

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 20, 2015

TO: Persons on the attached mailing list.

RE: NRG Texas Power, LLC
TPDES Permit No. WQ0002430000

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Amended Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Gibbs Memorial Library, 305 East Rusk Street, Mexia, Texas, and at the Teague Public Library, 400 Main Street, Teague, Texas.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

- (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

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

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

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

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

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

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.texas.gov/goto/comments> or by mail to the following address:

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

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

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Bridget C. Bohac
Chief Clerk

BCB/mc

Enclosure

MAILING LIST
for
NRG Texas Power, LLC
TPDES Permit No. WQ0002430000

FOR THE APPLICANT:

Robert Eyeington, Environmental Specialist
NRG Texas Power, LLC
3964 Farm-to-Market Road 39
Jewett, Texas 75846

Ted Long
Manager, Water Resources
NRG Texas Power, LLC
NRG Tower
1201 Fannin Street
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PROTESTANTS/INTERESTED PERSONS:

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Environmental Integrity Project
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Jennifer Dugan
Environmental Integrity Project
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Washington, District of Columbia 20005

Joshua Smith, Staff Attorney
Sierra Club
85 2nd Street, Second Floor
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FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Brian Christian, Director
Texas Commission on Environmental Quality
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Michael T. Parr II, Staff Attorney
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Attorney
Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK
via electronic mail:

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

TPDES Permit No. WQ0002430000

**APPLICATION by NRG
TEXAS POWER, LLC for
TPDES Permit No.
WQ0002430000**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application by NRG Texas Power, LLC (Applicant) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0002430000, and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from Joshua Smith on behalf of Sierra Club and Jennifer Duggan on behalf of Environmental Integrity Project (EIP). This response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can also be found at our website at <http://www.tceq.texas.gov/>

The ED files this Amended Executive Director's Response to Comment in order to address comments from Sierra Club in a letter dated May 19, 2014, that were not previously responded to in the original Response to Comment.

BACKGROUND

The Applicant, who operates the Limestone Electric Generating Station; applied to the TCEQ for a renewal of TPDES Permit No. WQ0002430000, which authorizes the discharge of low volume waste, cooling tower blowdown, coal pile runoff, and bottom ash transport water at a daily maximum (max) flow not to exceed 2.304 million gallons per day (MGD) via Outfall 001. Via Outfall 002, the proposed permit authorizes material handling area-runoff, washdown and bottom ash transport water, and low volume waste to be discharged on an intermittent and flow-variable basis. Via Outfalls 003-004, authorized discharges consist of bottom ash transport water, low volume waste, and stormwater runoff at a daily max flow not to exceed 0.51 MGD (003), and 0.432 MGD (004). Via Outfall 005, authorized discharges consist of low volume waste, metal cleaning waste, bottom ash transport water, and utility wastewater at a daily max flow not to exceed 0.216 MGD. Via Outfalls 006-007, authorized discharges consist of treated domestic wastewater at a daily average flow not to exceed 0.06 MGD (006), and 3,000 gallons per day (007). Via Outfall 008, authorized discharges consist of bottom ash transport water and low volume waste at a daily max flow not to exceed 0.072 MGD.

Description of Facility

The Limestone Electric Generating Station (facility), a lignite-coal-fired steam-electric generating station, is located at 3964 Farm-to-Market Road 39, adjacent to and west of Farm-to-Market Road 39, approximately 2.5 miles southeast of Farrar, Limestone County, Texas 75846. The discharge route for all outfalls ends at Lake Limestone in Segment No. 1252 of the Brazos River Basin. However, via Outfalls 001, 003, and 006, the discharge route is first to the original channel of Lynn Creek, then to Lambs Creek; via Outfalls 002, 007, and 008, first to the relocated channel of Lynn Creek, then to Lambs Creek; and via Outfalls 004 and 005, first to unnamed tributaries of Lambs Creek, then to Lambs Creek. The unclassified receiving waters in the original and relocated channels of Lynn Creek, the unnamed tributaries of, and Lambs Creek, are all minimal aquatic life use. The designated uses for Segment No. 1252 are primary contact recreation, public water supply, and high aquatic life use.

