommends that the Commission approve South Central's permit application.

## II. PROCEDURAL HISTORY AND JURISDICTION

The Commission considered the original proposal for decision at the May 19, 2010 Commission Agenda. The Commission remanded the case back to the State Office of Administrative (SOAH) to consider two issues:

1. Whether the discharge of effluent will harm marine life and wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson?
2. Who should pay the courts costs, *i.e.*, transcript costs?

A hearing on the remanded issues was held on January 26, 2011. The parties filed post-hearing briefs on March 7 and March 18, 2011. The record closed on March 18, 2011. The remand PFD addresses only the issues the Commission remanded to SOAH in addition to relevant background information. The ALJ refers the Commission to the original PFD for a discussion of the issues discussed in that PFD. The proposed order, however, incorporates the findings of fact and conclusions of law from the original PFD and the remand PFD.

## III. DISCUSSION

### **A. Whether the discharge of effluent will harm marine life and wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson.**

The Robinsons own a wetlands area adjacent to and immediately downstream from the proposed discharge point of the South Central Dolphin Cove Wastewater Treatment Plant (wastewater treatment plant). The effluent will be discharged to a defined channel that bisects the Robinsons' wetlands. The wetlands are low lying and are subject to inundation by high tides and storms. The wetlands are subject to a changing mixture of fresh and salt water.<sup>1</sup> The

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<sup>1</sup> Remand Tr. at 12.

evidence further shows that there is nothing unique about the wetlands that would attract birds,<sup>2</sup> and no mammals were observed around the wetlands during a visit by Jerry Ince, P.E., expert witness for South Central.<sup>3</sup> He observed that invertebrates are the common animal life in the wetlands.<sup>4</sup>

To address the Commission's remand issue, Mr. Ince performed a hydrological and hydraulic analysis to determine if the discharge of the effluent would adversely impact the receiving stream and the downstream wetlands. He conducted his analysis by taking on-the-ground measurements, using hydraulic models to predict stream flows, using wetland models to check for the natural system's ability to accept waste, and using wetland models to determine if the waste should receive additional treatment at the wastewater treatment plant.<sup>5</sup>

Mr. Ince first analyzed whether the *flow* of the treated effluent in the channel would adversely impact the wetlands. From his hydraulic analysis, Mr. Ince determined that the additional water from the treated effluent at peak flow would raise the water level in the restrictive pipe in the channel by 0.01 feet, and the effect would lessen as the water spread out from the pipe.<sup>6</sup> Mr. Ince further concluded that the effluent would remain within the channel except under high tide or storm conditions.<sup>7</sup> In addition, Mr. Ince determined that, during high tides and storms, the wetlands could become inundated with salt water. He also observed that barge traffic could impact the wetlands.<sup>8</sup> Because of these factors, Mr. Ince concluded that the flow of the effluent from the wastewater treatment plant would not convert the wetlands from

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<sup>2</sup> Remand Tr. at 31-32.

<sup>3</sup> Remand Tr. at 22.

<sup>4</sup> Remand Tr. at 21-22.

<sup>5</sup> SCWC Ex. R-1.

<sup>6</sup> SCWC Ex. R-1 at 4.

<sup>7</sup> SCWC Ex. R-1 at 5.

<sup>8</sup> Tr. at 25-26.

salt water to fresh water.<sup>9</sup> To mitigate any impact on the treated effluent flows, Mr. Ince recommended that a flow equalization chamber be added to the wastewater treatment plant.<sup>10</sup>

Mr. Ince next examined the *quality* of the water and any impact it might have on the wetlands. Mr. Ince took water samples and tested them accordingly. Mr. Ince noted that many variables exist near the wastewater treatment plant, which makes it difficult to determine the source of the water supply. For example, there is high tide versus low, wind direction and intensity, and storm runoff carrying constituents from roads, vehicles, and industrial operations.<sup>11</sup> Because Mr. Ince was investigating the impact of the effluent on the wetlands, he considered the worst case scenario to be a combination of the variables discussed above plus the addition of the effluent.<sup>12</sup> In the modeling and considering all variables, if South Central could control all the effluent going through the wetlands, he observed a small reduction in biochemical oxygen demand (BOD), phosphorous, and nitrogen. The lab tests (on the day he took the readings) showed that dissolved oxygen exceeded the levels that would normally be expected; therefore, Mr. Ince recommended air diffusers in the chlorine contact chamber.<sup>13</sup>

Ultimately, Mr. Ince concluded that the existing channel will be capable of accepting the effluent without spilling the effluent into the wetlands under normal conditions. If the conditions cause spillage into the wetlands, he determined that enough area is present so that the treated effluent would have an insignificant impact on the wetlands.<sup>14</sup> His overall analysis indicated that there would be no adverse impact on the wetlands. To further ensure and address any possible

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<sup>9</sup> Tr. at 23.

<sup>10</sup> SCWC Ex. R-1 at 7.

<sup>11</sup> SCWC Ex. R-1 at 5.

<sup>12</sup> SCWC Ex. R-1 at 5.

<sup>13</sup> SCWC Ex. R-1 at 7; Tr. at 9-10.

<sup>14</sup> SCWC Ex. R-1 at 7.

scenarios, Mr. Ince recommends the addition of air diffusers in the chlorine contact chamber and a flow equalization chamber.<sup>15</sup>

With this evidence, South Central argues that discharge of effluent will not harm wildlife and marine life in the receiving waters and wetlands maintained by Mr. and Mrs. Robinson. The ED and OPIC agree with South Central. Mark Rudolph, P.E., the ED's expert, reviewed Mr. Ince engineering report and testified that, in his opinion, the treated effluent would not harm the Robinsons' wetlands.<sup>16</sup> OPIC agrees South Central has met its burden of proof that proposed discharge will not harm the Robinsons' wetlands.<sup>17</sup>

The Robinsons did not offer any evidence at the hearing but argue that the evidence presented by South Central was insufficient to address the Commission's remand issue. The Robinsons take issue with the fact that South Central did not offer evidence on the conditions of the surrounding real property or the surrounding waters. The Robinsons also claim that Mr. Ince did not provide enough information about the marine life and wildlife in the area and how the conditions might vary throughout the year.

### *ALJ's Analysis*

Other than the brief testimony of Mr. Rudolph, South Central was the only party that presented evidence at the remand hearing. In fact, although the Robinsons' attorney appeared at the hearing, the Robinsons did not appear or offer any evidence. The convincing evidence shows that Mr. Ince did conduct a thorough survey and analysis of the wetlands area. Not only did Mr. Ince examine the flow of the water in the wetlands, he also tested the quality of the water. Mr. Ince, therefore, adequately addressed the Commission's issue on remand—whether the

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<sup>15</sup> SCWC Ex. R-1 at 7.

<sup>16</sup> Tr. at 43-44. Other than brief testimony of Mr. Rudolph, the ED did not offer any other evidence at the remand hearing.

<sup>17</sup> OPIC offered no evidence at the remand hearing.

discharge of effluent will harm marine life and wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson. As a result of his analysis and to further ensure that there would be no adverse impact on the wetlands, he recommended the addition of air diffusers and a flow equalization chamber.

The Robinsons imply that Mr. Ince should have conducted his study for as long as a year and examined the conditions of the wetlands throughout the year and identified all marine life and wildlife that could possibly appear. The ALJ strongly disagrees. Mr. Ince properly examined the area and performed adequate water quality testing. As long as the testing showed that there would be no harm to the marine life and wildlife, it is irrelevant as to the precise species that might show up over the course of a year. Furthermore, Mr. Ince did identify the conditions surrounding the wetlands and the type of animals that are likely to exist in this area. He stated that the sides of the stream are typical of coastal upland areas with little or no vegetation below the high tide and healthy woody and natural vegetation along the side from the waterline and above.<sup>18</sup> He did not identify many animals because there are not that many in the area. He stated that animals would likely be invertebrates, such as snails, and he did not observe any mammals on his visit. He stated that shore birds, such as pipers, would inhabit the area. However, his overall conclusion was that none of the animals would be impacted by the discharge of effluent. South Central has met its burden of proof, and the overwhelming evidence shows that the discharge of effluent will not harm wildlife and marine life in the receiving waters and wetlands maintained by Mr. and Mrs. Robinson.

**B. Who should pay the transcript costs?**

At the hearing on January 26, 2011, South Central agreed to pay the transcript costs. South Central will, therefore, bear the cost of the transcript in this proceeding.

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<sup>18</sup> SCWC Ex. R-1 at 3.

