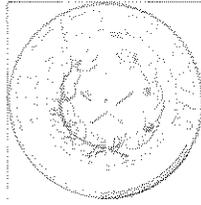


# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

June 9, 2016

Tucker Royall, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-15-4945; TCEQ Docket No. 2015-0563-MWD; In Re: Application by Clear Lake City Water Authority for a Major Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010539001**

Dear Mr. Royall:

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than 20 CALENDAR DAYS FROM ISSUANCE OF PFD. Any replies to exceptions or briefs must be filed in the same manner no later than 10 CALENDAR DAYS FROM EXCEPTIONS OR BRIEFS DEADLINE.

This matter has been designated **TCEQ Docket No 2015-1563-MWD; SOAH Docket No. 582-15-4945**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Rebecca S. Smith". The signature is written in a cursive, flowing style.

Rebecca S. Smith  
Administrative Law Judge

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) 322-2061

**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** CLEAR LAKE CITY WATER AUTHORITY  
**SOAH DOCKET NUMBER:** 582-15-4945  
**REFERRING AGENCY CASE:** 45240

---

**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ REBECCA SMITH**

---

**REPRESENTATIVE / ADDRESS**

**PARTIES**

KATHY HUMPHREYS  
STAFF ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. BOX 13087, MC-175  
AUSTIN, TX 78711-3087  
(512) 239-3417 (PH)  
(512) 239-0606 (FAX)  
kathy.humphreys@tceq.texas.gov

TCEQ EXECUTIVE DIRECTOR

---

ANGELA STEPHERSON  
COATS ROSE  
5420 LBJ FREEWAY, SUITE 600  
DALLAS, TX 75240  
(972) 982-8455 (PH)  
(972) 982-8451 (FAX)  
astepherson@coatsrose.com

CLEAR LAKE CITY WATER AUTHORITY

---

ELI MARTINEZ  
PUBLIC INTEREST COUNSEL  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
12100 PARK 35 CIRCLE, MC-103, BUILDING F  
AUSTIN, TX 78753  
(512) 239-3974 (PH)  
(512) 239-6377 (FAX)  
eli.martinez@tceq.texas.gov

TCEQ PUBLIC INTEREST COUNSEL

---

MICHAEL PARR  
STAFF ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
MC-173 P.O. BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-0600 (PH)  
(512) 239-0606 (FAX)  
michael.parr@tceq.texas.gov

TCEQ EXECUTIVE DIRECTOR

---

CAROLE HENNING  
FRIEND OF THE OLD GOLF COURSE  
15718 TORRY PINES RD.  
HOUSTON, TX 77062  
(832) 226-3526 (PH)  
dancerclt@sbcglobal.net

FRIEND OF THE OLD GOLF COURSE

---

LEIGH BAXTER  
2002 FAIRWIND RD.  
HOUSTON, TX 77062  
(281) 480-5469 (PH)  
leighbaxter2@yahoo.com

LEIGH BAXTER

---

TOM REED  
15923 DIANA LANE  
HOUSTON, TX 77062  
(281) 380-5097 (PH)  
tom@hotmail.com

TOM REED

---

RAYMOND HALYARD  
16204 DIANA LANE, #318A  
HOUSTON, TX 77062  
(281) 486-2050 (PH)  
rjhalyard@academicplanet.com

RAYMOND HALYARD

---

---

**SOAH DOCKET NO. 582-15-4945  
TCEQ DOCKET NO. 2015-0563-MWD**

<b>APPLICATION BY CLEAR LAKE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>CITY WATER AUTHORITY FOR A</b>	<b>§</b>	
<b>MAJOR AMENDMENT OF TEXAS</b>	<b>§</b>	<b>OF</b>
<b>POLLUTANT DISCHARGE</b>	<b>§</b>	
<b>ELIMINATION SYSTEM (TPDES)</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>PERMIT NO. WQ0010539001</b>	<b>§</b>	

**PROPOSAL FOR DECISION**

The Clear Lake City Water Authority (CLCWA) seeks an amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010539001 from the Texas Commission on Environmental Quality (TCEQ or Commission). TCEQ's Executive Director (ED) determined the application satisfied statutory and regulatory requirements. After nearby landowners and an organization called the Friends of the Old Golf Course (collectively, Protestants) protested the application, the Commission referred six issues to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the application. The Administrative Law Judge (ALJ) recommends that the permit be issued with the amendment requested by the ED.

