

TULANE ENVIRONMENTAL LAW CLINIC

September 19, 2006

Ref: 157-002

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Ms. Soumaya Ghosn
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Public Participation Group
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Attn: Ms. Soumaya Ghosn

**RE: Comments on Environmental Compliance Solutions
Portable Treatment Unit, Draft Water Discharge Permit**
AI Number: 131721
Permit Number: LA0122092
Activity Number: PER20050001.

Dear Ms. Ghosn,

Please consider the following comments on the draft permit for Environmental Compliance Solutions, L.L.C.'s Portable Treatment Unit, Permit No. LA0122092 (the "Draft Permit"). The Tulane Environmental Law Clinic submits these comments on behalf of the Gulf Restoration Network ("GRN"),¹ Louisiana Environmental Action Network ("LEAN"),² and Mr. O'Neil Couvillion.³ GRN, LEAN, and Mr. Couvillion reserve the right to rely on all public comments submitted in this matter.

¹ The Gulf Restoration Network is a diverse network of local, regional and national groups dedicated to protecting and restoring the valuable resources of the Gulf of Mexico. The GRN has members in the five Gulf states of Texas, Louisiana, Mississippi, Alabama and Florida and nationwide.

² LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in the project area.

³ Mr. Couvillion fishes in waters of the state and his enjoyment of this activity is impaired by the waters' pollution.

To assist in LDEQ's understanding of these comments, we have attached the expert testimony of Barry W. Sulkin, M.S. Mr. Sulkin's affidavit is incorporated by reference into these comments.

SUMMARY

LDEQ has proposed the Draft Permit for a portable treatment unit that would discharge "treated oily wastewaters from industrial and marine sources including: barge washwater, treated bilge and ballast wastewater, treated internal vacuum tank washwater, treated used crude inland oil spill waters, treated used oil and diesel fuel tank washwater, treated washwater from oilfield equipment and vessels, treated industrial oily wastewater, treated slop wastewater, treated washdown water and treated kitchen grease." The portable treatment unit is mobile and not stationed and any specified location.

The Draft Permit allows discharges into essentially all waters in the state of Louisiana, regardless of the designated use or most individual conditions of any receiving water body. Without considering the location for each discharge under the Draft Permit, LDEQ cannot analyze the environmental impacts that the discharge will have on the receiving waterbodies, as it must under the Louisiana Constitution. Also, because LDEQ's proposed permit does not exclude specially protected waterbodies, such as Outstanding Natural Resources Waters and 303(d)-listed impaired waters, it allows discharges that would violate state and federal law. Moreover, where the proposed Permit and accompanying Statement of Basis do set forth restrictions and limitations, those restrictions and limitations or the basis for those restrictions and limitations are often inadequate or unjustified. Finally, LDEQ fails to give sufficient public notice for each discharge and its proposed permit circumvents public participation.

I. LDEQ Has Not Sufficiently Analyzed the Environmental Impacts of the Proposed Permit Because It Has Not Considered The Individual Receiving Water Bodies.

The Draft Permit allows discharges into essentially any waters in the state of Louisiana, regardless the designated use or individual conditions of any receiving water body.⁴ Without considering the location for each discharge under the Draft Permit, LDEQ cannot competently analyze the environmental impacts that the discharges will have on the receiving water bodies.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of the proposed action before deciding whether to approve a permit. The Louisiana Constitution states that "[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the

⁴ The only exception is for specific subsegments that LDEQ knows contain endangered species and have a flow of less than 100 cubic feet per second. (Statement of Basis 2, VI (July 11, 2006).)

environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. art. IX, § 9. The Louisiana Supreme Court found that this constitutional provision “requires an agency or official, *before* granting approval of proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare.” *Save Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984) (emphasis added). The Louisiana Court of Appeals further clarified LDEQ’s public trustee responsibilities by listing five inquiries that the public trustee must address in its environmental impacts analysis. *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96); 670 So. 2d 475, 481.⁵ These inquiries are known as the “IT Questions,” and under the *Save Ourselves* and *Rubicon* decisions, LDEQ must answer them in an IT analysis before making any decision as to approving a permit.