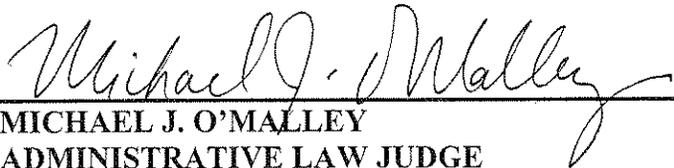
#### IV. CONCLUSION

Based on the evidence in this case, the ALJ recommends that South Central's application for a Texas Pollutant Discharge Elimination System Permit be approved. The findings of fact and conclusions of law supporting the ALJ's recommendations herein are set out in a separate proposed final order that is being sent to the Commission along with this remand PFD. The ALJ also recommends that the following language be added to the "Other Requirements" on page 23 of the Draft Permit:

7. Air diffusers shall be installed and used in the chlorine contact chamber in each phase of the treatment facilities.
8. A flow equalization chamber shall be installed and utilized before untreated sewage enters the treatment facilities. The flow equalization chamber shall be installed in each phase of the treatment facilities under this permit.<sup>19</sup>

In addition to addressing the issues referred by the Commission, the proposed order also includes a conclusion of law and an ordering provision stating that the terms of the permit and the ED's review of the application comply with all applicable federal and state requirements. These items are included as a convenience to the Commission to allow it to more easily issue a single decision on the application in accordance with 30 TEX. ADMIN. CODE § 50.117(g).

**SIGNED April 4, 2011.**

  
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**MICHAEL J. O'MALLEY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>19</sup> SCWC Ex. R-2.



TPDES PERMIT NO. WQ0014804001  
[For TCEQ office use only -  
EPA I.D. No. TX0129631]

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY  
P.O. Box 13087  
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES  
under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

South Central Water Company

whose mailing address is

P.O. Box 570177  
Houston, Texas 77257

is authorized to treat and discharge wastes from the Dolphin Cove Wastewater Treatment Facility, SIC Code 4952

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

to unnamed tidal tributary; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. 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 federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, September 1, 2013.

ISSUED DATE:

THE STATE OF TEXAS  
COUNTY OF TRAVIS  
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF A TEXAS PERMIT AS ISSUED BY THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY. THIS DOCUMENT IS SUBJECT TO THE PERMIT FILED RECORDS

MAY 20 2009

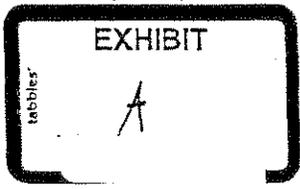
OF THE STATE OF TEXAS IS REVISED BY HAND AND THE  
SEAL OF THE COMMISSION  
*[Signature]*  
LINDA PATTON, D.A. CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

PFD

EXHIBIT

WQ0014804001





South Central Water Company

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning upon the completion of the 0.150 million gallons per day (MGD) facilities and lasting through the completion of expansion of the 0.950 MGD facilities the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.150 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 417 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations			Single Grab mg/l	Minimum Self-Monitoring Requirements Report Daily Avg. & Max. Single Grab Measurement Frequency Sample Type
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l		
Flow, MGD	Report	N/A	Report	N/A	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (1.3)	15	25	35	Grab
Total Suspended Solids	15 (1.9)	25	40	60	Grab
Ammonia Nitrogen	3 (3.8)	6	10	15	Grab

2. The effluent shall 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of completion of the 0.950 million gallons per day (MGD) facilities and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.950 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 2,639 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Daily Max.	Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (79)	15	25	35	One/week Composite
Total Suspended Solids	15 (119)	25	40	60	One/week Composite
Ammonia Nitrogen	3 (24)	6	10	15	One/week Composite

2. The effluent shall 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), and shall be monitored daily by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

**DEFINITIONS AND STANDARD PERMIT CONDITIONS**

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

**1. Flow Measurements**

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

**2. Concentration Measurements**

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
  - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
  - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

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- e. Bacteria concentration (Fecal coliform, *E. coli*, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the  $n$ th root of the product of all measurements made in a calendar month, where  $n$  equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
  - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (b).
  - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

## MONITORING AND REPORTING REQUIREMENTS

### 1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the TWC Chapters 26, 27, and 28, and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

### 2. Test Procedures

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

## 3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
  - i. date, time and place of sample or measurement;
  - ii. identity of individual who collected the sample or made the measurement.
  - iii. date and time of analysis;
  - iv. identity of the individual and laboratory who performed the analysis;
  - v. the technique or method of analysis; and
  - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

## 4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

## 5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

## 6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office No. 12 and the Enforcement Division (MC 224).

## 7. Noncompliance Notification

- a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
  - i. Unauthorized discharges as defined in Permit Condition 2(g).
  - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
  - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

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- c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
  - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
  9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 µg/L);
  - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 µg/L);
  - ii. One milligram per liter (1 mg/L) for antimony;
  - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

11. All publicly owned treatment works (POTWs) must provide adequate notice to the Executive Director of the following:
  - a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
  - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
  - c. For the purpose of this paragraph, adequate notice shall include information on:
    - i. The quality and quantity of effluent introduced into the POTW; and
    - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

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## PERMIT CONDITIONS

## 1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
  - i. Violation of any terms or conditions of this permit;
  - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
  - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

## 2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA §402, or any requirement imposed in a pretreatment program approved under the CWA §§402 (a)(3) or 402 (b)(8).

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## 3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

## 4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers);
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9; or
  - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes that are not described in the permit application or that 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.
- e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee

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shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal, which requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
  - i. the permittee;
  - ii. an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
  - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- b. This notification must indicate:
  - i. the name of the permittee and the permit number(s);
  - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
  - iii. the date of filing of the petition.

## OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in

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order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:
  - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
  - b. The permittee shall submit a closure plan for review and approval to the Land Application Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, 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.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
  - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:
- Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
  - Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
  - The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
  - Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.
  - The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
  - The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
    - Volume of waste and date(s) generated from treatment process;
    - Volume of waste disposed of on-site or shipped off-site;
    - Date(s) of disposal;
    - Identity of hauler or transporter;
    - Location of disposal site; and
    - Method of final disposal.
- The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.
12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Chapter 361.

**SLUDGE PROVISIONS**

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased, or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

**SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION****A. General Requirements**

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or leaseholder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

**B. Testing Requirements**

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method, that receives the prior approval of the TCEQ for the contaminants listed in Table I of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC R-12) within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

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2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section 1.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration</u> (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

\* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC §312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one plaque-forming unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency (EPA) as being equivalent to those in Alternative 5.

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- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1 -

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the EPA so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The executive director will accept from the EPA a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the processes to significantly reduce pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

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In addition, the following site restrictions must be met if Class B sludge is land applied:

- vi. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- vii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- viii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- ix. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- x. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- xi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- xii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.
- xiii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- xiv. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC §312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following alternatives 1 through 10 for Vector Attraction Reduction.

Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.

Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius (C). Volatile solids must be reduced by less than 17% to demonstrate compliance.

Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. Volatile solids must be reduced by less than 15% to demonstrate compliance.

Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.

Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.

Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are

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**SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3**

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

**A. Pollutant Limits**

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)*</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

\*Dry weight basis

**B. Pathogen Control**

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

**C. Management Practices**

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner that complies with the Management Requirements in accordance with 30 TAC §312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

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4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
  - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
  - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
  - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

#### D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
  - a. The location, by street address, and specific latitude and longitude, of each land application site.
  - b. The approximate time period bulk sewage sludge will be applied to the site.
  - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

#### E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludges, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:  
 "I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC §312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC §312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."
6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained.

The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

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1. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.
2. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
3. The number of acres in each site on which bulk sludge is applied.
4. The date and time sludge is applied to each site.
5. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
6. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

#### F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC R-12 and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. that applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
  - a. The location, by street address, and specific latitude and longitude.

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- b. The number of acres in each site on which bulk sewage sludge is applied.
- c. The date and time bulk sewage sludge is applied to each site.
- d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
- e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

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### SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a Municipal Solid Waste Landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method that receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC R-12) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.
3. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC R-12) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of

- the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
  7. Owner of disposal site(s).
  8. Location of disposal site(s).
  9. Date(s) of disposal.
  10. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

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## OTHER REQUIREMENTS

1. 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. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1103 of the San Jacinto-Brazos Coastal Basin and any subsequent updating of the water quality model for Segment No. 1103, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC §305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
4. The permittee shall comply with the requirements of 30 TAC §309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC §309.13(e).
5. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 12) and the Applications Review and Processing Team (MC 148) of the Water Quality Division, at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first.
6. Prior to construction of the interim I, interim II, and final phase treatment facilities, 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 217.6(c). 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 217, Design Criteria for Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2, 2a, and 2b of the permit.
7. The permittee is hereby placed on notice that the Executive Director of the TCEQ will be initiating rulemaking and/or changes to procedural documents that may result in bacteria effluent limits and monitoring requirements for this facility.
8. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.