**I. PRELIMINARY HEARING AND HEARING ON THE MERITS**

The preliminary hearing was held on September 24, 2015, in Houston, Texas. At that preliminary hearing the ALJ found that TCEQ and SOAH have jurisdiction over this case. Attorney Angela Stepherson represented CLCWA.

The ALJ admitted Leigh Baxter, Raymond Halyard, Charles Howard, Kenneth Proctor, and Tom Reed as individual Protestants representing themselves. The group Friends of the Old Golf Course, represented by member Carole Henning, was also admitted as a party. The ED, represented by Staff Attorneys Kathy Humphreys and Michael Parr, and the Office of Public Interest Counsel (OPIC), represented by Staff Attorney Eli Martinez, were admitted as statutory

parties. Following a Motion to Dismiss, Mr. Howard was dismissed as a party because he no longer had an interest in the case after he sold his property and moved away.

The hearing on the merits was conducted on February 16-17, 2016, in Houston, Texas. All remaining parties except for Mr. Proctor participated in the hearing. The record closed on April 22, 2016, the deadline to file reply briefs. No party contested jurisdiction, which is discussed only in the Proposed Order. Notice, to the extent that it is one of the six referred issues, will be discussed below.

## II. BACKGROUND

CLCWA applied to TCEQ for a major amendment to its permit to establish two additional outfalls, Outfalls 002 and 003, from its existing wastewater treatment facility. CLCWA's existing permit authorizes it to discharge treated domestic wastewater at a daily average flow not to exceed 10.0 million gallons per day (MGD) from Outfall 001. The amendment would authorize the discharge of treated domestic wastewater from Outfall 001 at an annual average flow not to exceed 10.0 MGD, from Outfall 002 at an annual average flow not to exceed 1.08 MGD, and from Outfall 003 at an annual average flow not to exceed 1.08 MGD. The draft permit authorizes a combined annual average flow not to exceed 10.0 MGD from Outfalls 001, 002, and 003. In other words, the amendment would not increase the average annual flow from CLCWA's treatment plant, but only add two outfalls.

CLCWA's treatment plant is located at 14210 Middlebrook Drive in Houston, approximately one mile northeast of the intersection of Bay Area Boulevard and Space Center Boulevard, southeast of Horsepen Bayou and adjacent to the northernmost part of Lyndon B. Johnson Space Center in Harris County, Texas.

Currently, treated effluent is discharged from Outfall 001 to Horsepen Bayou, then to Armand Bayou Tidal. The draft permit would also authorize discharge from Outfall 002 to a pond on the west side of El Dorado Boulevard, then to Harris County Flood Control District ditch B104-03-00, then to Horsepen Bayou, and then to Armand Bayou Tidal and discharge from

Outfall 003 to a series of ponds on the east side of El Dorado Boulevard, then to Harris County Flood Control District ditch B104-02-00, then to Horsepen Bayou, and then to Armand Bayou Tidal, all in Segment 113 of the San Jacinto–Brazos Coastal Basin.

The Protestants have expressed concern with the draft permit. Many of these concerns relate to the design, creation, and maintenance of the ponds where the outfalls discharge. These ponds are also intended to hold storm water, the quality of which is a cause for concern among the Protestants. Other concerns about the proposed permit involve issues such as construction dust. The engineering and maintenance of the ponds, the concerns about the quality of storm water that might enter those ponds, and issues relating to construction are outside the scope of a TPDES permit, which only concerns the discharge.<sup>1</sup>

### III. APPLICABLE LAW AND DRAFT PERMIT LIMITS

The Texas Water Code authorizes TCEQ to create and enforce water quality standards, issue permits, and conduct hearings.<sup>2</sup> Specifically, the TCEQ may issue permits to control the discharge of wastes or pollutants into waters in the state and to protect the water quality of the state's rivers, lakes, and coastal waters.<sup>3</sup>

---

<sup>1</sup> Mr. Halyard's closing brief emphasizes his concerns about these topics:

In summary I am merely stating that design and operation of the proposed facilities must protect the safety and health of the surrounding community, and that the Water Authority must agree to a design that will provide this protection. The design and operation of the proposed facility should comply with Best Management Practices for Wet Detention Ponds which include adequate water circulation in the wet ponds and a proper design for pond discharge into the county ditches. The Water Authority should provide documentation whereby it agrees to these conditions and the Permit should be modified as needed.