LDEQ must support its IT analysis with evidence in the administrative record. The Louisiana Supreme Court explained LDEQ must support its “basic findings” with evidence “to assure that the agency has acted reasonably in accordance with law.” *Save Ourselves*, 452 So. 2d at 1159-60. Moreover, LDEQ’s “ultimate findings” must “flow rationally from the basic findings; and it must articulate a rational connection between the facts found and the order issued.” *Id.* The court noted that “[t]his is particularly so . . . where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute.” *Id.*

LDEQ cannot yet have conducted a lawful IT analysis on the portable treatment unit because it has not specified into which waters the portable treatment unit will discharge. For example, without knowing and analyzing the specific location of discharges, LDEQ cannot draw reliable conclusions about the potential or real environmental effects of the proposed facility, including, but not limited to, impacts on specially protected water bodies, designated uses of water bodies, degradation of water bodies, effects of mixing zones, effects on endangered species, biocumulative impacts, and cumulative impacts on water bodies. (Sulkin Aff. ¶¶ 12 – 18.) Moreover, LDEQ has not included any analysis of alternatives to the proposed portable treatment unit or to its approach of not specifying or further limiting the sites of discharges. Therefore, LDEQ will not meet its public trustee duties if it approves the Draft Permit.

⁵ “First, have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible? Second, does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former? Third, are there alternative projects which would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? Fourth, are there alternative sites which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits? Fifth, are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?” *Rubicon*, 670 So. 2d at 481 (citing *Blackett v. LDEQ*, 506 So.2d 749, 754 (La. Ct. App. 1987).

II. LDEQ Must Consider Each Individual Receiving Water Body To Avoid Violation of Statutory & Regulatory Authorities.

A. Permitting a Facility to Discharge Into the Waters of Louisiana Generally Conflicts With State Regulations.

Because the Draft Permit does not identify specific receiving waters, LDEQ cannot conclude that it is not approving violations of state and federal laws. Generally, state antidegradation rules “reflect the goals for *individual* waterbodies.” La. Admin. Code, tit. 33, pt. IX, § 1119(B)(2)(a) (emphasis added). For example, state water quality standards require a use attainability analysis “before any lowering of water quality will be allowed. No such changes, however, will be allowed if they interfere with or become injurious to the existing water uses. No lowering of water quality will be allowed in waters where standards for the designated water uses are not currently being attained.” La. Admin. Code, tit. 33, pt. IX, § 1109A(1). Contrary to its own regulations, LDEQ’s Draft Permit omits all consideration of individual receiving water bodies. The result is that LDEQ will fail to perform required use attainability analyses. To act within statutory authority, LDEQ must analyze each waterbody that will receive discharges under the Draft Permit.

B. Permitting a Facility to Discharge Into All State Water Bodies Violates State and Federal Regulations Because Those Regulations Require Different Treatment For Different Water Bodies.

LDEQ’s broad-stroke permitting approach for the portable treatment unit violates state and federal regulations, which require for different treatment for different kinds and conditions of water bodies. Some of these water bodies (for example, waters which are cleaner than minimum water quality standards) must “be maintained at their existing high quality.” La. Admin. Code tit. 33, pt. IX, § 1115(A)(3). While regulations may permit limited discharges into those waters, the standard is different than that for waters that are not cleaner than water quality standards. Without considering each receiving water body separately, LDEQ cannot issue a permit that appropriately considers the special treatment for those water bodies.