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Law Offices of Mark H. Zeppa

No. 2788

P. 1/3

*Zeppa*

SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD

IN THE MATTER OF THE § BEFORE THE  
APPLICATION OF SOUTH CENTRAL §  
WATER COMPANY FOR PROPOSED § STATE OFFICE OF  
TEXAS POLLUTANT DISCHARGE §  
ELIMINATION SYSTEM PERMIT § ADMINISTRATIVE  
NO. WQ0014804001 IN GALVESTON §  
COUNTY § HEARINGS

SOUTH CENTRAL WATER COMPANY'S MOTION TO LATE FILE EXHIBIT  
SCWC R-2 – ADDITION "OTHER REQUIREMENTS"

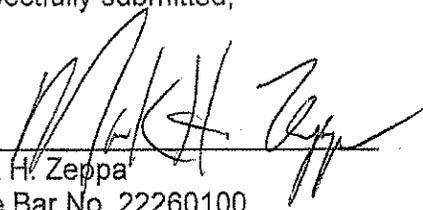
As agreed at the remand hearing of January 26, 2011, South Central Water Company (SCWC) requests permission to late file the attached Exhibit SCWC R-2 – Additional "Other Requirements" proposed to be added to the Draft Permit in this docket. These additional permit requirements come from the professional report of SCWC witness Jerry Ince, PE, which was given to all parties under pretrial orders. Look cause exists to allow this late exhibit to be late filed because SCWC could not have reasonably foreseen the Executive Director's request for specific permit language to carry out Mr. Ince's recommendations.

The act of filing this motion and its timing was agreed to by all parties at the remand hearing.

WHEREFORE PREMISES CONSIDERED, SCWC requests that the attached Exhibit SCWC R-2 be admitted into the remand hearing record.

Respectfully submitted,

By:



Mark H. Zeppa

State Bar No. 22260100

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ATTORNEY FOR SOUTH CENTRAL  
WATER COMPANY

SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION OF SOUTH CENTRAL	§	
WATER COMPANY FOR PROPOSED	§	STATE OFFICE OF
TEXAS POLLUTANT DISCHARGE	§	
ELIMINATION SYSTEM PERMIT	§	ADMINISTRATIVE
NO. WQ0014804001 IN GALVESTON	§	
COUNTY	§	HEARINGS

**EXHIBIT SCWC R-2**

Add to the "Other Requirements" on page 23 of the Draft Permit:

- 7. Air diffusers shall be installed and used in the chlorine contact chamber in each phase of the treatment facilities.
- 8. A flow equalization chamber shall be installed and utilized before untreated sewage enters the treatment facilities. This flow equalization chamber shall be installed in each phase of the treatment facilities under this permit.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER**

**GRANTING THE APPLICATION OF SOUTH CENTRAL WATER COMPANY FOR  
NEW WASTEWATER PERMIT, PROPOSED TEXAS POLLUTANT DISCHARGE  
ELIMINATION SYSTEM, PERMIT NO. WQ0014804001  
SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application (Application) of South Central Water Company (South Central or Applicant) for a new wastewater permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014804001. A Proposal for Decision (PFD) was presented by Michael J. O'Malley, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing in this case on November 10, 2009, and January 26, 2011, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. South Central applied to TCEQ for a new TPDES permit authorizing the discharge of treated 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.

2. The treated effluent would be discharged to an unnamed tidal tributary (also referred to during the hearing as the receiving stream, canal, and channel); then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin.
3. The unclassified receiving water use is high aquatic life. The designated uses for Segment No. 1103 are high aquatic life and contact recreation.
4. The facility would be located approximately 300 yards east of the intersection of 29<sup>th</sup> Street and Avenue S, on the north side of Avenue S in Galveston, County, Texas.
5. South Central, the TCEQ Executive Director (ED), the Office of Public Interest Counsel (OPIC), and Roy and Kathleen Robinson (Protestant) participated at the hearing.
6. The permit application was received on May 8, 2007, and declared administratively complete on July 10, 2007.
7. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Houston Chronicle* on August 16, 2007, and the alternative language NORI was published in the *La Voz De Houston* on August 15, 2007.
8. TCEQ Staff completed a technical review of the application and prepared a draft permit.
9. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published in the *Houston Chronicle* on October 18, 2007, the alternative language NAPD was published in the *La Voz De Houston* on October 17, 2007, and the comment period ended on November 19, 2007.
10. Roy and Kathleen Robinson (determined by the Commission to be affected persons) requested a contested case hearing on the application.
11. On August 4, 2008, the Commission referred this case to SOAH.

12. The hearing on the merits was initially scheduled for February 12, 2009; however, the Applicant requested a 90-day abatement, which was granted. The hearing was rescheduled for July 21, 2009, but Roy Robinson filed an unopposed motion for continuance due to an accident that required hospitalization. The ALJ rescheduled the hearing for November 10, 2009.
13. The parties filed post-hearing briefs, and the record closed January 12, 2010.
14. At its May 19, 2010 Agenda Meeting, the Commission remanded the case to SOAH to consider two issues.
15. The ALJ conducted the remand hearing on January 26, 2011.
16. The parties filed post-hearing briefs on the remand issues, and the record closed on March 18, 2011.
17. South Central, as the Applicant, has the burden of proof on the issues in this case.
18. The wastewater treatment plant will be designed and constructed to the standards in Title 30 of the Texas Administrative Code, Chapter 317.
19. The discharged effluent will have an adequate level of dissolved oxygen.
20. The wetlands along the Gulf Coast need fresh water flows (both natural and manmade) to remain healthy.
21. Man-made wetlands are often used to by wastewater treatment plants to provide additional cleaning for the discharged effluent.
22. The Robinsons are the owners of approximately two acres of wetlands adjacent to and immediately downstream from the proposed discharge point. Their homestead is about a half mile from the discharge point.
23. The Robinsons have operated fishing boats and other marine equipment in the area for almost 35 years.

24. The Robinsons' wetlands are typical of the Gulf Coast wetlands and need fresh water to remain healthy.
25. The likely animals to inhabit the area are invertebrates, such as snails. Shore birds, such as pipers, would also inhabit the area.
26. The amount of treated effluent is minimal and will have little impact on the Robinsons' wetlands because the small volume of water being discharged will be diluted by the daily tidal flows that run through the wetlands.
27. Few toxins are expected to be in the effluent because residential waste will be treated, not industrial waste.
28. Many variables, such as storm runoff from vehicles and industrial operations, exist near the wastewater treatment plant, which makes it difficult to determine the source of the water supply.
29. The distance from the proposed discharge point to Dickinson Bayou is 1,100 feet and the width of the receiving stream averages 15 feet over that distance.
30. The in-stream levels would be raised one or two inches at the maximum discharge of 950,000 gallons but, under normal conditions, the water surface would be one foot below the top of the bank.
31. The discharge effluent would not top the banks except during extreme tidal events and, thus, have little impact on the wetlands.
32. If conditions cause spillage into the wetlands, the treated effluent would have an insignificant impact on the wetlands.
33. The discharge of effluent will not harm the marine life or wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson.

34. The effluent will improve the waters of the receiving stream because the receiving stream will receive more oxygenated water due to the wastewater plant.
35. Wetlands are frequently created to provide additional cleaning for wastewater treatment plant effluent.
36. Wetlands clean water and, if no toxins are introduced into the waste stream, effluent leaving the wastewater treatment plant and flowing through the wetlands before entering Dickinson Bayou will be cleaner than it was when it left the plant and have less impact on the marine life and wildlife.
37. The discharge point and the portion of the Dickinson Bayou involved in this case are not § 303(d) (Clean Water Act) listed waterways.
38. The effluent will be discharged through a channel that bisects the Robinsons' wetlands.
39. The channel has sufficient depth and width to contain the amount of discharge except in periods of extreme high tide. When this occurs, a small amount of the effluent may flow over the channel and into the wetlands.
40. TCEQ sets the water quality standards for Texas waterways.
41. TCEQ has been charged with the responsibility to maintain the quality of the water in this state taking into consideration the public health, aquatic life, and economic development.
42. To implement the quality standards, TCEQ developed the Texas Surface Water Quality Standards (TSWQS).
43. Tier 1 and Tier 2 antidegradation reviews were performed for this application.
44. The antidegradation reviews assessed the discharge route, the unnamed tidal tributary, and the Dickinson Bayou and determined the uses to be contact recreation, high aquatic life, and sustainable fishery.