However, the management and design of the ponds is outside the scope of a TPDES permit hearing. Similarly, the Protestants' request that various kinds of signage be required relating to the nature of the water in the ponds is outside the hearing's scope.

<sup>2</sup> Tex. Water Code §§ 5.013(a)(3), 5.102(b).

<sup>3</sup> Tex. Water Code § 26.027.

The TCEQ has set out Texas Surface Water Quality Standards to maintain the quality of water in the state,<sup>4</sup> and has specifically set out effluent limitations for domestic wastewater effluent to maintain water quality in accordance with those standards.<sup>5</sup>

The draft permit has the following 30-day average limits, which are maximums, except for dissolved oxygen, which is a minimum:

	<b>Biochemical Oxygen Demand</b>	<b>Total Suspended Solids</b>	<b>Ammonia Nitrogen</b>	<b>Total Copper</b>	<b>Total Zinc</b>	<b>Dissolved Oxygen</b>	<b>Enterococci or <i>E. coli</i></b>
<b>Outfall 001</b>	5 mg/l	12 mg/l	2 mg/l	0.02 mg/l	0.08 mg/l	4.0 mg/l	35 colony forming units (CFU) or most probable number (MPN)/100 ml enterococci
<b>Outfall 002</b>	5 mg/l	12 mg/l	2 mg/l	0.02 mg/l	0.08 mg/l	4.0 mg/l	126 CFU or MPN/100 ml <i>E. coli</i>
<b>Outfall 003</b>	5 mg/l	12 mg/l	2 mg/l	0.02 mg/l	0.08 mg/l	4.0 mg/l	126 CFU or MPN/100 ml <i>E. coli</i>

The draft permit also requires the discharge to have a pH value between 6.0 and 9.0 standard units. Under the draft permit, there can be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil. The draft permit also contains Whole Effluent Toxicity, or biomonitoring, limits for the mysid shrimp.

At hearing, the permit writer, John Onyenobi, P.E., testified that the 5 mg/l effluent limit for biochemical oxygen demand should actually be a 5 mg/l limit for carbonaceous oxygen

<sup>4</sup> 30 Tex. Admin. Code chapter 307.

<sup>5</sup> 30 Tex. Admin. Code § 309.1.

demand. Based on this, the ED requests that the permit be amended to reflect this correction. No party has expressed any objection to this request.

#### IV. REFERRED ISSUES

On July 1, 2015, the Commission referred six issues to SOAH for consideration at a contested case hearing:

- 1) Whether the draft permit is adequately protective of the Requestors' health and safety;
- 2) Whether the draft permit will adequately maintain and support the recreational and aquatic life uses of the receiving waters;
- 3) Whether the proposed discharge will cause the excessive growth of aquatic vegetation;
- 4) Whether the proposed discharge will cause offensive odors;
- 5) Whether public notice of the application substantially complied with 30 Texas Administrative Code Chapter 39; and
- 6) Whether the proposed discharge route has been properly characterized.

This Proposal for Decision discusses these issues in the order in which there were referred. CLCWA bears the burden of proof.<sup>6</sup> The burden of proof is by a preponderance of the evidence, which means that CLCWA must show that a fact is more likely than not. This burden of proof does not require CLCWA to eliminate all doubt about a topic.

##### **A. Whether the Draft Permit is Adequately Protective of the Requestors' Health and Safety**

The ED's witness John Onyenobi, P.E. testified that the draft permit requires the treated effluent to be disinfected before it is discharged.<sup>7</sup> CLCWA will use a ultraviolet light (UV) disinfection system. If the UV disinfection system is shut down, such as for maintenance,

---

<sup>6</sup> 30 Tex. Admin. Code § 80.17(a).

<sup>7</sup> ED Ex. 1 at 28.

disinfection will occur by using chlorine.<sup>8</sup> He also testified that the permit requires CLCWA to maintain adequate safeguards to prevent untreated or inadequately treated waste from being discharged during electrical power failures.<sup>9</sup>

CLCWA's expert witness George Guillen, Ph.D., testified that the draft permit will adequately protect the Protestants' health and safety. The draft permit requires CLCWA to maintain indicator bacteria below 126 CFU/100 ml *E. coli.*, which is also the primary contact recreation criteria for freshwater.