LDEQ must exclude other water bodies that federal and state laws single out for special protection (such as Outstanding Natural Resource Waters and 303(d)-listed impaired waters) from the scope of the Draft Permit to avoid violating state and federal law. For example, Louisiana regulations provide that LDEQ “shall not approve” a wastewater discharge into Outstanding Natural Resources “if it will cause degradation of these waters.” La. Admin. Code, tit. 33, pt. IX, § 1119(C)(4). Under that regulation, “degradation” means “a statistically significant difference . . . from existing physical, chemical and biological conditions.” *Id.* Further, federal regulations require that Outstanding Natural Resource Waters must be “maintained and protected,” which means “*no* new or increased discharge to [Outstanding Natural Resource Waters] . . .” EPA

Water Quality Standards Handbook § 4.7 (2d. ed. August 1994) (emphasis added) (*citing* 33 C.F.R. § 131.12(a)(3)). Under the Draft Permit, LDEQ acts outside its authority to approve discharges into Outstanding Natural Resource Waters and other specially protected waters. Accordingly, LDEQ must exclude Outstanding Natural Resource Waters, 303(d)-listed impaired waters, and other specially protected waters from the scope of the Draft Permit.

C. LDEQ Must Not Approve An Application For A Permit That Does Not Include Location of Outfalls and Discharges, Date of Commencement For Each Outfall, and Information Mapping The Path Of The Discharge.

LDEQ must not approve an application that omits essential information. Under state regulations, the agency “shall not issue a permit before receiving a complete application for a permit.” La. Admin. Code, tit. 33, pt. IX, § 2501(E)(1). To be complete, an application must include (1) expected outfall location(s), (2) discharge dates, and (3) flows, sources of pollution, and treatment technologies. La. Admin. Code, tit. 33, pt. IX, § 2501(K). Here Environmental Compliance Solutions’s application lacks more than two out of three of § 2501(K)’s requirements. First, the application fails to state the specific latitude and longitude for each expected outfall and discharge. (LPDES Permit Application To Discharge Wastewater From Industrial Facilities, AI 131721 Sec. II pt. D.) Second, the application fails to state the commencement date for each outfall location. Finally, the application fails to include required information concerning flows. For example, the application fails to include a topographic “map which has been highlighted to show the path of the wastewater from the facility to the first *named* water body,” as required under La. Admin. Code, tit. 33, pt. IX, § 2501(K)(3)(b). (LPDES Permit Application To Discharge Wastewater From Industrial Facilities, AI 131721 Sec. VI pt. D.) Similarly, the application does not consistently name the minor water bodies wastewater will travel through on the way to a major water body, as required under La. Admin. Code, tit. 33, pt. IX, § 6505(B)(3) (LPDES Permit Application To Discharge Wastewater From Industrial Facilities, AI 131721 Sec. II pt. D.)

D. The Applicant Has Not Applied For Sufficient Permits To Cover Most Of The Proposed Discharges.

Moreover, Environmental Compliance Solutions, LLC did not submit the appropriate permit application forms for the activities included in the Draft Permit. For example, the Draft Permit allows “discharging treated barge washwater.” Such activities require a WPC-3 permit application form for “Facilities Cleaning And/Or Repairing Barges.” See <http://www.deq.louisiana.gov/portal/Default.aspx?tabid=1837>. The WPC-3 application form requires different information from that which Environmental Compliance Solutions, LLC provided, rendering its application incomplete. Accordingly, LDEQ must not approve the Environmental Compliance Solutions’s incomplete application.

III. The Draft Permit's Effluent Limitations Are Insufficient, Based On Inappropriate Standards, Or Unsupported Standards.

A. LDEQ's Basis For Its Effluent Limitations Is Inappropriate Because The Proposed Facility Does Not Fit The Statutory Definition For Centralized Waste Treaters.