45. The discharged effluent will not violate the water quality standards in the receiving stream or in the Dickinson Bayou.
46. TCEQ also modeled the receiving water to determine what effluent limits must be in the permit to maintain the dissolved oxygen criteria.
47. Using the QUAL-TEX model, TCEQ was able to make an informed recommendation on the appropriate effluent limitations of 10 mg/L 5-day carbonaceous oxygen demand (CBOD<sub>5</sub>), 3 mg/L Ammonia-Nitrogen (NH<sub>3</sub>-N), and 4 mg/l dissolved oxygen (DO) for the 75,000 gpd and 150,000 gpd phases, and an effluent set of 10 mg/L CBOD<sub>5</sub>, 3 mg/L NH<sub>3</sub>-N, and 6 mg/l DO for the final phase of 950,000 gpd.
48. The effluent sets will be adequate to ensure that the dissolved oxygen level will be maintained above the standards for the unnamed tidal tributary and Dickinson Bayou outside the impaired area.
49. A portion of Dickinson Bayou is impaired for dissolved oxygen, but it is approximately four stream miles upstream from the proposed discharge and could not be affected.
50. It is reasonable for South Central to add air diffusers to be used in the chlorine contact chamber in each phase of the treatment facilities.
51. It is reasonable for South Central to install a flow equalization chamber to be used before untreated sewage enters the treatment facilities.
52. South Central will pay the transcript costs.

## **II. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Texas Water Code Chapter 26.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code Chapter 2003.

3. Applicant and TCEQ have satisfied all applicable public notice requirements.
4. In accordance with TEX. WATER CODE ANN. § 26.041, South Central's discharge under the terms of the Draft Permit will meet water quality standards and not be injurious to public health.
5. In accordance with TEX. WATER CODE ANN. § 26.003, South Central's discharge under the terms of the Draft Permit will be in compliance with the regulations intended to protect water quality, health and safety of humans, native wildlife and marine life.
6. It is reasonable for South Central to pay the transcript costs for the hearing in this case. 30 TEX. ADMIN. CODE § 80.23 (d)(1).
7. South Central's application should be granted, and Permit No. WQ0014804001 should be issued.
8. In accordance with 30 TEX. ADMIN. CODE § 50.117, the Commission issues this Order and the attached permit as its single decision on the permit application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, document the Executive Director's review of the permit application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit (Exhibit A) are appropriate and satisfy all applicable federal and state requirements.

**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. In accordance with 30 TEX. ADMIN. CODE § 50.117, the Commission issues this Order granting TPDES Permit No. WQ0014804001 to South Central Water Company, which is attached as Exhibit A.
2. The Commission adopts the Executive Director's Response to Public Comment in accordance with 30 TEX. ADMIN. CODE § 50.117. Also, in accordance with Section

50.117, the Commission issues this Order and the attached permit as its single decision on the permit application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, document the Executive Director's review of the permit application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit are appropriate and satisfy all applicable federal and state requirements.

3. South Central shall install air diffusers to be used in the chlorine contact chamber in each phase of the treatment facilities.
4. South Central shall install a flow equalization chamber to be used before untreated sewage enters the treatment facilities. The flow equalization chamber shall be installed in each phase of the treatment facilities under this permit.
5. 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.
6. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
8. 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.

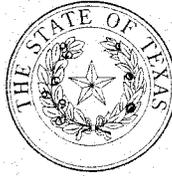
**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Bryan W. Shaw, Chairman**  
**For the Commission**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 9, 2010

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

Re: SOAH Docket No. 582-08-4290; TCEQ Docket No. 2008-0473-MWD; In Re: In the Matter of the Application of South Central Water Company for Proposed Texas Pollutant Discharge Elimination System, Permit No. WQ0014804001

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than March 29, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than April 8 2010.

This matter has been designated **TCEQ Docket No. 2008-0473-MWD; SOAH Docket No. 582-08-4290**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Michael J. O'Malley".

Michael J. O'Malley  
Administrative Law Judge

MJO/sb  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

**300 West 15th Street Suite 502**

**Austin, Texas 78701**

**Phone: (512) 475-4993**

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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)

**STYLE/CASE:** SOUTH CENTRAL WATER COMPANY

**SOAH DOCKET NUMBER:** 582-08-4290

**REFERRING AGENCY CASE:** 2008-0473-MWD

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**

**ALJ MICHAEL J. OMALLEY**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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SOUTH CENTRAL WATER COMPANY

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ROY AND KATHLEEN ROBINSON

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD**

<b>IN THE MATTER OF THE APPLICATION OF SOUTH CENTRAL, WATER COMPANY FOR PROPOSED TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM, PERMIT NO. WQ0014804001</b>	<b>§ § § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

South Central Water Company (South Central or Applicant) applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a new Texas Pollutant Discharge Elimination System (TPDES) permit authorizing the discharge of treated 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 treated effluent would be discharged to an unnamed tidal tributary (also referred to during the hearing as the receiving stream, canal, and channel); then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The TCEQ Executive Director (ED) has determined that the unclassified receiving water use is high aquatic life. The designated uses for Segment No. 1103 are high aquatic life and contact recreation. The facility would be located approximately 300 yards east of the intersection of 29<sup>th</sup> Street and Avenue S, on the north side of Avenue S in Galveston, County, Texas.<sup>1</sup>

South Central, the ED, the Office of Public Interest Counsel (OPIC), and Roy and Kathleen Robinson (Protestant), participated at the hearing. Based on the evidence presented at hearing, the Administrative Law Judge (ALJ) recommends that the Commission approve South Central's permit application.

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<sup>1</sup> ED Ex. 3, Draft Permit.

## II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The permit application was received on May 8, 2007, and declared administratively complete on July 10, 2007.<sup>2</sup> The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Houston Chronicle* on August 16, 2007, and the alternative language NORI was published in the *La Voz De Houston* on August 15, 2007.<sup>3</sup>

TCEQ Staff completed a technical review of the application and prepared a draft permit.<sup>4</sup> The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published in the *Houston Chronicle* on October 18, 2007, the alternative language NAPD was published in the *La Voz De Houston* on October 17, 2007, and the comment period ended on November 19, 2007.<sup>5</sup>

Roy and Kathleen Robinson (determined by the Commission to be affected persons) requested a contested case hearing on the application. On August 4, 2008, the Commission referred this case to the State Office of Administrative Hearings (SOAH). The hearing on the merits was initially scheduled for February 12, 2009; however, the Applicant requested a 90-day abatement, which was granted.<sup>6</sup> The hearing was rescheduled for July 21, 2009, but Roy Robinson filed an unopposed motion for continuance due to an accident that required hospitalization. The ALJ rescheduled the hearing for November 10, 2009. The parties filed post-hearing briefs, and the record closed January 12, 2010.

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<sup>2</sup> ED Ex. 7, ED's Response to Comments.

<sup>3</sup> ED Ex. 7, ED's Response to Comments.

<sup>4</sup> ED Ex. 7, ED's Response to Comments.

<sup>5</sup> ED Ex. 7, ED's Response to Comments.

<sup>6</sup> By agreement of the parties, the deadline in this case was indefinitely extended beyond the six-month deadline referenced in the Commission's August 12, 2008 Interim Order. 30 TEX. ADMIN. CODE § 80.4(c)(17)(B).

There are no contested issues of notice or jurisdiction, so those matters are set forth in the findings of fact and conclusions of law in the proposed order attached to this proposal for decision (PFD).

### III. THE COMMISSION'S REFERRED ISSUES

In granting the hearing request in this case and referring the matter to SOAH, the Commission identified two issues it wanted the ALJ to address. Those issues are as follows:

1. Whether the discharge effluent will harm marine life and wildlife in the receiving waters and wetlands maintained by Mr. and Mrs. Robinson; and
2. Whether the discharge will violate water quality standards in the receiving stream or in Dickinson Bayou.

Each of the referred issues is addressed below as directed by the Commission.

### IV. DISCUSSION

#### A. **Whether the discharge of effluent will harm marine life and wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson.**

The Robinsons are the owners of approximately two acres of wetlands adjacent to and immediately downstream from the proposed discharge point. Their homestead is about a half mile from the discharge point. The Robinsons have operated fishing boats and other marine equipment in the area for almost 35 years. The effluent will be discharged to a channel that bisects the Robinsons' wetlands.