Procedural Background

The TCEQ received the renewal application on May 23, 2013, and declared it Administratively Complete on July 1, 2013. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Limestone County, Texas on July 3, 25 2013 in the *Mexia News*, on July 25, 2013 in the *Teague Chronicle*, and on July 26, 2013 in the the *La Cara* Spanish Newspaper. The ED completed the technical review of the application on December 17, 2013, and prepared a draft permit, which if approved, would establish the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) on April 17, 2014, in the *Mexia News* and the *Teague Chronicle*, and on April 18, 2014 in the *La Cara* Spanish Newspaper. The public comment period closed on May 19, 2014. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

All administrative rules: Secretary of State Website: www.sos.state.tx.us
TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/
(select TAC Viewer on the right, then Title 30 Environmental Quality)
Texas statutes: <http://www.statutes.legis.state.tx.us/>
TCEQ website: <http://www.tceq.texas.gov/> (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules," then "Current TCEQ Rules," then "Download TCEQ Rules")
Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.):
www.epa.gov/epahome/cfr40.htm
Federal environmental laws: www.epa.gov/epahome/laws.htm
Environmental or Citizen Complaints may be filed online at:
<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.
Or by sending an email to the following address: cmplaint@TCEQ.state.tx.us.

Commission records for the proposed facility are available for viewing and copying at TCEQ's main office in Austin, located at 12100 Park 35 Circle, Building E, Room 103 (Central Records, for existing or past permits), or Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, proposed permit, technical summary, and the ED's preliminary decision have been available for viewing and copying at the Gibbs Memorial Library, located at 305 East Rusk Street, Mexia, Texas 76667, and at the Teague Public Library, located at 400 Main Street, Teague, Texas 75860.

The ED has determined that the proposed permit, if issued, is protective of the environment, water quality, and human health because it meets all statutory and regulatory requirements, including the Texas Surface Water Quality Standards (TSWQS). However, if you would like to file a complaint about the facility concerning its compliance with provisions of its permit or with TCEQ rules, you may contact the Agency at 1-888-777-3186 or you may contact the TCEQ Region 9 Office at (254) 751-0335 to address potential permit violations. If an inspection by the Regional office finds that the facility is out of compliance, the facility may be subject to enforcement actions.

COMMENTS and RESPONSES

Comment 1

Joshua Smith, on behalf of Sierra Club, commented that on May 9, 2014, the Sierra Club submitted a Public Information Request (PIR) to the TCEQ requesting copies of the proposed permit and its application, but that the TCEQ had not responded to the PIR.

Response 1

The TCEQ received the PIR form from Kadie McShirley of the Sierra Club, by email on May 9, 2014 and through regular mail on May 22, 2014. In an email dated May 20, 2014, the Water Quality Division's PIR Team member informed Ms. McShirley that the files in connection with the PIR had been located and the estimated cost for the documents was \$106.00 plus postage, handling, and (possible) off-site storage. The email also informed Ms. McShirley that the documents could be obtained free of charge by retrieving them in person at the TCEQ offices. To date, neither Ms. McShirley, nor any other Sierra Club representative responded to the email from the Water Quality Division's PIR Team member.

Comment 2

Joshua Smith, on behalf of Sierra Club, commented that the Sierra Club filed a request for additional time to file comments on the application because TCEQ staff had not yet provided Sierra Club with a copy of the draft permit, the fact sheet, or the permit's application in response to the PIR submitted by Sierra Club on May 9, 2014.

Response 2

In a letter dated May 28, 2014 (May 28-letter), the ED advised the Sierra Club that the Chief Clerk had received the request for additional time to file comment on the proposed

permit. Sierra Club was advised, however, that according to the TCEQ's Public Comment rules (30 TAC § 55.152(a)), "public comments must be filed with the chief clerk within the time period specified in the notice," and that "the public comment period [must] end 30 days after the last publication of the [NAPD]." The May 28-letter recounted the facts of the administrative record that the Applicant published the NAPD in English on April 17, 2014, and in Spanish on April 18, 2014. Additionally, the May 28-letter also spoke to the TCEQ's Public Notice rules' provision that requires applicants to "make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located" (30 TAC § 39.405(g)). Again, the May 28-letter recounted the facts of the administrative record that consistent with the requirement above, the NORI the Applicant published in English on July 25, 2014 and in Spanish on July 30, 2014, included the location where the permit application was available for viewing and copying. The following passage appeared in both the NORI and NAPD: "The permit application is available for viewing and copying at the Gibbs Memorial Library, 305 East Rusk Street, Mexia, Texas and at the Teague Public Library, 400 Main Street, Teague, Texas." In addition, the May 28-letter reiterated that the NORI solicited public comment on the application and the NAPD solicited public comments, and also provided a 30-day deadline from the date of newspaper publication of the notice for filing comments.