LDEQ bases its effluent limitations on an inapplicable regulation. LDEQ states that “[t]he parameters and effluent limitations in the proposed permit are based on New Source Performance Standards (NSPS) for Centralized Waste Treaters (40 CFR 437.24-Subpart B. Oil Treatment and Recovery).” But the Portable Treatment Unit that is the subject of the proposed permit will discharge “treated oily wastewaters from industrial and marine sources including: barge washwater, treated bilge and ballast wastewater, treated internal vacuum tank washwater, treated used crude inland oil spill waters, treated used oil and diesel fuel tank washwater, treated washwater from oilfield equipment, and vessels, treated industrial oily wastewater, treated slop wastewater, treated washdown water and treated kitchen grease.” Importantly, 40 C.F.R. § 437.24 does not include those discharges because 40 C.F.R. § 437.1(c)(2) specifically excludes “the discharge of marine generated wastes including wash water from equipment and tank cleaning, ballast water, bilge water, and other wastes generated (while operating on inland, coastal, or open waters or while berthed) as part of routine ship maintenance and operation as long as they are treated and discharged at the ship servicing facility where it is off-loaded.” Moreover, LDEQ has placed no restrictions on where the Portable treatment Unit must discharge the wastewaters it treats. Without further instruction, it is most likely and efficient that the facility will treat and discharge any marine wastes at the ship servicing location and not a separate location.

Similarly, sections 437.1(b)(8) and (9) specifically exclude the application of Centralized Waste Treater criteria to “the treatment of, or recovery of material from, animal or vegetable fats/oils from grease traps or interceptors generated by facilities engaged in food service activities [*i.e.* kitchen grease] . . . or [w]astewater from the treatment of, or recovery of material from, off-site wastes generated by facilities engaged only in food processing. Therefore, the regulation that LDEQ bases its effluent limitations excludes discharges like those the Draft Permit allows and is an inappropriate basis for its Effluent Limitations.

Moreover, LDEQ states that it bases the Draft Permit's parameters and effluent limitations on its “best professional judgment from similar permits and discharges.” (Statement of Basis 3 (July 11, 2006)) However, LDEQ has failed to specify any such similar permits or discharges. (Sulkin Aff. ¶ 19).

B. LDEQ Uses Incorrect Assertions to Support its Effluent Limitations

LDEQ's assertion on page four of the Statement of Basis that “[p]lacing the most stringent effluent limitation at the end of the pipe will ensure no degradation of the water

body will occur regardless of the receiving stream” is an incorrect statement. (Sulkin Aff. ¶ 24.)

C. The Draft Permit’s Effluent Limitations Are Insufficient To Protect All Receiving Water Bodies.

1. The Draft Permit Uses Insufficient Effluent Measurement Standards

LDEQ’s monitoring requirements will not reliably measure how much pollution is discharged into a receiving water body. The Draft Permit’s concentration-based effluent limitations, on page 2 of part I and page 5 of part II, only measure what proportion of a discharge is a pollutant, not the total amount of pollutants discharged. (Sulkin Aff. ¶¶ 26.) Additionally, a single sample measure of an effluent “batch” will not always reflect true effluent concentrations in such a batch. (*Id.* ¶ 27.) Moreover, the standards for measuring flow in the Statement of Basis and the standards in the Draft Permit are inconsistent and unclear. (*id.* ¶¶ 17, 19, 23, 29.) Accordingly, the Draft permit must use clear, consistent, and appropriate standards and methods to measure discharges into receiving waters.

2. Included Effluent Limitations Are Insufficient To Protect All Receiving Water Bodies

Effluent limitations in the Draft Permit are not sufficiently restrictive to protect all receiving water bodies. (Sulkin Aff. ¶¶ 20, 21) Generally, the included effluent limitations will not protect small or low flow water bodies. (*Id.* ¶ 21). Moreover, some of the included effluent limitations will not even protect medium sized water bodies. (*Id.* ¶ 20). The Draft Permit needs more stringent effluent limitations based on site specific evaluations.

3. LDEQ Omits Effluent Limitations For Pollutants That Are Likely to Appear In Some Of The Wastewaters Listed In The Permit.

LDEQ must include effluent limits for other pollutants which are likely to be present in the wastewater sources listed on page 1 of the Draft Permit. For instance, LDEQ omits limitations for volatile organic compounds and trichloroethylene (TCE) in the permit. (Sulkin Aff. ¶¶ 22.) The Draft Permit also omits disinfection requirements and effluent limitations for bacteria known to appear in wastes containing oils. (*Id.* ¶ 25.) Furthermore LDEQ should have prohibited discharges of sewage likely to be present in some of the wastewaters. (*Id.* ¶ 23.).