#### *South Central*

South Central, as the Applicant, has the burden of proof on both issues in this case. South Central witness Jerry Ince, P.E., testified on behalf of South Central and stated that the

proposed discharge and effluent limitations would not harm the marine life and wildlife in the receiving streams and wetlands maintained by Mr. and Mrs. Robinson.<sup>7</sup> Mr. Ince provided four reasons to support his opinion: (1) the wastewater treatment plant will be designed and constructed to the standards in Title 30 of the Texas Administrative Code, Chapter 317; (2) the discharged effluent will have an adequate level of dissolved oxygen; (3) wetlands along the Gulf Coast need fresh water flows (both natural and manmade) to remain healthy; and (4) man-made wetlands are often used by wastewater treatment plants to provide additional cleaning for discharged effluent.<sup>8</sup> Mr. Ince further explained that the Robinsons' wetlands are typical of Gulf Coast wetlands and need fresh water to remain healthy. Although the treatment plant will be a source of fresh water, he testified that the amount of treated effluent is minimal and will have little impact on the Robinsons' wetlands because the small volume of water being discharged will be somewhat diluted by the daily tidal flows that runs through the wetlands. He also emphasized that few toxins are expected to be in the effluent because residential waste will be treated, not industrial waste.<sup>9</sup>

Mr. Ince further testified that the distance from the proposed discharge point to Dickinson Bayou is 1,100 feet and the width of the receiving stream averages 15 feet over that distance. He further testified that the in-stream levels would be raised one or two inches at the maximum discharge of 950,000 gallons but, under normal conditions, the water surface would be one foot below the top of the bank. Therefore, according to Mr. Ince, the discharge would not top the banks except during extreme tidal events and, thus, have little impact on the wetlands.<sup>10</sup>

South Central witness Malcolm Bailey provided similar testimony on the impact of the effluent on the Robinsons' wetlands. In his 40 years of experience, he testified that the small volume of treated water being discharged will have little impact on the wetlands due to the

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<sup>7</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 2.

<sup>8</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 3-4.

<sup>9</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 3-4.

<sup>10</sup> Tr. at 44, 51, and 58-60.

volume of the effluent being discharged, the small area of wetlands, and the effect of daily tidal flows.<sup>11</sup>

### ***ED***

The ED supports South Central's application. Mark Rudolph, P.E., testified that he modeled the proposed discharge and that the modeling analysis was designed to be protective of the receiving stream and Dickinson Bayou. He emphasized that the proposed discharge was evaluated using conservative assumptions designed to represent conditions when water body dissolved oxygen is typically at its minimum. Mr. Rudolph recommended effluent limitations of 10 mg/L 5-day carbonaceous oxygen demand (CBOD<sub>5</sub>), 3 mg/L Ammonia-Nitrogen (NH<sub>3</sub>-N), and 4 mg/L dissolved oxygen (DO) at the Phase I and II discharge levels, and included a more restrictive requirement of 6 mg/L DO at the final phase.<sup>12</sup> Mr. Rudolph did not model the wetlands because he believed, based on aerial photographs, that a well-defined channel would carry the discharged effluent from the unnamed tidal tributary through the wetlands. He further testified that it was unclear as to whether the wetland area was hydrologically connected with the unnamed tributary or Dickinson Bayou under normal water level conditions. Mr. Rudolph opined that most of the discharge would be conveyed through the existing channel and that only a small amount of the discharge would top the bank, under certain situations, and get into the wetlands.<sup>13</sup>

### ***Robinsons***

The Robinsons argue that South Central has not presented enough evidence to meet its burden of proof, and that the wastewater plant is actually intended to be a regional plant (regional plant for the City of Texas City) serving a wider area than initially planned. The

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<sup>11</sup> South Central Ex. 1, Bailey Prefiled Direct Testimony at 2-3.

<sup>12</sup> ED Ex. 9, Rudolph Prefiled Direct Testimony at 8-9.

<sup>13</sup> ED Ex. 9, Rudolph Prefiled Direct Testimony at 10; and Tr. at 107.

Robinsons take issue with the witnesses who testified in favor of the wastewater plant because they claim the witnesses do not have enough personal knowledge of the wetlands. With respect to Mr. Ince, South Central's expert witness, the Robinsons claim that one visit to the site is not enough for purposes of evaluating the wetlands area. For the other witnesses who testified in favor of the wastewater plant (Mr. Bailey for South Central, and Ms. Murphy and Mr. Rudolph for the ED) the Robinsons argue that these witnesses have no personal knowledge of the wetlands area or the larger discharge area because they have not visited the site. On the other hand, the Robinsons maintain that, because they live in the area and have sufficient knowledge of the wetlands and discharge area, their testimony<sup>14</sup> on the impact on the wetlands is more credible. The Robinsons believe that there is the likelihood of harm to the wetlands and larger discharge area.<sup>15</sup>

### *OPIC*

OPIC asserts that South Central has not met its burden of proof on the first issue. OPIC claims that South Central relies on the ED's evaluation to meet its burden of proof, which OPIC claims is improper. OPIC notes that the ED's review did not include an analysis of the wetlands, and South Central's expert witness, Mr. Ince, mainly relies on his reputation to support his opinion. OPIC primarily argues that South Central improperly relied on the ED's evaluation and draft permit as proof that the discharge will not harm wildlife in the receiving waters or wetlands. Simply relying on TCEQ's prior review and preliminary approval is not enough for South Central to meet its burden of proof.

Furthermore, OPIC claims that no witness offered a sufficient opinion on whether the effluent will harm marine life and wildlife. According to OPIC, Mr. Bailey and Mr. Goebel could not offer an opinion, instead relying on TCEQ.<sup>16</sup> As for Mr. Ince's opinion, OPIC asserts

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<sup>14</sup> Only Mr. Robinson testified at the hearing.

<sup>15</sup> Tr. at 84-98.

<sup>16</sup> Tr. at 24-25; and Tr. at 30.

that he formed his opinion without taking any samples of the downstream waterway and without conducting any measurements of the dimensions of the waterway.<sup>17</sup> OPIC points out that the ED, through its witnesses, does not offer an opinion on whether the discharge will impact the wetlands. And, it further opines that Mr. Ince's opinion is not sufficient for South Central to meet its burden of proof because experience and physical examination of the area is not enough for him to make an informed decision on whether the marine life and wildlife will be harmed by the discharge.

### *ALJ's Analysis and Recommendation*

The preponderance of the evidence shows that the discharge of effluent will not harm the marine life and wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson. South Central's burden is to show by a preponderance of the evidence that the effluent will not harm the marine life and wildlife. OPIC and the Robinsons assert that South Central did not meet this burden. The ALJ disagrees. OPIC and the Robinsons claim that South Central should have conducted water sampling and other scientific testing to meet its burden of proof. Of course, neither party is specific as to what type of testing is required, nor did they cite to any rule or statute that requires such testing. The ALJ points out that the Robinsons provided no evidence, other than the lay opinion of Mr. Robinson, that the receiving waters and wetlands would be harmed. The Robinsons offered no expert opinion, and Mr. Robinson's lay opinion was given limited weight because it primarily dealt with a description of the area. The ALJ realizes that Mr. Robinson is intimately familiar with the area, especially the wetlands, but his familiarity with the area does not prove or really address the harm to the marine life and wildlife in the receiving waters and wetlands. And, although the ALJ appreciates OPIC's observations, OPIC offered no testimony or evidence on the issue. It postulates that some additional testing should have been done without any specific evidence to back this up.

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<sup>17</sup> Tr. at 58, 65, and 67.

The evidence in this case shows that the discharge will not harm the marine life or wildlife in the receiving waters and waterways. First, South Central has agreed to design and construct the wastewater plant to comply with the TCEQ standards. Mr. Bailey testified that he has built at least a 100 of these wastewater plants in the Houston area and knows how to best meet the TCEQ requirements for wastewater plants.<sup>18</sup> Mr. Ince testified that there are hundreds if not thousands of these wastewater plants in operation throughout the Gulf states.<sup>19</sup>

Second, the evidence, which was not rebutted, shows that the Robinsons' wetlands are typical of coastal waters found along the Gulf Coast. These wetlands are tidally influenced and need fresh water to remain healthy. The treated effluent will be the source of the fresh water. Furthermore, the amount of water being discharged is minimal and will have no noticeable effect on the wetlands. The wetlands will be minimally affected because the small volume of water being discharged, the small area of the wetlands that could be impacted by the effluent, the dilution from the daily tidal flows, and the existence of the channel through the wetlands along the discharge route.<sup>20</sup>

Third, the discharged effluent will have an adequate level of dissolved oxygen. The dissolved oxygen is necessary to healthy waters for marine and other aquatic life. In this case, at the final stage of the project, the dissolved oxygen level of 6 will be required. The effluent will improve the waters of the receiving stream because the receiving stream will receive more oxygenated water due to the wastewater plant.<sup>21</sup>

Fourth, wetlands are frequently created to provide additional cleaning for wastewater treatment plant effluent. Wetlands clean water and, if no toxins are introduced into the waste stream, effluent leaving the wastewater treatment plant and flowing through the wetlands before

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<sup>18</sup> South Central Ex. 1, Bailey Prefiled Direct Testimony at 2-3.