The May 28-letter advised Sierra Club that although the TCEQ's Public Comment rules (30 TAC § 55.152(a)(6)) authorized the ED to extend the comment period for a permit application for good cause, the ED was denying the request for extension of time because Sierra Club had failed to articulate "good cause" for its request.

The May 28-letter also advised Sierra Club that the PIR it submitted was processed according to the Texas Public Information Act's procedures related to access, (Chapter 552, subchapter E of the Texas Government Code), but that the filing of a PIR was not "good cause" to extend the public comment period in this instance. This was because Sierra Club had over nine months to file comments (July 25, 2013-May 19, 2014), it had waited until the end of the comment period to file an extension request, and the documents it requested pursuant to the PIR, were available for review and copying at two different locations as stated in the Public Notices.

Comment 3

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit would have serious impacts to the environment and water quality if it is substantially similar to the existing TPDES permit.

Response 3

The ED does not expect that discharges, authorized under the proposed permit from the facility (when they occur), will have adverse impacts to the environment or water quality. Because of the technology-based effluent limitations, water quality-based effluent limitations, and requirements of WET testing placed in the proposed permit, the proposed permit meets all current state and federal regulations guidelines for discharges of wastewater from industrial facilities, such as coal-burning power plants.

Comment 4

Joshua Smith, on behalf of Sierra Club, commented that the existing permit, if renewed, would not comply with the Federal Clean Water Act (CWA) and state law, including the Texas Water Code and the Texas Surface Water Quality Standards (TSWQS).

Response 4

The proposed permit's technology-based effluent limitations (TBELs), water quality-based effluent limitations (WQBELs), and requirements for WET testing to protect aquatic life, human health, and the preservation of the designated uses of the water in the receiving stream, demonstrates the proposed permit's compliance with the CWA and state law, including the Texas Water Code and the TSWQS.

Comment 5

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit fails to establish TBELs for toxic metals in coal combustion wastewaters.

Response 5

The proposed permit does not contain TBELs or requirements for toxic metals in coal combustion wastewaters because the EPA is still in the process of promulgating the rules that will contain those limitations and requirements. In the EPA's review of the draft permit, no interim objection to the permit was made citing the need to establish TBELs for toxic metals in coal combustion wastewaters from the proposed rules. Also see the TCEQ's responses to the comments from Jennifer Duggan on behalf of EIP in Responses 13 and 14.

Comment 6

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit fails to protect water quality by limiting selenium discharges at Outfalls 003, 006, and 007.

Response 6

WQBELs for total selenium are not present in the proposed permit at Outfalls 003, 006, and 007 because no discharges via Outfalls 001 thru 008 were recorded during the two years prior to the Applicant applying for a renewal of the TPDES permit, and therefore, screening of analytical data during the technical review of the permit was not possible.

However, Other Requirement No. 13 was added to the proposed permit and requires that for future discharges made via Outfalls 001 thru 008, the Applicant must conduct sampling and submit analytical data of the screening for the parameters listed in Tables 1 through 5 of Attachment A of the proposed permit.

Based on a technical review of the analytical data submitted pursuant to Other Requirement No.13, TCEQ staff may initiate an amendment to the permit to include any additional water quality-based effluent limitations or monitoring requirements. Additional WQBELs or monitoring requirements may be applicable to any of the

parameters listed in Tables 1 through 5 if effluent levels exceed thresholds of 70% (for requiring water quality-based monitoring and reporting of effluent levels) or 85% (for requiring water quality-based effluent limits) of the calculated water quality-based effluent limitations located in Appendix B of the fact sheet.

Comment 7

Joshua Smith, on behalf of Sierra Club commented that the proposed permit fails to include thermal limits.