IV. LDEQ Does Not Provide Customary Or Sufficient Public Notice And Its Draft Permit Circumvents Public Participation Requirements.

LDEQ’s proposed permit would notify the public of discharges into any or all waters of the state of Louisiana without informing the public of any specific discharge


into any specific water. Even LDEQ considers this form of notice insufficient when it calls for the portable facility to notify it of any expected discharge 48 hours before such discharge. (Draft Permit, pt. II p. 4 ¶17) Similarly, LDEQ requires prior notification before any discharge into a water body with TMDL restrictions. (*Id.* pt. II, p. 1 ¶1.) But LDEQ fails to provide for public notice or an opportunity for the public to comment on any analysis that it may or may not execute in those 48 hours. This form of permit, which approves discharges now, but asks where, when, and to what effect later, deprives the public of its rights to have notice of actions and opportunity to comment on the specific proposed action and LDEQ's analysis of those actions. (Sulkin Aff. ¶ 31).

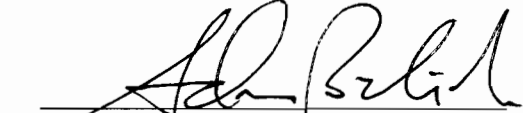
To the extent that the Draft Permit provides any notice of the proposed permissions and restrictions on discharges into waters with endangered species, its identification of such water bodies by subsegments circumvents public participation. While citizens might notice that the named water body in their backyard that contains endangered species is not protected under the Draft Permit, few will recognize the same if that water body is referred to only by its subsegment number. Accordingly, LDEQ must give public notice of the specific receiving waters affected by this proposed permit.

V. Conclusion

GRN, LEAN, and Mr. Couvillion object to the issuance of the portable treatment unit until and unless LDEQ adequately addresses their comments. Again, thank you for this opportunity to participate in the state's water quality protection process.

Respectfully submitted this 19th day of September, 2006,

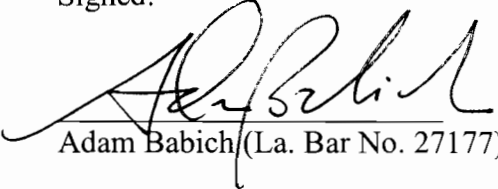

Charles J. Walsh, Student Attorney,
As Counsel for Mr. O'Neil Couvillion


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*As Counsel for the Gulf Restoration
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Charles J. Walsh's Representation of Mr.
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**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT
ATTORNEY AND NOTICE OF APPROVAL OF STUDENT
APPEARANCE**

Undersigned counsel respectfully introduces student attorney Charles J. Walsh. As the student attorney's supervising attorney, I approve of the student attorney's appearance in this matter on behalf of Mr. O'Neil Couvillion only. With this document, we also submit Mr. Couvillion's written consent to an appearance by student attorneys in this matter.

Signed:



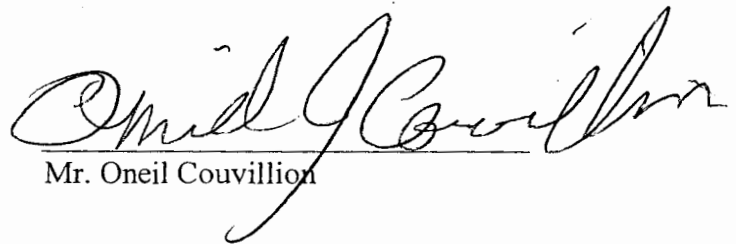
Adam Babich (La. Bar No. 27177)

CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in Court or before an administrative tribunal.

Dated: 11/20/2001

[signed:]
[name:]


Mr. Oneil Couvillion

AFFIDAVIT OF BARRY W. SULKIN, M.S.