<sup>19</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 3.

<sup>20</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 3-4.

<sup>21</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 4.

entering Dickinson Bayou will be cleaner than it was when it left the plant and have less impact on the marine life and wildlife. No toxins are anticipated to be discharged because the plant will treat residential waste not industrial waste.<sup>22</sup>

Fifth, the discharge point and this portion of the Dickinson Bayou are not section 303(d) (Clean Water Act) listed waterways. South Central was informed by TCEQ, specifically Mr. Rudolph, that the discharge point and this portion of Dickinson Bayou were not impaired water bodies.<sup>23</sup>

Finally, the effluent will be discharged through a channel that bisects the Robinsons' wetlands. The channel has sufficient depth and width to contain the amount of discharge except in periods of extreme high tide. When this occurs, a small amount of the effluent may flow over the channel and into the wetlands. At the same time, however, tidal waters will be diluting the effluent.<sup>24</sup>

**B. Whether the discharge will violate water quality standards in the receiving stream or in the Dickinson Bayou.**

***South Central***

South Central asserts that the discharged effluent will not violate the water quality standards in the receiving stream or in the Dickinson Bayou. South Central states that TCEQ sets the water quality standards for Texas waterways. According to South Central, all of the expert testimony recognizes that neither the receiving stream nor this segment of the Dickinson

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<sup>22</sup> South Central Ex. 3, Ince Prefiled Direct Testimony at 4.

<sup>23</sup> South Central Ex. 2, Goebel Prefiled Direct Testimony at 4.

<sup>24</sup> Tr. at 59-60, 107-108, and 120-121.

Bayou is listed as an impaired water body. Furthermore, it asserts that the discharged effluent at the draft permit standards will not degrade these waters.<sup>25</sup>

***ED***

The ED points out that TCEQ has been charged with the responsibility to maintain the quality of the water in this state taking into consideration the public health, aquatic life, and economic development.<sup>26</sup> To implement the quality standards, TCEQ developed the Texas Surface Water Quality Standards (TSWQS). Larry Diamond, ED expert witness and Environmental Permit Specialist III, testified that he prepared the wastewater draft permit in accordance with all applicable statutory and regulatory requirements.<sup>27</sup>

The ED points out that, in accordance with 30 TEX. ADMIN. CODE § 307.5 and the TCEQ implementation procedures for the TSWQS, the ED performed Tier 1 and Tier 2 antidegradation reviews for this application.<sup>28</sup> The ED states that the reviews are performed to ensure the existing uses and water quality of the receiving water will be maintained and protected. In this case, Lili Murphy, and ED expert witness and Aquatic Scientist II, performed the Tier 1 and Tier 2 antidegradation reviews. Ms. Murphy assessed the discharge route, the unnamed tidal tributary, and the Dickinson Bayou and determined the uses to be contact recreation, high aquatic life, and sustainable fishery. After her review, Ms. Murphy determined that no significant degradation of water quality is expected. Ms. Murphy assigned a dissolved oxygen criterion of 4.0 mg/L to Segment 1103 and the unnamed tidal tributary.<sup>29</sup>

Once Ms. Murphy determined the dissolved oxygen level, Mr. Rudolph modeled the receiving water to determine what effluent limits must be in the permit to maintain the dissolved

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<sup>25</sup> Tr. at 131-132, and 137-138.

<sup>26</sup> TEX. WATER CODE ANN. § 26.003.

<sup>27</sup> ED Ex. 1, Diamond Prefiled Direct Testimony at 2-5.

<sup>28</sup> ED Ex. 17, Water Quality Assessment Memo.

<sup>29</sup> ED Ex. 14, Murphy Prefiled Direct Testimony at 2, and 6-8.

oxygen criteria. According to the ED, Mr. Rudolph used the QUAL-TEX model and was able to make an informed recommendation on the appropriate effluent limitations of 10 mg/L CBOD<sub>5</sub>, 3 mg/L NH<sub>3</sub>-N, and 4 mg/l DO for the 75,000 gpd and 150,000 gpd phases, and an effluent set of 10 mg/L CBOD<sub>5</sub>, 3 mg/L NH<sub>3</sub>-N, and 6 mg/l DO for the final phase of 950,000 gpd. He determined that these effluent sets would be adequate to ensure that the dissolved oxygen level will be maintained above the standards for the unnamed tidal tributary and the Dickinson Bayou outside the impaired area. Mr. Rudolph testified that a portion of Dickinson Bayou was impaired for dissolved oxygen but that impairment was approximately four stream miles *upstream* from the proposed discharge. He concluded, however, that the effluent limits are adequate to prevent further significant lowering of dissolved oxygen in the impaired region of Dickinson Bayou.<sup>30</sup>

### ***Robinsons***

The Robinsons assert that the receiving stream is a drainage ditch that is tidally influenced. They assert that without a water quality analysis, the experts cannot determine or conclude that the water quality will be improved by the effluent discharge. The Robinsons further contend that Mr. Ince's conclusion that effluent would flow uniformly and evenly was merely guesswork because he did not fully analyze their property, the wetlands, or the larger area of discharge.

### ***OPIC***

OPIC opines that South Central failed to meet its burden of proof on the second issue because it relied on the water quality evaluations performed by the ED and did not perform its own evaluations. Without evidence on water quality from South Central, OPIC claims that it

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<sup>30</sup> ED Ex. 9, Rudolph Prefiled Direct Testimony at 3-6, and 8-9.

cannot meet its burden of proof on this issue even if the ED had performed a water quality evaluation.

*ALJ's Analysis and Recommendation*

The Robinsons claim that the plant is intended to be a regional plant; therefore, this case should be evaluated as if the full volume of discharge will begin on day one of operation. The ALJ acknowledges that the final phase flow will be 950,000 gpd. This information is contained in the application and was used by the ED in its evaluation. However, regionalization was not an issue referred to SOAH; therefore, whether the plant becomes a regional plant is not relevant to the issues referred. Furthermore, the ED fully evaluated the application for water quality issues in the final phase (950,000 gpd).

The Robinsons and OPIC attempt to characterize this portion of Dickinson Bayou as impaired; however, the evidence shows otherwise. The impaired portion of Dickinson Bayou is four miles upstream from the where the proposed discharge would enter Dickinson Bayou.<sup>31</sup> Mr. Rudolph was aware of the location of the impaired portion of the Dickinson Bayou. He considered the impaired portion when modeling the proposed discharge and concluded that the impaired portion of the Dickinson Bayou would have an insignificant lowering of the dissolved oxygen in proposed discharge area.<sup>32</sup> In addition, Ms. Murphy performed an antidegradation review on the receiving waters and determined that the effluent at the draft permit standards will not adversely affect the water quality of the unnamed tributary or Dickinson Bayou.<sup>33</sup> There is no evidence to rebut or even dispute Mr. Rudolph's modeling and Ms. Murphy's review. Moreover, the results of his modeling can be relied on by South Central on the issues of water quality. The requirement that more testing of the water quality be done is not supported by any

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<sup>31</sup> ED Ex. 9, Rudolph Prefiled Direct Testimony at 6.

<sup>32</sup> Tr. at 116-117.

<sup>33</sup> ED Ex. 14, Murphy Prefiled Direct Testimony at 8-10.

expert, rule, or statutory provision. Furthermore, neither the Robinsons nor OPIC suggested any type of additional evaluation that would have been helpful.

Finally, TCEQ has the duty to maintain the quality of the water in this state taking into consideration the public health, aquatic life, and economic development.<sup>34</sup> To implement the quality standards, TCEQ developed the TSWQS reviews. These reviews, including the anitdegradation reviews, have been performed in this case to ensure the existing uses and water quality of the receiving water will be maintained and protected. Again, there is no credible evidence to the contrary. Accordingly, South Central has proven that the effluent discharge will not violate water quality standards in the receiving stream or in the Dickinson Bayou.

## V. CONCLUSION

In conclusion, the ALJ finds that none of the concerns of OPIC or the Robinsons warrant denial of the application or a refusal to issue the requested permit. South Central has met its burden of proof, and its application should be approved. The findings of fact and conclusions of law supporting the ALJ's recommendations herein are set out in a separate proposed final order that is being sent to the Commission along with this PFD.

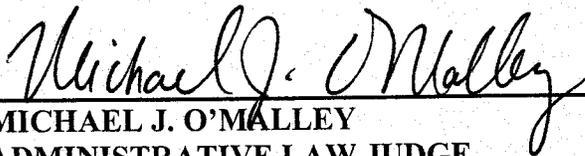
In addition to addressing the issues referred by the Commission, the proposed order also includes a conclusion of law and an ordering provision stating that the terms of the permit and the ED's review of the application comply with all applicable federal and state requirements. These items are included as a convenience to the Commission to allow it to more easily issue a

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<sup>34</sup> TEX. WATER CODE ANN. § 26.003.

single decision on the application in accordance with 30 TEX. ADMIN. CODE § 50.117(g). The ALJ makes no recommendation regarding issues not referred for hearing.

