

SOAH Docket No. 582-07-3998  
TCEQ Docket No. 3007-0020-MWD

2008 JUL -2 AM 9:13

Application of	§	Before the	CHIEF CLERKS OFFICE
<b>THE CITY OF ALEDO</b>	§	<b>TEXAS COMMISSION</b>	
For	§	<b>ON</b>	
TPDES Permit No. WQ0010847001	§	<b>ENVIRONMENTAL QUALITY</b>	

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR  
DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files these Exceptions to the Administrative Law Judge's Proposal for Decision (PFD) in the above referenced case.

**REQUEST FOR CLARIFICATION**

The ED agrees with the proposed finding in the PFD. However, a few statements in the PFD and in the proposed Findings of Fact should be clarified in order to make the record complete and accurate.

**I. No New Notice Required**

In the PFD, the Administrative Law Judge states:

Even though the application indicated that there would be no change in the discharge location, Mr. Burton had determined by the time of the hearing that it may be necessary to relocate the discharge location by about 100 feet to accommodate the UV disinfection chamber. Moving the discharge location by this distance would not require notice to other landowners *because the discharge point will still be a mile downstream and be on the same person's property.*<sup>1</sup> (emphasis added).

<sup>1</sup> Proposal for Decision, pp. 4-5.

When applying for a permit, the Applicant must submit a Landowners Map, showing the landowners one mile downstream of the proposed discharge point. The landowners listed on this map receive mailed notice of the application. The determination by Mr. Burton that it may be necessary to relocate the discharge point by about 100 feet does not require notice to other landowners. The reason for this is not “because the discharge point will still be a mile downstream, and be on the same person’s property,” but rather, because no new landowners will need to be added to the Landowners Map in response to moving the discharge point. The Landowners Map, submitted with the City of Aledo’s application, shows the landowners one mile from the discharge point.<sup>2</sup> If 100 feet were added to the discharge point, the same listed landowners would continue to comprise the list of landowners located one mile downstream of the new discharge point.<sup>3</sup> The final two landowners on the Landowners Map are landowners 18 and 19, who are Scott and Rebecca Law and Robert R. and Guylene Daugherty.<sup>4</sup> When one mile is measured downstream from the new discharge point, the stopping point remains on these two landowners’ properties. Since these two landowners were already listed on the Landowners Map, and were mailed notice,<sup>5</sup> then there is no requirement of re-notice.

During the hearing, Mr. Northcutt, representing the ED, attempted to elicit this explanation from Mr. Burton when he asked:

Q: In regards to moving the discharge point 100 feet, you know our application rules state that you have to give notice to adjacent property owners and someone in [sic] a mile downstream?

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<sup>2</sup> See Exhibit 4 – Landowners Map, Applicant Exhibit 1 (City of Aledo Application)

<sup>3</sup> *Id.*

<sup>4</sup> See Exhibit 4 – Landowners Map, Applicant Exhibit 1 (City of Aledo Application) and see Exhibit 5 – Cross Reference – Landowners, Applicant Exhibit 1 (City of Aledo Application)

<sup>5</sup> See Exhibit 6 – Adjacent Landowner Mailing Labels, Applicant Exhibit 1 (City of Aledo Application)

A: Yes.

Q: Would that 100-foot discharge have affected any kind of notice? Would it still end a mile downstream and still be on the same person's property?

A: Yes.<sup>6</sup>

The exchange is not perfectly clear, but Mr. Northcutt was asking whether the "same person's property," or the same listed landowner's property, would still be one mile downstream from the discharge point. This is important because, if the discharge point was moved far enough downstream that new property owners had to be added to the Landowners List, then notice problems could arise.

For the reasons stated above, the ED respectfully requests that the PFD be changed in order to clarify why new notice would not be required due to a 100 foot move in the discharge point.

## II. Clarification to Finding of Fact No. 21

Finding of Fact No. 21 states, "The nearest residence to the facility is about 1,000 to 1,200 feet away." This finding is incorrect. During the hearing, it was determined that Mr. Burton was mistaken when he made that statement in his prefiled testimony. This mistake was pointed out by the Protestant, Mr. Siegmund, when he was questioning Mr. Burton about a diagram from the application:

Q: Did you draw this diagram in the corner?

A: Yes, sir.

Q: And you show all of the lots right up against the plant; don't you?

A: Right.

Q: How far are those lots away from the plant?

A: It looks like about two, 300 feet.

Q: And some of them are within the 150-foot buffer zone — and you are aware of that; aren't they?

A: One of them is. One of the lots, yes, sir.

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<sup>6</sup> Tr. 72-73.

Q: And even with the house in the buffer zone – and you are aware of that; aren't you?

A: That there is a lot in the buffer zone?

Q: Well, you are aware there is a house on it; aren't you?

A: Yes, I believe so.

Q: And so when you say that there aren't any houses within 1,000 to 1,200 feet away, you know, obviously, that's not correct; don't you?

A: Well, I do now.

Q: And you didn't know it then?

A: No, sir.<sup>7</sup>

The distance to the nearest residence was clarified later in the hearing when the Applicant asked Mr. Burton:

Q: When you offered testimony about this earlier, I believe you indicated there is a small portion of a residential lot that extends into a 150 foot area. Is that correct?

A: That's correct.

Q: But to your knowledge, from your own experience in being generally in that area, this isn't a home within the 150-foot boundary. Is that correct?

A: I don't believe the home is within the 150-foot boundary. Just the portion of the lot.<sup>8</sup>

The location was further clarified when the Applicant questioned Mr. Gordon Smith:

Q: Mr. Smith, do you recall the testimony earlier about the 150-foot buffer zone?

A: Yes.

Q: To the best of your knowledge, are there any residential structures within that 150-foot buffer zone?

A: No residential structures.<sup>9</sup>

Based on the information above, the ED respectfully requests that the first sentence of Finding of Fact No. 21 be removed or changed to state, "The nearest residence to the facility is not within the 150 foot buffer zone."

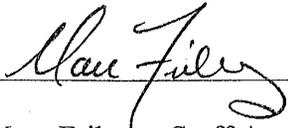
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<sup>7</sup> Tr. 31-32

<sup>8</sup> Tr. 84

<sup>9</sup> Tr. 147

Respectfully submitted,



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Marc Friberg, Staff Attorney

TCEQ Environmental Law

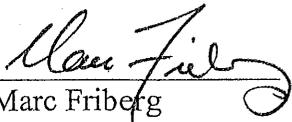
Division

State Bar No. 24048472

Representing the  
EXECUTIVE DIRECTOR of  
the TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing by certified mail, return receipt requested, regular mail, hand delivery, electronic mail, and/or fax transmission on July 2, 2008 to the parties on the attached mailing list.

  
Marc Friberg  
State Bar No. 24048472

MAILING LIST  
CITY OF ALEDO  
SOAH DOCKET NO. 582-07-3998  
TCEQ DOCKET NO. 2007-0020-MWD  
PERMIT NO. WQ0010847001

The Honorable Sarah G. Ramos  
Administrative Law Judge  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street  
Suite 502  
Austin, Texas 78701

Douglas W. Black  
Taylor, Olson, Adkins, Sralla, & Elam  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107

Mr. Martin Siegmund  
10 Taylor Court  
Aledo, Texas 76008

Garrett Arthur  
TCEQ  
Office of Public Interest, MC-103  
PO Box 13087  
Austin, Texas 78711-3087

LaDonna Castañuela  
TCEQ  
Office of the Chief Clerk MC-105  
PO Box 13087  
Austin, Texas 78711-3087