BEFORE ME, the undersigned authority, personally came and appeared, Barry W. Sulkin, M.S., who, after being duly sworn, did depose and say:

Qualifications

1. My name is Barry W. Sulkin. I am an expert in the field of environmental engineering and in all aspects of discharge permits under the federal Clean Water Act's National Pollutant Discharge Elimination System and related state programs.
2. I am an environmental consultant and also Director of the Tennessee office of PEER (Public Employees for Environmental Responsibility), and am working on behalf of the commenting parties in this matter.
3. I received my Bachelor of Arts in Environmental Science in 1975 from the University of Virginia where I received a du Pont Scholarship. During my undergraduate years, I worked as a Lab Technician and Research Assistant at the University of Virginia and Memphis State University conducting water and soil/sediment analyses and sampling.
4. Following graduation from college, in 1976 I joined the staff of what is now called the Tennessee Department of Environment and Conservation as a Water Quality Specialist. I worked in the Chattanooga, Knoxville, and Nashville field offices and the central office of what is now called the Division of Water Pollution Control in positions that included field inspector, enforcement coordinator, assistant field office manager, and assistant manager of the Enforcement Section. My duties included compliance inspections of water systems and wastewater systems under the NPDES permit program, enforcement coordination for the water pollution and drinking water programs, as well as work with the drinking water, dam safety, underground storage tank, and solid/hazardous waste programs. I also conducted investigations regarding fish kills, spills, and general complaints, including problems of stream alteration and pollution.
5. In 1984 I was promoted within the Division to Special Projects Assistant to the Director, and in 1985 I became State-wide manager of the Enforcement and Compliance Section for the Division of Water Pollution Control. In this capacity I was responsible for investigating and preparing enforcement cases, supervising the inspection programs, participating in developing NPDES permit, permit compliance monitoring, and field studies involving stream alterations and water quality impacts.
6. While in this position I received a joint State of Tennessee and Vanderbilt scholarship and took an educational leave to obtain my Masters of Science in Environmental Engineering in 1987 from Vanderbilt University. My thesis was "Harpeth River Below Franklin, Dissolved Oxygen Study," which was a field and laboratory study and

computer analysis of stream water quality and impacts of pollutants from an NPDES permitted facility. I returned to my position as manager of the Enforcement and Compliance Section in 1987, where I remained until 1990.

7. Since 1990 I have engaged in a private consulting practice primarily specializing in water quality problems and solutions, regulatory assistance, permits, stream surveys, and various environmental investigations related to water. My work as a consultant has included projects related to federal Clean Water Act permits and related state programs. During my employment at the state agency, as well as in private practice since, I have had extensive experience and training regarding all aspects of NPDES permits under the federal Clean Water Act and related state programs.
8. An accurate copy of my curriculum vitae is attached to and incorporated into this Statement.
9. I have reviewed and assessed the draft Louisiana Pollution Discharge Elimination System (LPDES) permit and accompanying Statement of Basis proposed for Environmental Treatment Solutions, LLC's or Environmental Compliance Solutions, LLC's (the provided names are inconsistent) Portable Treatment Unit, AI Number 131721, Permit Number LA0122092, and Activity Number PER20050001 (the "Draft Permit").
10. This Statement contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based on on my application of professional judgment and expertise to sufficient facts or data, consisting specifically of a review of the regulations and documents related to the proposed LPDES permit at issue in this matter. These are facts and data typically and reasonably relied upon by experts in my field.
11. In my expert opinion, the Draft Permit is not sufficient to protect, as required by the Clean Water Act, the waters into which the Portable Treatment Unit will be allowed to discharge, for the reasons described below.

Summary of Opinions

LDEQ Reaches Unsupported Conclusions And Has Not Performed Sufficient Analyses To Determine The Environmental Impacts From The Proposed Discharges

12. LDEQ can not conclude that the proposed discharges will result in no statistically significant difference to outstanding natural resource waters without analyzing each outstanding natural resource water body that will receive discharges and the effects that the proposed discharges will have on each such water body.
13. LDEQ can not conclude that the proposed discharges will not further degrade 303(d) list impaired waters without analyzing each impaired water body that will receive discharges and the effects that the proposed discharges will have on each such water body.