**SIGNED March 9, 2010.**

  
\_\_\_\_\_  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AN ORDER

**GRANTING THE APPLICATION OF SOUTH CENTRAL WATER COMPANY FOR  
NEW WASTEWATER PERMIT, PROPOSED TEXAS POLLUTANT DISCHARGE  
ELIMINATION SYSTEM, PERMIT NO. WQ0014804001  
SOAH DOCKET NO. 582-08-4290  
TCEQ DOCKET NO. 2008-0473-MWD**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application (Application) of South Central Water Company (South Central or Applicant) for a new wastewater permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014804001. A Proposal for Decision (PFD) was presented by Michael J. O'Malley, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing in this case on November 10, 2009, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

### I. FINDINGS OF FACT

1. South Central applied to TCEQ for a new TPDES permit authorizing the discharge of treated 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.

2. The treated effluent would be discharged to an unnamed tidal tributary (also referred to during the hearing as the receiving stream, canal, and channel); then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin.
3. The unclassified receiving water use is high aquatic life. The designated uses for Segment No. 1103 are high aquatic life and contact recreation.
4. The facility would be located approximately 300 yards east of the intersection of 29<sup>th</sup> Street and Avenue S, on the north side of Avenue S in Galveston, County, Texas.
5. South Central, the TCEQ Executive Director (ED), the Office of Public Interest Counsel (OPIC), and Roy and Kathleen Robinson (Protestant) participated at the hearing.
6. The permit application was received on May 8, 2007, and declared administratively complete on July 10, 2007.
7. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Houston Chronicle* on August 16, 2007, and the alternative language NORI was published in the *La Voz De Houston* on August 15, 2007.
8. TCEQ Staff completed a technical review of the application and prepared a draft permit.
9. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published in the *Houston Chronicle* on October 18, 2007, the alternative language NAPD was published in the *La Voz De Houston* on October 17, 2007, and the comment period ended on November 19, 2007.
10. Roy and Kathleen Robinson (determined by the Commission to be affected persons) requested a contested case hearing on the application.
11. On August 4, 2008, the Commission referred this case to SOAH.

12. The hearing on the merits was initially scheduled for February 12, 2009; however, the Applicant requested a 90-day abatement, which was granted. The hearing was rescheduled for July 21, 2009, but Roy Robinson filed an unopposed motion for continuance due to an accident that required hospitalization. The ALJ rescheduled the hearing for November 10, 2009.
13. The parties filed post-hearing briefs, and the record closed January 12, 2010.
14. South Central, as the Applicant, has the burden of proof on both issues in this case.
15. The wastewater treatment plant will be designed and constructed to the standards in Title 30 of the Texas Administrative Code, Chapter 317.
16. The discharged effluent will have an adequate level of dissolved oxygen.
17. The wetlands along the Gulf Coast need fresh water flows (both natural and manmade) to remain healthy.
18. Man-made wetlands are often used to by wastewater treatment plants to provide additional cleaning for the discharged effluent.
19. The Robinsons are the owners of approximately two acres of wetlands adjacent to and immediately downstream from the proposed discharge point. Their homestead is about a half mile from the discharge point.
20. The Robinsons have operated fishing boats and other marine equipment in the area for almost 35 years.
21. The Robinsons' wetlands are typical of the Gulf Coast wetlands and need fresh water to remain healthy.
22. The amount of treated effluent is minimal and will have little impact on the Robinsons' wetlands because the small volume of water being discharged will be diluted by the daily tidal flows that run through the wetlands.

23. Few toxins are expected to be in the effluent because residential waste will be treated, not industrial waste.
24. The distance from the proposed discharge point to Dickinson Bayou is 1,100 feet and the width of the receiving stream averages 15 feet over that distance.
25. The in-stream levels would be raised one or two inches at the maximum discharge of 950,000 gallons but, under normal conditions, the water surface would be one foot below the top of the bank.
26. The discharge effluent would not top the banks except during extreme tidal events and, thus, have little impact on the wetlands.
27. The discharge of effluent will not harm the marine life or wildlife in the receiving waters and the wetlands maintained by Mr. and Mrs. Robinson.
28. The effluent will improve the waters of the receiving stream because the receiving stream will receive more oxygenated water due to the wastewater plant.
29. Wetlands are frequently created to provide additional cleaning for wastewater treatment plant effluent.
30. Wetlands clean water and, if no toxins are introduced into the waste stream, effluent leaving the wastewater treatment plant and flowing through the wetlands before entering Dickinson Bayou will be cleaner than it was when it left the plant and have less impact on the marine life and wildlife.
31. No toxins are anticipated to be discharged because the plant will treat residential waste not industrial waste.
32. The discharge point and the portion of the Dickinson Bayou involved in this case are not § 303(d) (Clean Water Act) listed waterways.
33. The effluent will be discharged through a channel that bisects the Robinsons' wetlands.

34. The channel has sufficient depth and width to contain the amount of discharge except in periods of extreme high tide. When this occurs, a small amount of the effluent may flow over the channel and into the wetlands.
35. TCEQ sets the water quality standards for Texas waterways.
36. TCEQ has been charged with the responsibility to maintain the quality of the water in this state taking into consideration the public health, aquatic life, and economic development.
37. To implement the quality standards, TCEQ developed the Texas Surface Water Quality Standards (TSWQS).
38. Tier 1 and Tier 2 antidegradation reviews were performed for this application.
39. The antidegradation reviews assessed the discharge route, the unnamed tidal tributary, and the Dickinson Bayou and determined the uses to be contact recreation, high aquatic life, and sustainable fishery.
40. The discharged effluent will not violate the water quality standards in the receiving stream or in the Dickinson Bayou.
41. TCEQ also modeled the receiving water to determine what effluent limits must be in the permit to maintain the dissolved oxygen criteria.
42. Using the QUAL-TEX model, TCEQ was able to make an informed recommendation on the appropriate effluent limitations of 10 mg/L 5-day carbonaceous oxygen demand (CBOD<sub>5</sub>), 3 mg/L Ammonia-Nitrogen (NH<sub>3</sub>-N), and 4 mg/l dissolved oxygen (DO) for the 75,000 gpd and 150,000 gpd phases, and an effluent set of 10 mg/L CBOD<sub>5</sub>, 3 mg/L NH<sub>3</sub>-N, and 6 mg/l DO for the final phase of 950,000 gpd.
43. The effluent sets will be adequate to ensure that the dissolved oxygen level will be maintained above the standards for the unnamed tidal tributary and Dickinson Bayou outside the impaired area.

44. A portion of Dickinson Bayou is impaired for dissolved oxygen, but it is approximately four stream miles upstream from the proposed discharge and could not be affected.

## **II. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Texas Water Code Chapter 26.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code Chapter 2003.
3. Applicant and TCEQ have satisfied all applicable public notice requirements.
4. In accordance with TEX. WATER CODE ANN. § 26.041, South Central's discharge under the terms of the Draft Permit will meet water quality standards and not be injurious to public health.
5. In accordance with TEX. WATER CODE ANN. § 26.003, South Central's discharge under the terms of the Draft Permit will be in compliance with the regulations intended to protect water quality, health and safety of humans, native wildlife and marine life.
6. It is reasonable for South Central to pay the transcript costs for the hearing in this case. 30 TEX. ADMIN. CODE § 80.23 (d)(1).
7. South Central's application should be granted, and Permit No. WQ0014804001 should be issued.
8. In accordance with 30 TEX. ADMIN. CODE § 50.117, the Commission issues this Order and the attached permit as its single decision on the permit application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, document the Executive Director's review of the permit application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit (Exhibit A) are appropriate and satisfy all applicable federal and state requirements.

**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. In accordance with 30 TEX. ADMIN. CODE § 50.117, the Commission issues this Order granting TPDES Permit No. WQ0014804001 to South Central Water Company, which is attached as Exhibit A.
2. The Commission adopts the Executive Director's Response to Public Comment in accordance with 30 TEX. ADMIN. CODE § 50.117. Also, in accordance with Section 50.117, the Commission issues this Order and the attached permit as its single decision on the permit application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, document the Executive Director's review of the permit application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit are appropriate and satisfy all applicable federal and state requirements.
3. 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.
4. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

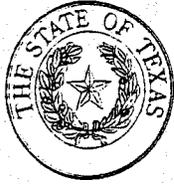
6. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Buddy Garcia, Chairman  
For the Commission**



TPDES PERMIT NO. WQ0014804001  
[For TCEQ office use only -  
EPA I.D. No. TX0129631]

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY  
P.O. Box 13087  
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES  
under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

South Central Water Company

whose mailing address is

P.O. Box 570177  
Houston, Texas 77257

is authorized to treat and discharge wastes from the Dolphin Cove Wastewater Treatment Facility, SIC Code 4952

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

to unnamed tidal tributary; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. 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 federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, September 1, 2013.

