State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

December 23, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 DEC 23 PM 4: 21
CHIEF CLERKS OFFICE

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

Re: SOAH Docket No. 582-08-0020; TCEQ Docket No. 2007-0016-MWD; In Re: Application Of Galilee Partners, L.P., For New TPDES Permit No. WQ0014640001

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 original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than January 12, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than January 22, 2008.

This matter has been designated **TCEQ Docket No. 2007-0016-MWD; SOAH Docket No. 582-08-0020**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Katherine L. Smith

Katherine L. Smith
Administrative Law Judge

KLS/Ls
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: GALILEE PARTNERS, LP

SOAH DOCKET NUMBER: 582-08-0020

REFERRING AGENCY CASE: 2007-0016-MWD

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ KATHERINE L. SMITH

REPRESENTATIVE / ADDRESS | **PARTIES**

SCOTT HUMPHREY
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P. O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-0574 (PH)
(512) 239-6377 (FAX)
shumphre@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

DOCKET CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3300 (PH)
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHRISTINA MANN
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-4014 (PH)
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

ALICIA M LEE
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION, MC 163
MC-175 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0133 (PH)
(512) 239-0606 (FAX)

EXECUTIVE DIRECTOR

SAL LEVATINO
ATTORNEY
LAW OFFICE OF SAL LEVATINO
1524 SOUTH IH-35, SUITE 234
AUSTIN, TX 78704
(512) 474-4462 (PH)
(512) 482-0051 (FAX)

GALILEE PARTNERS, L.P.

SKIP NEWSOM
ATTORNEY AT LAW
THE LAW OFFICES OF SKIP NEWSOM
6806 BEE CAVES ROAD, SUITE 1-A
AUSTIN, TX 78746
(512) 477-4121 (PH)
(512) 477-2860 (FAX)
(512) 431-9511 (CELL)

GALILEE PARTNERS, L.P.

CHRISTIAAN SIANO
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6743 (PH)
(512) 239-0606 (FAX)

EXECUTIVE DIRECTOR

W. LEE AUVENSHINE
ASSISTANT COUNTY & DISTRICT ATTORNEY
ELLIS COUNTY, TEXAS
TEMPORARY ADMINISTRATION BUILDING
1201 N. HWY. 77, SUITE 104
WAXAHACHIE, TX 75165-7832
(972) 825-5035 (PH)
(972) 825-5047 (FAX)

ELLIS COUNTY, TEXAS

JASON M WILLETT
200 A NORTH ROGERS STREET
WAXAHACHIE, TX 75165
(972) 938-1850 (PH)
(972) 937-6844 (FAX)
jason@elliscountylaw.com

ELLIS PRARIE SWCD

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-0020
TCEQ DOCKET NO. 2007-0016-MWD

APPLICATION OF GALILEE	§	**BEFORE THE STATE OFFICE**
	§	
PARTNERS, L.P., FOR NEW	§	**OF**
	§	
TPDES PERMIT NO. WQ0014640001	§	**ADMINISTRATIVE HEARINGS**

2008 DEC 23 PM 4: 21
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PROPOSAL FOR DECISION

On July 22, 2005, the Texas Commission on Environmental Quality (TCEQ) received from the Applicant Galilee Partners, L.P., an application for a wastewater permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ001464001, which was referred to the State Office of Administrative Hearings (SOAH) on August 23, 2007, for a contested hearing. The case was assigned Docket No. 582-08-0020, and it was consolidated with *In the Matter of the Application of Galilee Partners, L.P., for the Creation of Maypearl Water Control and Improvement District No. 1 of Ellis County, Texas,* Docket No. 582-07-2163 at a preliminary hearing on October 29, 2007. At the preliminary hearing, the Applicant, the Executive Director (ED), the Office of Public Interest Counsel (OPIC), and Ellis County were designated as parties and documents establishing jurisdiction were admitted into the record.

In its order referring the matter to SOAH, the Commissioners set forth the following issue:

> Will the permit meet applicable water quality standards, including consideration of any impacts related to intermittent stream flow?