14. LDEQ can not conclude that the proposed discharges will not degrade any other water body – alone or in combination with other dischargers - without analyzing each water body that will receive discharges. For example, if a water body has a zero level for cobalt, discharging cobalt into that water body will result in degradation to that water body.
15. LDEQ can not conclude on the effects of any mixing zone created by discharges under the permit without analyzing each water body that will receive discharges. This is because appropriate mixing zones must be determined for each discharge site on a case-by-case basis, and if allowed, set so as to prevent toxicities and impairment of fish passage. Mixing zones cannot be determined without specifically identifying discharge locations.
16. LDEQ can not conclude that the proposed discharges will have no cumulative impact on the environment without analyzing each water body that will receive discharges, the frequency of such discharges, and other discharges in the area.
17. LDEQ does not consider the biocumulative impacts of some of the pollutants, including but not limited to lead and mercury. Biocumulative impacts are the result of pollutants that do not degrade rapidly, and thus build up in sediments, plants, and animals, and can concentrate up the food chain. Evaluating concentration in the effluent alone is not sufficient for determining impacts from such pollutants, as one would have to also consider the hydraulics and configuration of each discharge location.
18. LDEQ has not adequately assessed the impacts of the proposed discharges on endangered species. The likely presence and condition of such species populations in the vicinity of each discharge needs to be considered before one can assess the possible impacts.
19. There is no basis in the record for LDEQ's assertion of "similar permits and discharges" on which its "best professional judgment" is based, as described at page 3 of the Statement of Basis. Upon my office's inquiry, LDEQ failed to specify any such similar permits and discharges.

***The Draft Permit's Restrictive Criteria Are Not Sufficient
To Protect The Receiving Water Bodies***

20. Effluent limits for Chemical Oxygen Demand (COD) are insufficient to protect medium-sized, small, or low flow water bodies. The proposed limits of 200 mg/L (average) and 300 mg/L (maximum) are quite high levels of oxygen demanding waste. In a relatively small receiving water body, especially with limited reaeration, this could easily deplete the water of oxygen, violating state criteria and harming or killing aquatic life. The permit and supporting documentation do not indicate that Dissolved Oxygen (DO) modeling or other evaluation of the impact of this high level of COD has been considered.

21. Effluent limits for other pollutant are insufficient to protect small or low-flow water bodies. Depending on the size of receiving waters – and presumably some could have zero flow – other parameter limits would likely be excessive and violate state standards. This would depend on background conditions, existing pollution, other discharges in the area, and related considerations such as available loading capacity, anti-degradation, and margin of safety. This includes Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), metals and organic chemicals.
22. LDEQ has not included effluent limitations for additional pollutants which I expect will appear in the Portable Treatment Unit's discharges, including Volatile Organic Compounds (VOC) and specifically trichloroethylene (TCE) and other related industrial solvents that might be expected in the waste. This is significant because some of these pollutants can be harmful in small quantities.
23. LDEQ omits cyanide from its effluent limitations. LDEQ references cyanide in a footnote at page 6 of the Statement of Basis, stating that “[t]he following in-plant limitations apply to metal-bearing wastewater containing cyanide.” It is unclear what LDEQ means by “in-plant limitations.” If these are discharge limits, then at 178 mg/L and 500 mg/L for average and maximum they are significantly higher than EPA criteria (0.0052 mg/L and 0.022 mg/L for average and maximum) or Louisiana criteria (0.0054 mg/L and 0.045 mg/L for average and maximum). To protect the receiving water bodies, LDEQ must include an effluent limitation for cyanide below the EPA and Louisiana criteria.
24. LDEQ's statement that “[p]lacing the most stringent effluent limitation at the end of the pipe will ensure no degradation of the water body will occur regardless of the receiving stream” is an incorrect statement. LDEQ ignores the existing condition of the receiving water. If the water is of higher quality than the limit this would allow for degradation of existing quality, and if the water is already impaired this could contribute to the impairment, particularly for pollutants that can accumulate. Allowing a discharge at a level equal to criteria – particularly for small or zero flow streams – could bring the level in the stream right up to the edge of impairment, using up all available assimilative capacity. This also does not account for the margin of safety required under 40 C.F.R. § 130 for water quality limited segments.
25. Sewage and bacteria are likely to be present in the kinds of discharges contemplated under this permit because it appears that sewage could be present in some of the facility wastes described, and bacteria are known to be present in other wastes such as those containing oils. To protect the receiving water bodies, LDEQ must exclude sewage from the permit and include effluent limitations for bacteria along with disinfection requirements.
26. LDEQ limits its effluent limitations to concentration, failing to include measurements based on mass. Concentration limitations are easily manipulated and can not, by themselves, indicate the measure or total loading of pollutants discharged into receiving water bodies. This is because concentration only describes the amount of pollutant