Response 7

Based on an agreement reached by the TCEQ and the EPA on the development and implementation of temperature limits in TPDES permits, a requirement is to be placed in any TPDES individual permit with an existing temperature limit that exceeds the segment criteria for temperature, which is located in the Texas Surface Water Quality Standards. The requirement must state that the permittee shall develop and submit a plan to the TCEQ that characterizes the thermal plume in the receiving water, using a model, mass balance, or via collected or existing in-stream temperature data and then implement the plan following its approval by the TCEQ. Other Requirement No. 10 was placed in the proposed permit and meets with the agreement reached by the TCEQ and the EPA.

Comment 8

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit should limit bacteria discharges into a segment (No. 1252) of the Brazos River Basin because its designated uses are recreation, public water supply, and high aquatic life use.

Response 8

The proposed permit includes effluent limitations for *E.coli* to demonstrate the disinfection level in treated domestic wastewater effluent discharged into water in the state (freshwater) at Outfalls 006 and 007 because those discharges of treated domestic wastewater meet the requirements of 30 TAC § 309.3(h)(1)(A) and 30 TAC § 307.7(b)(1)(A)(i). Due to the lack of potential sources of bacteria in other discharges authorized by the permit, additional effluent limitations for *E.coli* were not placed at Outfalls 001, 002, 003, 004, 005, and 008.

Comment 9

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit fails to address whether the cooling water intake structures for the facility represent the best technology available for minimizing adverse environmental impact.

Response 9

The proposed permit does address whether the cooling water intake structures (CWIS) for the facility represent the best technology available for minimizing adverse environmental impact. On May 14, 2014, the EPA submitted an interim objection letter

stating that the proposed permit did not include conditions and requirements for the facility's CWIS in accordance with CWA § 316(b) and 40 C.F.R. Part 125. Pursuant to EPA's letter, the Fact sheet was revised by adding Other Requirement No. 12 that evaluates the applicability of the conditions and requirements of CWA § 316(b) and 40 C.F.R. Part 125 to the facility's CWIS, and details how the facility's CWIS are subject to the conditions and requirements of CWA § 316(b) and 40 C.F.R. Part 125. In a letter dated October 23, 2014, the EPA accepted the changes to the proposed permit and withdrew its interim objections.

Comment 10

Joshua Smith, on behalf of Sierra Club, commented that the proposed permit is internally inconsistent, unclear, and thwarts effective public review.

Response 10

The ED respectfully disagrees with Sierra Club that the proposed permit is internally inconsistent, unclear, and thwarts effective public review. If members of the public have concern about what is included in the proposed permit, they may contact the TCEQ Water Quality Division and ask any questions or express any specific concerns to the permit writer.

Comment 11

Jennifer Duggan, on behalf of EIP, commented that the effluent limits in the proposed permit do not reflect that Applicant's ability to achieve "zero discharge" at the facility, and further that the proposed permit does not prohibit discharges from any of the outfalls at the facility.

Response 11

The Applicant's ability to achieve "zero discharge" at the facility during the two years prior to its application for a renewal of its TPDES permit was the result of voluntary actions to conserve water that reduced the likelihood of a discharge at the facility. Though the Applicant has indicated it continues to desire to operate the facility in a manner so as not to discharge to waters in the state; the Applicant requested authorization to discharge under its TPDES permit if such a need arises.

Texas Water Code (TWC) § 26.027 authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes and coastal waters. The application submitted by the Applicant was for a renewal of a TPDES permit, which authorizes discharges into water in the state under set of prescribed conditions. The ED does not have the authority to mandate a different type of application nor a different type of wastewater treatment plant. The ED evaluates applications for wastewater treatment plants based on the information provided in the application. Nonetheless, TPDES permit No. WQ0002430000 specifically states the wastewaters authorized for discharge under the permit. The discharge of any wastewater(s) not listed as authorized for discharge in TPDES permit

No. WQ0002430000 would result in a violation of the permit, the TWC, and the Clean Water Act (CWA), resulting in an enforcement action against the Applicant.

Comment 12

Jennifer Duggan, on behalf of EIP, commented that the application and proposed permit both fail to provide analytical data for wastewater discharged from the facility and are in violation of the federal CWA and state and federal regulations for the following reasons.