Carole Henning, the representative of the Friends of the Old Golf Course, testified about her concerns with *Legionella* bacteria, citing two studies of industrial plants in Norway. But Dr. Guillen testified that CLCWA's disinfection process will inactivate microorganisms such as those that cause Legionnaire's disease. He testified that the proposed discharge would not spread the disease:

Based on the proposed disinfection process, the risk of exposure to levels of *Legionella pneumophila*, the specific species of bacteria responsible for Legionnaire's disease or Legionellosis, in the proposed wastewater discharge from outfalls 001, 002, and 003 that would cause any adverse reactions or disease is essentially zero.<sup>10</sup>

He testified that, according to a 2006 study, no species within the genus *Legionella* has been detected in aerosols generated at wastewater treatment facilities.<sup>11</sup> He testified that current reported cases are linked to condensate from air-conditioning systems and cooling towers.<sup>12</sup>

While appreciating Ms. Henning's concerns, the ALJ finds Dr. Guillen's testimony on this point to be more credible. The draft permit does not appear to create an enhanced risk of Legionnaire's disease.

---

<sup>8</sup> ED Ex. 1 at 29-30.

<sup>9</sup> ED Ex. 1 at 30.

<sup>10</sup> App. Ex. 10 at 14.

<sup>11</sup> App. Ex. 10 at 14.

<sup>12</sup> App. Ex. 10 at 14.

Given the disinfection requirements, CLCWA has established that the draft permit will adequately protect health and safety.

**B. Whether the Draft Permit Will Adequately Maintain and Support the Recreational and Aquatic Life Uses of the Receiving Waters**

The ED's witness Brad Caston, an aquatic scientist who performed the water quality standards review of CLCWA's application, testified that the draft permit follows the Texas Surface Water Quality Standards and will therefore protect the recreational and aquatic life uses of the receiving waters. Mr. Caston determined that the uses of Horsepen Bayou, the discharge route from Outfall 001, are high aquatic life use, primary contact recreation use, and sustainable fisheries use. For Outfall 002, he determined the uses for the proposed pond are intermediate life use, primary contact recreation use, and sustainable fisheries use. The uses for the ditch B104-03-00 and Horsepen Bayou are high aquatic life use, assumed primary contact recreation use, and sustainable fisheries use. For Outfall 003, Mr. Caston determined the proposed ponds will have intermediate life use, primary contact recreation use, and sustainable fisheries use. The uses for the tidally-influenced section of ditch B104-02-00 and Horsepen Bayou are high aquatic life, assumed primary contact recreation use, and sustainable fisheries. The section of ditch B104-02-00 that is not tidally-influenced has a limited aquatic life use and incidental fisheries use.

Mr. Caston also testified about the antidegradation review he performed. Antidegradation review consists of two tiers. Tier 1 ensures that there will be no impairment of existing uses.<sup>13</sup> Tier 2 antidegradation review ensures that water quality that exceeds fishable/swimmable quality will not be lowered by more than a *de minimis* extent.<sup>14</sup> After conducting a Tier 1 antidegradation review, Mr. Caston concluded that the existing water quality uses will not be impaired by the draft permit.

---

<sup>13</sup> 30 Tex. Admin. Code § 307.5(b)(1).

<sup>14</sup> 30 Tex. Admin. Code § 307.5(b)(2).

The Protestants expressed concern about the ED's evaluation of the application. Mr. Halyard, in particular, suggested that the modeling used to calculate dissolved oxygen, using a model called a continuously stirred tank reactor, was inappropriate because the water in the ponds will not be constantly in motion, particularly in hot, dry weather. However, the modeler, ED's witness Mark Rudolph testified that this model is TCEQ's standard model for modeling ponds.<sup>15</sup> He also testified that while the ED recognizes that models are simplifications, and not the real world, "we endeavor to set them up in a conservative fashion so that they — well, in this example, underpredict dissolved oxygen relative to the real world by intelligently setting the thing up to exclude some of the more uncertain parameters."<sup>16</sup> Given the frequency of the use of the model and the conservative assumptions used in the model, the ALJ does not find a problem in the use of the continuously stirred tank reactor model.

With all the evidence, CLCWA established that the draft permit will maintain the recreational and aquatic life uses of the receiving waters.