ISSUED DATE:

THE STATE OF TEXAS  
COUNTY OF TRAVIS  
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF A PERMIT TO DISCHARGE WASTES TO THE QUALITY  
DOCUMENTS FILED IN THE PUBLIC RECORDS

MAY 20 2009

OF THE COMMISSION ON ENVIRONMENTAL QUALITY AND THE  
SEA OF TEXAS

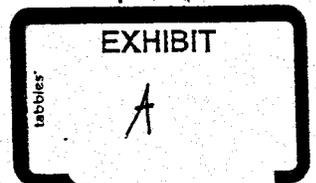
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

PFD  
EXHIBIT

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South Central Water Company  
INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning upon the date of issuance and lasting through the completion of expansion of the 0.150 million gallons per day (MGD) facilities the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.075 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 208 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Single Grab</u> mg/l	<u>Minimum Self-Monitoring Requirements</u> Report Daily Avg. & Max. Single Grab
	<u>Daily Avg</u> mg/(lbs/day)	<u>7-day Avg</u> mg/l	<u>Daily Max</u> mg/l		
Flow, MGD	Report	N/A	Report	N/A	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (6.3)	15	25	35	Grab
Total Suspended Solids	15 (9.4)	25	40	60	Grab
Ammonia Nitrogen	3 (1.9)	6	10	15	Grab

- The effluent shall 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
- The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
- There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
- The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

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INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- During the period beginning upon the completion of the 0.150 million gallons per day (MGD) facilities and lasting through the completion of expansion of the 0.950 MGD facilities the permittee is authorized to discharge subject to the following effluent limitations:  
  
The daily average flow of effluent shall not exceed 0.150 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 417 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report mg/l	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (13)	15	25	35	Grab
Total Suspended Solids	15 (19)	25	40	60	Grab
Ammonia Nitrogen	3 (3.8)	6	10	15	Grab

- The effluent shall 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
- The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
- There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
- The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

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FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of completion of the 0.950 million gallons per day (MGD) facilities and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.950 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 2,639 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Daily Max. Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (79)	15	25	One/week	Composite
Total Suspended Solids	15 (119)	25	40	One/week	Composite
Ammonia Nitrogen	3 (24)	6	10	One/week	Composite

- The effluent shall 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), and shall be monitored daily by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
- The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice per month by grab sample.
- There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
- The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

**DEFINITIONS AND STANDARD PERMIT CONDITIONS**

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

**1. Flow Measurements**

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

**2. Concentration Measurements**

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
  - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
  - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

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- e. Bacteria concentration (Fecal coliform, *E. coli*, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the  $n$ th root of the product of all measurements made in a calendar month, where  $n$  equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as ( Flow, MGD x Concentration, mg/l x 8.34).
  - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (b).
  - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

## MONITORING AND REPORTING REQUIREMENTS

### 1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the TWC Chapters 26, 27, and 28, and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

### 2. Test Procedures

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

## 3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
  - i. date, time and place of sample or measurement;
  - ii. identity of individual who collected the sample or made the measurement.
  - iii. date and time of analysis;
  - iv. identity of the individual and laboratory who performed the analysis;
  - v. the technique or method of analysis; and
  - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

## 4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

## 5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

## 6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office No. 12 and the Enforcement Division (MC 224).

## 7. Noncompliance Notification

- a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
  - i. Unauthorized discharges as defined in Permit Condition 2(g).
  - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
  - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

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- c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
  - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 µg/L);
  - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 µg/L);
  - ii. One milligram per liter (1 mg/L) for antimony;
  - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

11. All publicly owned treatment works (POTWs) must provide adequate notice to the Executive Director of the following:
- a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
  - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
  - c. For the purpose of this paragraph, adequate notice shall include information on:
    - i. The quality and quantity of effluent introduced into the POTW; and
    - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

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## PERMIT CONDITIONS

## 1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
  - i. Violation of any terms or conditions of this permit;
  - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
  - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

## 2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA §402, or any requirement imposed in a pretreatment program approved under the CWA §§402 (a)(3) or 402 (b)(8).

## 3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

## 4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers);
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9; or
  - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes that are not described in the permit application or that 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.
- e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee

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shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal, which requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
  - i. the permittee;
  - ii. an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
  - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- b. This notification must indicate:
  - i. the name of the permittee and the permit number(s);
  - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
  - iii. the date of filing of the petition.

## OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in

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order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:
  - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
  - b. The permittee shall submit a closure plan for review and approval to the Land Application Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, 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.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
  - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:
- Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335 relating to Industrial Solid Waste Management.
  - Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
  - The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
  - Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.
  - The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
  - The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
    - Volume of waste and date(s) generated from treatment process;
    - Volume of waste disposed of on-site or shipped off-site;
    - Date(s) of disposal;
    - Identity of hauler or transporter;
    - Location of disposal site; and
    - Method of final disposal.
- The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.
12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Chapter 361.

## SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased, or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

### SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

#### A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or leaseholder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

#### B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method, that receives the prior approval of the TCEQ for the contaminants listed in Table 1 of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC R-12) within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

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2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration</u> (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

\* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC §312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one plaque-forming unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency (EPA) as being equivalent to those in Alternative 5.

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- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1 -

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the EPA so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The executive director will accept from the EPA a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the processes to significantly reduce pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

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In addition, the following site restrictions must be met if Class B sludge is land applied:

- vi. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- vii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- viii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- ix. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- x. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- xi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- xii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.
- xiii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- xiv. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC §312.44.

#### 4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following alternatives 1 through 10 for Vector Attraction Reduction.

- Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.
- Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius (C). Volatile solids must be reduced by less than 17% to demonstrate compliance.
- Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. Volatile solids must be reduced by less than 15% to demonstrate compliance.
- Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.
- Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.
- Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.
- Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are

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defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 9 -

- i. Sewage sludge shall be injected below the surface of the land.
- ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
- iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10-

- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
- ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

**C. Monitoring Requirements**

- 1. Toxicity Characteristic Leaching Procedure (TCLP) Test once during the term of this permit
- 2. PCBs once during the term of this permit
- 3. All metal constituents and Fecal coliform or *Salmonella sp.* bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC §312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(\*) *The amount of bulk sewage sludge applied to the land (dry weight basis).*

- 4. Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC §312.7.

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**SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3**

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

**A. Pollutant Limits**

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)*</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

\*Dry weight basis

**B. Pathogen Control**

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section 1.B.3.

**C. Management Practices**

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner that complies with the Management Requirements in accordance with 30 TAC §312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

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4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
  - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
  - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
  - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

#### D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
  - a. The location, by street address, and specific latitude and longitude, of each land application site.
  - b. The approximate time period bulk sewage sludge will be applied to the site.
  - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

#### E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludges, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

"I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC §312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC §312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."
6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained.

The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

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1. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.
2. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
3. The number of acres in each site on which bulk sludge is applied.
4. The date and time sludge is applied to each site.
5. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
6. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

#### F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC R-12 and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. that applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
  - a. The location, by street address, and specific latitude and longitude.

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- b. The number of acres in each site on which bulk sewage sludge is applied.
- c. The date and time bulk sewage sludge is applied to each site.
- d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
- e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

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**SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL**

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a Municipal Solid Waste Landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method that receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MCR-12) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.

F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.
3. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC R-12) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of

- the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
  7. Owner of disposal site(s).
  8. Location of disposal site(s).
  9. Date(s) of disposal.
  10. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

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**OTHER REQUIREMENTS**

1. 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. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1103 of the San Jacinto-Brazos Coastal Basin and any subsequent updating of the water quality model for Segment No. 1103, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC §305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
4. The permittee shall comply with the requirements of 30 TAC §309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC §309.13(e).
5. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 12) and the Applications Review and Processing Team (MC 148) of the Water Quality Division, at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first.
6. Prior to construction of the interim I, interim II, and final phase treatment facilities, 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 217.6(c). 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 217, Design Criteria for Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2, 2a, and 2b of the permit.
7. The permittee is hereby placed on notice that the Executive Director of the TCEQ will be initiating rulemaking and/or changes to procedural documents that may result in bacteria effluent limits and monitoring requirements for this facility.
8. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.

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