First, the CWA requires a detailed application before a discharge of pollution into surface waters occurs in order for the TCEQ to have the information required to make a reasoned decision to limit pollution and protect surface waters. Likewise, 40 Code of Federal Regulations (C.F.R.) § 122.21(g)(1)-(7) and (9)-(13) require TPDES permit applications to include a detailed description of the process or operation that contributes wastewater to facility effluent and complete quantitative data for certain pollutants, of which neither the application nor the proposed permit include. Moreover, 40 C.F.R. § 122.21(g)(7)(v) requires that the application and proposed permit report quantitative data at each outfall for certain pollutants listed in various tables in Appendix D of 40 C.F.R. § 122.21, which neither do.

Second the application and proposed permit fail to report quantitative data at each outfall for Biochemical Oxygen Demand-5-day (BOD5), Chemical Oxygen Demand, Total Organic Carbon, Total Suspended Solids (TSS), Ammonia (as N), Summer and Winter Temperatures, and pH, as 40 C.F.R. § 122.21(g)(7)(iii) requires. Ms. Duggan notes that 40 C.F.R. § 122.21(g)(iv) does allow reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in 40 C.F.R. § 122.21(g)(7)(iii) to be waived if an Applicant demonstrates issuance of a permit can be obtained with less stringent requirements. Ms. Duggan, however, states that there has been no indication that a waiver has been extended.

Ms. Duggan further comments that the permit's requirement for the Applicant to sample wastewater at all the outfalls for a later determination of whether additional effluent limitations and monitoring requirements are necessary, is not in accordance with the CWA.

Response 12

The Applicant did not submit effluent data with the application because the facility did not discharge during the two years prior to applying for a renewal of its TPDES permit. All the same, the proposed permit was developed in accordance with the Texas Surface Water Quality Standards (TSWQS), which are designed to maintain the quality of water in the state and to be protective of human health and the environment. Thus, the proposed permit contains both Technology Based Effluent Limits (TBELs) and Water Quality Based Effluent Limits (WQBELs) that are continued from the previous permit, and are still considered to be protective. Appendix C of the Fact Sheet and ED's preliminary decision contains a summary of the TBELs assessed in the proposed permit, calculated/assessed WQBELs, and effluent limitations from the existing permit.

When a discharge occurs from any of the facilities' outfalls pursuant to its permit, the discharge is subject to Other Requirement No. 13 of the proposed permit. Other Requirement No. 13 requires the Applicant to complete "Attachment A" of the permit (Tables 1, 2, 3, 4, and 5) with the analytical results for Outfalls 001, 002, 003, 004, 005, 006, 007, and 008 and then send the data to the TCEQ-Wastewater Permitting Section (MC-148) within 60 days after the Applicant obtains the data. TCEQ Staff will then compare the effluent data to the calculated water quality-based effluent limitations contained in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision. Based on a technical review of the submitted analytical results, TCEQ staff may initiate a permit amendment to include additional effluent limitations or monitoring requirements, or both if the data indicates that the effluent has the potential to exceed any water quality-based effluent limits.

Guidance from the United States Environmental Protection Agency's (EPA) *Permit Writer's Manual* (September 2010), page 6-23, states that when determining the need for a WQBEL, a permit writer should use any available effluent and receiving water data as well as other information pertaining to the discharge and receiving water, as the basis for a decision. The permit writer might already have data available from previous monitoring or he or she could decide to work with the permittee to generate data before permit issuance or as a condition of the permit. The EPA recommends that monitoring data be generated before effluent limitation development whenever possible and monitoring should begin far enough in advance of permit development to allow sufficient time to conduct chemical analyses. Where data is generated as a condition of the permit, it is appropriate for the permit writer to include a reopener condition in the permit to allow the incorporation of a WQBEL if the monitoring data indicates that a WQBEL is required.

Along these lines, Other Requirement No. 11 in the proposed permit is consistent with guidance in the US EPA *Permit Writer's Manual* (September 2010).

Comment 13

Jennifer Duggan, on behalf of EIP, commented that the application and proposed permit fail to comply with the CWA and state and federal regulations because the proposed permit does not set TBELs for the numerous toxic pollutants found in wastewaters such as coal ash transport water and coal combustion leachate that are routinely discharged from the facility. Ms. Duggan comments that CWA §§ 301, 302 (a), 402(a)(1); 40 C.F.R. § 122.44 (a) and (e); and 30 TAC § 305.531 require that TPDES permits must include, for all pollutants discharged, TBELs that are reflective of the pollution controls for the best available technology economically achievable (BAT), unless more stringent WQBELs are required to avoid exceedances of water quality standards.