**C. Whether the Proposed Discharge Will Cause the Excessive Growth of Aquatic Vegetation**

Dr. Guillen, CLCWA's expert witness, testified that the proposed discharges would not cause excessive growth of aquatic vegetation.<sup>17</sup> He testified that the limits in the draft permit are consistent with those in the existing permit and that based on his personal observations, the discharge under the existing permit has not caused excessive algal growth in Horsepen Bayou.<sup>18</sup> He testified that the vascular plants in the receiving ponds would compete with any algae, which would reduce the chance of excessive algal growth, and that the high background turbidity, canopy shading, the silt or mud bottom, and sufficient flow found at the site indicate a very low probability of excessive algal growth.<sup>19</sup>

---

<sup>15</sup> ED Ex. 20 at 6.

<sup>16</sup> Tr. Vol. 2 at 431.

<sup>17</sup> App. Ex. 10 at 12.

<sup>18</sup> App. Ex. 10 at 12. Dr. Guillen testified that the CLCWA wastewater plant is next to the University of Houston Clear Lake campus where he works.

<sup>19</sup> App. Ex. 10 at 12-13.

The Protestants express concern about algal growth from stagnant water and cross-examined Dr. Guillen and other witnesses about the possibility of the water in the ponds becoming stagnant. But the evidence was not that the water would be stagnant. In fact, much of the testimony was that the ponds would not be stagnant and that algal growth “would be a very extremely low-probability event.”<sup>20</sup>

CLCWA established that the proposed discharge would not cause the excessive growth of aquatic vegetation.

**D. Whether the Proposed Discharge Would Cause Offensive Odors**

Dr. Guillen testified that he did not expect the proposed discharge to cause offensive odors. He testified that, unlike untreated waste, treated effluent from wastewater treatment facilities “almost never [has] any issues with odors.”<sup>21</sup>

The ED’s witness Mr. Onyenobi testified about aspects of the draft permit that will reduce the chance of odor. He testified that the draft permit ensured that the wastewater treatment plant unit was not located closer than 150 feet to the nearest property line, in compliance with 30 Texas Administrative Code § 309.13(e). According to Mr. Onyenobi, the purpose of the 150-foot buffer zone is to provide nuisance odor prevention. He also noted that the draft permit contains Other Requirement No. 5, which states that CLCWA shall maintain sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone that it does not own.

Ms. Baxter and Mr. Reed argue that Outfalls 002 and 003 may not be located within 500 feet of the nearest property line. They cite 30 Texas Administrative Code § 309.13(a), which

---

<sup>20</sup> Tr. Vol. 1 at 164. *See also* Tr. Vol. 1 at 113 (ponds would not be stagnant because effluent would be introduced to them); Tr. Vol. 1 at 162 (“I wouldn’t expect there to be stagnant water just sitting there.”).

<sup>21</sup> App. Ex. 10 at 15.

provides that “[l]agoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line.” Outfalls 002 and 003 are discharge locations of treated wastewater; they are not lagoons with zones of anaerobic activity. Moreover, the outfalls themselves are not wastewater treatment plant units, which are defined as “[a]ny apparatus necessary for the purpose of providing treatment of wastewater.”<sup>22</sup> The Protestants also reiterated their concern about stagnation, which was discussed above.

CLCWA has established that the proposed discharge would not cause offensive odors.

**E. Whether public notice of the application substantially complied with 30 Texas Administrative Code Chapter 39**

CLCWA’s Engineer, William G. Rosenbaum, P.E., testified that he arranged for the Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment to be published in English in the *Houston Chronicle* and in Spanish in *Rumbo*.<sup>23</sup> CLCWA’s general manager Jennifer Morrow testified that the Notice of Public Meeting and Notice of Application and Preliminary Decision for Water Quality TPDES Permit Amendment—Permit No. WQ0010539001 were published in English in the *Houston Chronicle* and the *Bay Area Citizen* and in Spanish in *La Voz de Houston*.<sup>24</sup> Ms. Morrow testified that both the Chronicle and the Citizen are widely circulated in the area. Ms. Morrow testified that copies of the Application were also available to the public in the main CLCWA Office.

Ms. Morrow testified that the notice of the preliminary hearing was also published in both the *Houston Chronicle* and the *Bay Area Citizen*.<sup>25</sup>

---

<sup>22</sup> 30 Tex. Admin. Code § 309.11(a).

<sup>23</sup> App. Ex. 3 at 5.

<sup>24</sup> App. Ex. 1 at 3.

<sup>25</sup> App. Ex. 1 at 4.

Mr. Oyenobi also testified at great length about the ways CLCWA complied with the requirements of 30 Texas Administrative Code § 39.551.<sup>26</sup> To provide additional notice and opportunity to comment to landowners who were identified late, the notices were mailed to those landowners and the comment period was held open.