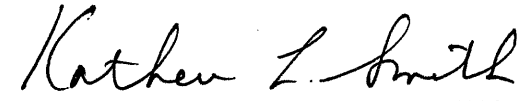
On or about February 12, 2008, Applicant filed the pre-filed testimony of Albert C. Petrasek, Jr., PhD, P.E., of Carter, Burgess, and its application, Exhibit AP-1, prepared under Dr. Petrasek's supervision, in support of its permit application. On March 25, 2008, the ED pre-filed the testimony of (1) Lori Hamilton, M.S., an aquatic scientist with TCEQ's Water Quality Standards Team, which included Ex. L-2, a memorandum summarizing the Staff's anti-degradation review and endangered species review for the receiving waters under the requested permit; (2) James E. Milchalk, M.A., a water quality modeling specialist with TCEQ's Water Quality Division, which included Ex. M-2, a memorandum summary of the modeling results of dissolved oxygen impacts downstream of the

treated effluent discharge and recommending an effluent limitations to be incorporated with the proposed permit; and (3) June Ella Martinez, B.S., a permit coordinator with the Municipal Permits Team of TCEQ's Wastewater Permit Section, which included a TCEQ Staff recommended draft permit, Ex. JM-2, and a technical summary and ED's Preliminary Decision.

At the pre-hearing conference held on April 14, 2008, the ALJ admitted into the record without objection or cross-examination, the Applicant's and ED's prefiled testimony and accompanying exhibits. Ellis County and OPIC presented no evidence, but Ellis County argues that if the proposed Water Control and Improvement District is not feasible, practical, necessary, or beneficial and would detrimentally affect the public welfare, the proposed wastewater treatment facility sought via the TPDES permit is similarly unnecessary, and, therefore, the permit should be denied.

Based upon the uncontroverted evidence, as set forth in the attached proposed order, the ALJ finds that the proposed draft permit meets all applicable water quality standards, including consideration of any impacts related to intermittent stream flow, and should be granted.

SIGNED December 23, 2008.



KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER granting the Application of Galilee Partners, L.P., for a new TPDES Permit No. WQ0014640001, TCEQ Docket No. 2007-0016-MWD, SOAH Docket No. 582-08-0020

On _____, 2009, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Galilee Partners, L.P., (Applicant) for a Texas Pollutant Discharge Elimination System (TPDES) permit that would authorize the discharge of treated domestic wastewater. The facility is to be located on the east bank of Boggy Branch, approximately 2,200 feet downstream of a Soil Conservation Service (SCS) dam and approximately 1,000 feet upstream of Farm-to-Market Road 2258 in Ellis County, Texas.

Administrative Law Judge Katherine Smith with the State Office of Administrative Hearings (SOAH), held a hearing on the merits of the Application and prepared a proposal for decision (PFD), which recommended that the Commission grant the Application.

After considering the ALJ's PFD and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Galilee Partners L.P.'s, application for TPDES Permit No. WQ0014640001 was received by the Texas Commission on Environmental Quality (TCEQ or Commission) on July 22, 2005.

2. The application requests permission to discharge treated wastewater at a volume not to exceed a daily discharge flow of 410,000 gallons per day. The proposed domestic wastewater treatment facility is located on the east bank of Boggy Branch, approximately 2,200 feet downstream of an SCS dam and approximately 1,000 feet upstream of Farm-to-Market Road 2258 in Ellis County.

3. The discharge route is from the plant site to Boggy Branch, thence to Armstrong Creek, thence to Cottonwood Creek, thence to North Fork Chambers Creek, thence to Chambers Creek above the Richland Chambers Reservoir in Segment 0814 of the Trinity River Basin.

4. On August 24, 2005, TCEQ's Water Quality Applications Team declared the application to be administratively complete.

5. On September 4, 2005, notice of the application and the intent to obtain the permit and that public comments could be submitted was published in the Waxahachie Daily Light, a newspaper of general circulation in Ellis County.

6. On November 18, 2005, TCEQ's Executive Director issued a preliminary decision that existing water quality uses will not be impaired by the permit action and prepared a draft permit.

7. On December 13, 2005, notice of the preliminary decision was published in the Waxahachie Daily Light.

8. On March 1, 2006, notice of a public meeting to be held on March 30, 2006, at the Maypearl High School in Maypearl, Texas, to take public comment was published in the Waxahachie Daily Light.