discharged relative to the amount of water discharged with it. Changing the amount of water discharged will change the pollutant concentration level. Mass measurements, however, describe the actual amount of a pollutant discharged regardless of the water that it is discharged in. Although LDEQ notes that Louisiana regulations may allow a concentration measurements for BOD and TSS (Statement of Basis at page 6), BOD and TSS are only 2 of approximately 40 pollutants with only concentration-based effluent limits.

27. The draft permit requires only one measurement per “batch” of discharge to monitor the pollutants included in that discharge. This effluent limitation measurement of one measure per batch is insufficient because it may not yield an adequate representation of the pollutant levels in the batch due to settling or incomplete mixing of the discharge. Samples should be taken periodically throughout the discharge.
28. LDEQ’s reference to “slop” at page 1 in the Statement of Basis is insufficient to describe the materials referenced.
29. LDEQ has not provided a sufficient standard for monitoring discharge flow. The Statement of Basis at page 10 and the Draft Permit at part I page 2 require flow “measurement,” but the Draft Permit at part II page 2 then states that the flow measurement is only an “estimate” and not subject to accuracy provisions. These guidelines are inconsistent and make it unclear how the flow will be reported.
30. LDEQ states that “[t]he parameters and effluent limitations in the proposed permit are based on New Source Performance Standards (NSPS) for Centralized Waste Treaters (40 CFR 437.24-Subpart B. Oil Treatment and Recovery).” These parameters and effluent limitations are inapplicable to the Portable Treatment Unit that is the subject of the proposed permit because the applicability of the relevant regulation excludes “the discharge of marine generated wastes including wash water from equipment and tank cleaning, ballast water, bilge water, and other wastes generated (while operating on inland, coastal, or open waters or while berthed) as part of routine ship maintenance and operation as long as they are treated and discharged at the ship servicing facility where it is off-loaded.” 40 C.F.R. § 437.1(c)(2). The proposed discharges fall within that exclusion. Because the Portable Treatment Unit is portable, I expect that the any marine wastes will be treated at the ship servicing location and not a separate location. LDEQ has not provided sufficient information to determine otherwise.

LDEQ’s Public Notice Process Is Insufficient

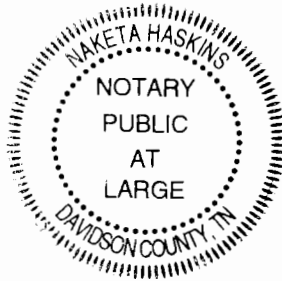
31. LDEQ’s permit notice does not provide sufficient public notice of the location(s) of the discharge or of when discharges will occur. A permitting notification that any water body may receive discharges at any time is not customary public notice for an individual facility permit and does not give notice to the public of the particular discharges or environmental impacts before permitting them.

Further, the Affiant saith not.

Benny Sullivan
AFFIANT

Sworn to and subscribed
before me this 14 day
of September 2006.

Naketa Haskins
NOTARY PUBLIC



My Commission Expires:

~~MY COMMISSION EXPIRES:~~
March 22, 2008