

**SOAH DOCKET NO. 582-09-2895
TCEQ DOCKET NO. 2008-1305-MWD**

IN THE MATTER OF THE	§	BEFORE THE STATE OFFICE
APPLICATION BY	§	
FARMERSVILLE INVESTORS,	§	
L.P., FOR TEXAS POLLUTANT	§	OF
DISCHARGE ELIMINATION	§	
SYSTEM (TPDES)	§	
PERMIT NO. WQ0014778001	§	ADMINISTRATIVE HEARINGS

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

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

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) submits the following specific exceptions (Exceptions) to the Proposal for Decision (PFD) filed by the Administrative Law Judge (ALJ) relating to the application by Farmersville Investors, L.P., (Farmersville) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014778001 in Collin County, Texas.

The Executive Director is in overall agreement with the ALJ's PFD and Order, however, for clarification purposes Executive Director recommends two changes to the PFD and six changes to the Order.

**EXCEPTIONS TO SECTION IV, FINDINGS OF FACT, AND ORDERING
PROVISIONS**

The Executive Director files Exceptions to the Discussion contained in Section I and IV of the PFD and Findings of Fact 25-28, and 40 and Ordering Provision 1 of the Order.

1. Proposal For Decision

A. Procedural History.

In the third full paragraph on Page 3, the date that the Notice of Hearing was published is incorrect. As referenced in Finding of Fact No. 14, the correct date is March 14, 2009.¹ The Executive Director respectfully recommends that the Notice of Hearing Date in the third full paragraph on Page 3 be edited to read that the Notice of Hearing was published in the *Dallas Morning News* on March 14, 2009.

B. Computer Modeling for Effluent Limitations (Remanded Issue 2)

The discharge route is defined in the draft permit as “an unnamed tributary, thence to the Elm Creek Arm of Lavon Lake in Segment No. 0821 of the Trinity River Basin,”² The term “discharge point” is a more accurate term for the beginning of the discharge route. The Executive Director, therefore, respectfully recommends that in the last sentence of the first full paragraph on Page No.22 of the PFD, the two occurrences of the phrase “discharge route” be changed to “discharge point.”

2. Order

A. Finding of Fact No.25

The Executive Director respectfully recommends that Finding of Fact No.25 be changed to clarify that the unnamed tributary was assigned a DO *criterion* rather than a DO *tributary requirement*. At the hearing on the merits, Mr. Michalk testified that the

¹ Ex. ED-D.

² Ex. ED-5.

Dissolved Oxygen (DO) criterion pertains to the minimum 24-hour mean DO concentration in the water body being assessed.³ A DO limit, on the other hand, refers to the minimum allowable concentration of DO measured in the effluent itself.⁴ Ms. Murphy testified that because the unnamed tributary is an intermittent stream with no significant aquatic life use, she assigned it a DO criterion of 2.0 mg/L.

Finding of Fact

25. The immediate receiving stream, the unnamed tributary, is an intermittent stream with no significant life use and was properly assigned a dissolved oxygen (DO) ~~tributary requirement~~ criterion of 2.0 mg/L.

Finding of Fact No.26

The Executive Director respectfully recommends that Finding of Fact 26 be modified to include the normal pool elevation of Lavon Lake. The Texas Surface Water Quality Standards (TSWQS) define the classified segment of Lavon Lake as the normal or conservation pool of the lake as defined by the operators of the lake and adopted in the TSWQS.⁵ Normal pool elevation of Lavon Lake is defined in the TSWQS as “from Lavon Dam in Collin County up to the normal pool elevation of 492 feet (impounds East Fork Trinity River).”⁶

Finding of Fact

26. Lavon Lake is defined in the Texas Surface Water Quality Standards as “from Lavon Dam in Collin County up to the normal pool elevation of 492 feet (impounds East

³ Ex. ED-14 8:5-6.

⁴ *Id.* 8:6-7.

⁵ Hr’g Tr. Vol. 2:318:3-24; Hr’g Tr. Vol. 2, 350:6-10; Hr’g Tr. Vol. 2, 394:15-21

⁶ 30 TEX. ADMIN. CODE § 307.10(3).

Fork Trinity River). Lavon Lake is a classified water body (Segment No. 0821) and is assigned contact recreation, public water supply, and high aquatic life use.

B. Finding of Fact No.27

The Executive Director respectfully recommends that Finding of Fact No.27 be changed to clarify that Lavon Lake was assigned a DO *criterion* rather than a DO *requirement*. At the hearing on the merits, Mr. Michalk testified that the Dissolved Oxygen (DO) criterion pertains to the minimum 24-hour mean DO concentration in the water body being assessed.⁷ A DO limit, on the other hand, refers to the minimum allowable concentration of DO measured in the effluent itself. At the Hearing on the Merits, Ms. Murphy testified that Lavon Lake is a classified segment with the designated uses of contact recreation, public water supply and high aquatic life use with a corresponding DO criterion of 5.0 mg/L.⁸

Finding of Fact

27. Lavon Lake is properly assigned a dissolved oxygen (DO) criterion ~~requirement~~ of 5.0 mg/L.

C. Finding of Fact No.28

The Executive Director respectfully recommends that Finding of Fact No. 28 be modified to clarify that the DO limit has not been modified, to replace the term “requirement” with the more accurate term “limit” and to clarify that the DO limit will be protective of both the unnamed tributary and Lavon Lake.