Response 13

Effluent limitations developed from federal categorical effluent limitations guidelines (ELGs) that are generated from national standards developed by the EPA on an industry-by-industry basis, are intended to represent the greatest pollutant reductions

that are economically achievable for an industry. The categorical effluent limitations in the proposed permit were developed in accordance with 40 C.F.R. § 423 (Steam Electric Power Generating Point Source Category). Detailed information is located in Appendix A of the Fact Sheet and Executive Director's Preliminary Decision as to how the TBELs are applied in the permit under 40 C.F.R. § 423.

For discharges via Outfalls 001 – 005 and Outfall 008, the TCEQ has established all applicable TBELs, including those applicable for bottom ash transport water, based on the ELGs located in 40 C.F.R. § 423.15. The proposed permit contains WQBELs for Total Selenium at Outfalls 001 – 005 and Outfall 008. Additionally, discharges via Outfall 001 are subject to reporting requirements for total copper and discharges via Outfall 005 are subject to a WQBEL for total copper. Likewise, Operational Requirement No. 2, found on page 11 of the proposed permit subjects the discharges of all wastewaters from the facility to effluent limitations for hazardous metals to inland waters such as arsenic, barium, cadmium, chromium, , copper, lead, manganese, mercury, nickel, selenium, silver, and zinc, found in 30 TAC § 319.22.

The proposed permit also contains Whole Effluent Toxicity (WET) testing requirements. WET testing is designed to protect receiving water quality from the aggregate toxic effect of a mixture of pollutants in the effluent. WET tests measure the degree of response exhibited by aquatic test organisms when exposed to treated effluent. If WET testing indicates actual or potential ambient toxicity in the receiving water, then the permit may be reopened to require additional/revised effluent limits, additional testing, or other appropriate actions to address toxicity.

The TCEQ concludes that based on the existing TBELs and WQBELs in the permit, the limitations and requirements of WET testing in the permit, and the placement of Other Requirement No. 13 in the permit, that the proposed permit fully complies with the CWA and state and federal regulations.

Comment 14

Jennifer Duggan, on behalf of EIP, states that the EPA is finalizing ELGs for 27 pollutants it has identified in coal-fired power plants' coal ash-wastewaters. Ms. Duggan comments that currently, not only does the proposed permit not contain limits for most toxic pollutants identified in coal combustion wastewater by the EPA; the effluent limits that are identified appear to be WQBELs not TBELs. Ms. Duggan further comments that the proposed permit authorizes discharges of ash transport water from Outfalls 001-005, 008, and stormwater discharges with coal combustion wastes from Outfall 002, but only limits discharges of Free Available Chlorine, total dissolved solids, and total iron, copper, and selenium beyond the already established-outdated ELGs for Total Suspended Solids and oil and grease.

Ms. Duggan comments that the CWA, and EPA and TCEQ regulations require that the TCEQ establish, based on best professional judgment, TBELs for discharges when the 27 pollutants are present in coal ash-wastewater. Ms. Duggan continues by stating that the TCEQ can use data available from the EPA and power plants in Texas for development of BAT TBELs and apply those limitations in the proposed permit. In the alternative,

Ms. Duggan comments that if TBELs for the 27 pollutants are not developed and placed in the permit, based on NRG having already achieved “zero discharge” by treating and recycling its wastewaters, TCEQ should prohibit discharges from Outfalls 001 – 005 and Outfall 008.

Response 14

The Applicant’s ability to achieve “zero discharge” at the facility was the result of voluntary actions to conserve water that reduced the likelihood of a discharge at the facility. The Applicant continues to desire to operate the facility in a manner so as not to discharge to the water in the state but has requested that it be allowed to retain its authorization to discharge under its TPDES permit if such a need arises. The ED does not have the authority to dictate what an Applicant requests in an application, nor can the TCEQ mandate a different type of application or a different type of wastewater treatment plant. The ED evaluates applications for wastewater treatment plants based on the information provided in the application.

The TCEQ currently requires analytical data for pollutants to be submitted with the application for all but four of the 27 pollutants (calcium, sodium, vanadium, and yttrium) cited by EIP. At this time, there are no specific requirements for analytical data for calcium, sodium, vanadium, and yttrium to be included in the application.