9. On July 11, 2007, TCEQ's Chief Clerk issued a notice to interested persons of the public meeting to be held by TCEQ's commissioners on August 13, 2007, in Austin, Texas, to consider hearing requests and requests for reconsideration of the application.

10. On August 23, 2007, after considering the request for hearing filed by Ellis County, responses to the request filed by the Executive Director (ED) and the Office of Public Interest Counsel (OPIC), and public comment, the commissioners issued an interim order determining that Ellis County is an affected entity and referring the matter to the State Office of Administrative Hearings (SOAH) for a hearing.

11. The commissioners directed that the following issue be considered at the hearing: Will the permit meet applicable water quality standards, including consideration of any impacts related to intermittent stream flow? The commissioners denied the remaining issues.

12. The case was assigned SOAH docket number 582-08-0020.

13. Notice of the hearing was issued to the Applicant and interested persons on September 19, 2007.

14. A preliminary hearing was held by Administrative Law Judge (ALJ) Tom Walston on October 29, 2007, at which time it was consolidated, for purposes of discovery and hearing, with *In the Matter of the Application of Galilee Partners, L.P., for the Creation*

of Maypearl Water Control and Improvement District No. 1 of Ellis County, Texas, Docket No. 582-07-2163. The Applicant, the ED, OPIC, and Ellis County were named as parties.

15. On November 19, 2007, an order was issued setting a prehearing conference in the matter for April 14, 2008.

16. At the prehearing conference conducted on April 14, 2008, ALJ Katherine Smith admitted into the record without objection or cross-examination, the Applicant's and ED's prefiled testimony and accompanying exhibits. OPIC and the Ellis County did not submit any testimony or evidence. The record closed on October 16, 2008, with the filing of briefs.

17. TCEQ's Water Quality Assessment Team performed an assessment of the receiving stream impacts associated with the proposed discharge using a Qual Tx model with a treated effluent flow of 0.41 MGD. Such model results predicted that the proposed effluent set of 10 mg/L CBOD5, 3 mg/L NH3-N and 4 mg/L DO would ensure that dissolved oxygen in the receiving waters would be maintained above established criteria and consistent with the recommendations of the TCEQ's Wast Load Evaluation for Dissolved Oxygen in Chambers Creek above Richland Chambers Reservoir in the Trinity River Basin.

18. Existing water quality uses in the receiving waters will not be impaired by the proposed permit and both numerical and narrative criteria for the receiving waters will be maintained.

CONCLUSION OF LAW

1. The Commission has jurisdiction to issue permits for the discharge of waste into or adjacent to water in the state. TEX. WATER CODE ANN. (Water Code) § 26.027(a).

2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. (Gov't Code) § 2003.047.

3. A person desiring to obtain a permit must submit an application to the Commission containing all information reasonably required by the Commission. Water Code § 26.027(b).

4. Water Code § 26.028(a) requires notice of an application for a permit to be given to the persons who in the judgment of the commission may be affected by the application.

5. Based on the above Findings of Fact and Conclusions of Law, all public notices were given in substantial compliance with the requirements of 30 TAC § 39.551.

6. Based on the above Findings of Fact and Conclusions of Law, notice of the contested case hearing was given as required by Water Code § 26.022 and Gov't Code §§ 2001.051 and 2001.052.

7. Based on the above Findings of Fact and Conclusions of Law, the Commission has jurisdiction to consider and, if warranted, approve the Application.

8. The effluent limits and/or conditions in the draft permit comply with Texas Surface Water Quality Standards, 30 TAC § 307.1 – 307.10.

9. The effluent limitation in the draft permit meets both the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chap. 309, subchapter A.

10. Based on the above Findings of Fact and Conclusions of Law, the Applicant has met its burden of proof on all issues.

11. Based on the above Findings of Fact and Conclusions of Law, the proposed permit meets all applicable water quality standards, including consideration of any impacts related to intermittent stream flow.

12. Based on the above Findings of Fact and Conclusions of Law, the Application should be approved.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The Application of Galilee Partners, L.P., for TPDES Permit No. WQ001464001 is granted as set out in the Draft Permit.

2. The Executive Director of the Texas Commission on Environmental Quality shall issue a permit to Galilee Partners, L.P., that conforms with this Order.

3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties.

4. If any provisions, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Buddy Garcia
Chairman