⁷ Ex. ED-14 8:5-6.

⁸ Ex. ED-10 8:23-9:21.

At the hearing on the merits, Mr. Michalk testified that the Dissolved Oxygen (DO) criterion pertains to the minimum 24-hour mean DO concentration in the water body being assessed.⁹ A DO limit, on the other hand, refers to the minimum allowable concentration of DO measured in the effluent itself,¹⁰ therefore, the Executive Director recommends that the word “requirement” be replaced with the more accurate term “limit.” Additionally, the DO limit has not been modified. The limit of 4.0 mg/L is the DO limit originally included in the draft permit.¹¹

According to Mr. Michalk’s testimony, the 4.0 mg/L DO limit is designed to be protective of both the unnamed tributary (DO criterion of 2.0 mg/L) and Lavon Lake (DO criterion of 5.0 mg/L).¹² The Executive Director, therefore, respectfully recommends that Finding of Fact No.28 be changed to reflect the Draft Permit’s correct terminology and the correct classification of the receiving water body.

Finding of Fact

28. Existing water quality uses of the unnamed tributary and Lavon Lake will be maintained and protected and no significant degradation of Lavon Lake will occur if the Draft Permit is issued with a modified DO limit requirement of 4.0 mg/L, to protect ~~Lavon Lake when the water backs into the intermittent stream and discharge is directly into the lake.~~

⁹ Ex. ED-14 8:5-6.

¹⁰ *Id.* 8:6-7.

¹¹ Ex. ED-5.

¹² Ex. ED-14 at 8:20 – 9:5.

Finding of Fact No.40

The Executive Director respectfully recommends that Finding of Fact No. 40 be clarified that Farmersville will be required to submit a summary submittal letter, not a full plans and specifications.

The TCEQ rules require owners of WWTP to submit a “summary transmittal letter” for each collection and treatment facility,¹³ then if requested by the Executive Director the owner must submit a complete set of plans and specifications.¹⁴ In the same way, the draft permit stipulates:

Prior to construction of the wastewater treatment facilities interim I, interim II, and final phases, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.1. If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2, 2a, and 2b of the permit.¹⁵

Likewise, the only testimony offered at the original hearing or the remand hearing about a full plans and specifications review was from Mr. Kent Trede, the permit writer. Mr. Trede testified at the original hearing that the final plans and specifications are not required until the permit is final.¹⁶ Additionally, the plans and specification review, whether by a summary transmittal letter or by a full plans and specification review, is governed by 30 TEX. ADMIN. CODE ch. 217, not 30 TEX. ADMIN. CODE ch. 307. The

¹³ 30 TEX. ADMIN. CODE § 217.6(c)

¹⁴ 30 TEX. ADMIN. CODE § 217.6(f).

¹⁵ Ex. ED-5 25:Paragraph 7.

¹⁶ Ex. ED-1 18-19:13-2.

Executive Director, therefore, respectfully recommends that Finding of Fact No. 40 be changed to clarify what TCEQ rules are applicable and what those rules require.

Finding of Fact

40. If the draft Permit is approved, Farmersville will be obligated to then submit a summary submittal letter in accordance with the requirements in 30 TAC Section 217.1 ~~its design plans and specifications~~ for review by the ED to ensure compliance with requirements set out in 30 TEX. ADMIN. CODE ch. 217, Design Criteria for Domestic Wastewater Systems. ~~307, the Texas Surface Water Quality Standards.~~

D. Ordering Provision 1

In Ordering Provision 1 the permit number is listed incorrectly as “WQ001478001,” the correct permit number is “WQ0014778001.” The Executive Director respectfully recommends that Ordering Provision 1 be edited to list the correct permit number.

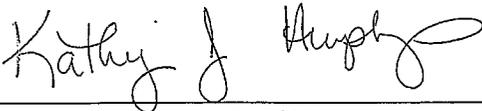
Ordering Provision 1

1. The application of Farmersville, LP, for Texas Pollutant Discharge Elimination System (TPDES) Permit No. ~~WQ001478001~~ WQ0014778001 is granted.

Respectfully Submitted,
Texas Commission on Environmental Quality

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By 

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REPRESENTING THE EXECUTIVE
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CERTIFICATE OF SERVICE

I certify that on February 28, 2011, a copy of the foregoing Executive Director's Exceptions to the Administrative Law Judge's Proposal For Decision was filed with the Office of the Chief Clerk and sent by first class, agency mail and/or facsimile to the persons listed in the mailing list below.



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