The EPA stated in its 2009 *Steam Electric Power Generating Point Source Category: Final Detailed Study Report* that “Several analytes, such as yttrium, were included in the analyte list because of pre-established laboratory contracts and perhaps would not have been individually selected for inclusion.”¹ That statement highlights that until the EPA has promulgated effluent limitations and monitoring requirements for the 27 pollutants, the TCEQ has no reasonable basis to establish TBELs in the permit based on BPJ, for the 27 pollutants as indicated by EIP.

If the TCEQ determines that any pollutant(s) are present in a discharge from a facility at levels which TCEQ determines will require reporting or effluent limitations to be placed in the permit, TBELs, WQBELs, monitoring requirements, discharge requirements, or a combination of any of these will be placed in the permit as needed or as required by rules and regulations.

The TCEQ concludes, based on the permit’s existing TBELs and WQBELs, its limitations and requirements for WET testing, and the addition of Other Requirement No. 13, the proposed permit will provide water quality protection until such time that a discharge occurs at an outfall covered under the permit and NRG submits the analytical data required under Other Requirement No. 13.

However, TCEQ agrees with EIP that additional information from NRG is needed to provide complete information of the pollutants being discharged by the facility. Therefore additional tables of pollutants have been added to Other Requirement item

¹ U.S. EPA, *Steam Electric Power Generating Point Source Category: Final Detailed Study Report*, EPA 821-R-09-008, 2-11 (October 2009).

No. 13 (Table 5 of Worksheet 2.0 of the application), which are required to be completed in the TPDES permit application.

Comment 15

Jennifer Duggan, on behalf of EIP, states that without protective liners, coal combustion waste landfills and impoundments routinely seep or leak dangerous toxins into ground and surface waters. These leaks in pollution containment systems for coal combustion waste landfills and impoundments, are point sources according to CWA § 502(14) and are considered discharges to ground or surface waters without a permit that are prohibited by the CWA.

Ms. Duggan comments that the facility has one landfill and several impoundments that handle coal combustion waste and that an NRG submission to the EPA states that the impoundments do not have protective composite liners, it is also unclear if even the landfill has a protective composite liner.

Hence, Ms. Duggan comments, the TCEQ must assess whether NRG is discharging pollution from its coal combustion waste landfill and impoundments without a permit, and if needed, address all discharges associated with the landfill and impoundments.

Response 15

As indicated by EIP, the Applicant provided additional information to the EPA about the liner for the material handling area (landfill). Currently, assessment and regulation of seepage of leachate from a landfill due to a leaking liner is covered under the Resource Conservation and Recovery Act (RCRA) and not under the scope of TPDES permitting program or the requirements and conditions of TPDES Permit No. WQ0002430000.

However, section X.C.1. of the Fact Sheet and Executive Director's Preliminary Decision and No. 1 of the Effluent Limitations and Monitoring Requirements page for Outfall 002 (page 2a of the permit) lists "material handling area runoff" as an authorized waste stream at Outfall 002 and it is defined in Other Requirement No. 4.c. of the permit. The material handling area at the facility includes the landfill where ash from coal combustion is stored. The leachate from the landfill is identified through the definition of "material handling area runoff" in Other Requirement No. 4.c. where rainfall runoff from or *through* any coal, ash, or other material storage pile coming from the material handling area are routed to a sedimentation pond for the removal of solids and equalization and then discharged either to Lynn Creek via Outfall 002, or routed for re-use in the Flue Gas Desulfurization (FGD) system. NRG provided information in its TPDES permit application for renewal of its permit (WQ0002430000), which indicates that clay liners are used in the impoundments at the Limestone Electric Generating Station.

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

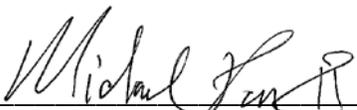
- Additional tables of pollutants have been added to Other Requirement item No. 13 (Table 5 of Worksheet 2.0 of the application), which are required to be completed in the TPDES permit application if the facility discharges.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Environmental Law
Division Director

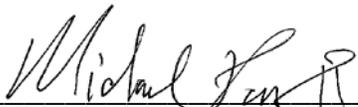
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CERTIFICATE OF SERVICE

I certify that on January 7, 2014, the Executive Director's Amended Response to Public Comment for Permit No. WQ0002430000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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