In their closing arguments, the Protestants have not pointed to any specific problems with the public notice. Nor does the ALJ see any problems with the notice. CLCWA established that public notice substantially complied with 30 Texas Administrative Code chapter 39.

**F. Whether the Proposed Discharge Route Has Been Properly Characterized**

The only Protestant to mention this issue in closing was Tom Reed. His concern is that the application did not mention a pipe from the outfalls, but at hearing, a witness discussed a pipe.

Mr. Rosenbaum testified that the discharge route was properly characterized in the application and draft permit.<sup>27</sup> He testified that he determined the discharge route based on the detention pond layout. He testified that Outfall 002 will discharge into existing Harris County Flood Control District Channel No. B104-03-00, which will be expanded and become part of a future detention pond. Outfall 003 will discharge into a future detention pond which will flow into existing Harris County Flood Control District Channel No. B104-02-00, which will also be expanded and become part of a future detention pond. All discharge routes then go to Horsepen Bayou, then to Armand Bayou Tidal in Segment 1113 of the San Jacinto-Brazos Coastal Basin.

ED witness Brad Caston testified that he verified the discharge routes using maps, software, and drawings.<sup>28</sup> He also asked questions via email of CLCWA's consultant.

---

<sup>26</sup> ED Ex. 1 at 35-44.

<sup>27</sup> App. Ex. 3 at 8.

<sup>28</sup> ED Ex. 14 at 36.

The ALJ finds that, even without discussing the pipe, CLCWA has sufficiently established that the proposed discharge route has been properly characterized.

## V. ASSESSMENT OF TRANSCRIPTION COSTS

Although not among the six issues referred to SOAH by the Commission, the costs of the court reporter and the transcript must be allocated. In compliance with the ALJ's order, CLCWA arranged for the attendance of a court reporter and instructed the court reporter to prepare the original and copies of the transcript for delivery to the ALJ and TCEQ Chief Clerk. CLCWA paid \$6,026.80 for those services. The Protestants chose not to order transcripts.

Factors to be considered in assessing costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs.<sup>29</sup>

Section 80.23(d)(2) prohibits the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Therefore, no costs should be assessed against the ED or OPIC.

CLCWA was represented by counsel and retained expert witnesses. Protestants did not retain counsel or expert witnesses. Protestants and CLCWA participated equally in the proceedings.

CLCWA recommends that the Commission assess one-third of the costs to CLCWA, one-third to the Friends of the Old Golf Course, and one-third to the combined group of Ms. Baxter, Mr. Halyard, and Mr. Reed.

---

<sup>29</sup> 30 Tex. Admin. Code § 80.23(d)(1).

The ALJ finds that CLCWA should pay the costs of the transcript. CLCWA had the resources to retain counsel and expert witnesses. Because Protestants did not order a transcript, they did not benefit from it. On the whole, the factors weigh in favor of assessing all costs to CLCWA.

## VI. CONCLUSION

The ALJ finds that the draft permit, as modified to reflect carbonaceous oxygen demand, rather than biochemical oxygen demand, should be issued, and that CLCWA should pay all costs for the court reporter and transcript.

**SIGNED June 9, 2016.**

  
REBECCA S. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER GRANTING THE APPLICATION BY CLEAR LAKE CITY  
WATER AUTHORITY FOR A MAJOR AMENDMENT OF  
TPDES PERMIT NO. WQ0010539001; TCEQ Docket  
No. 2015-0563-MWD; SOAH Docket No. 582-15-4945**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered an application by Clear Lake City Water Authority (CLCWA) for a major amendment of TPDES Permit No. WQ0010539001. A proposal for decision (PFD) was presented by Rebecca S. Smith, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the application on February 16-17, 2016, in Houston, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

**Background**

1. CLCWA currently holds TPDES Permit WQ0010539001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10.0 million gallons per day (MGD) from Outfall 001.
2. The discharge is from CLCWA's treatment plant located at 14210 Middlebrook Drive in Houston, Texas, approximately one mile northeast of the intersection of Bay Area Boulevard and Space Center Boulevard, southeast of Horsepen Bayou and adjacent to the northernmost part of Lyndon B. Johnson Space Center in Harris County, Texas.
3. The existing treatment plant serves the Clear Lake City service area.
4. The draft permit authorizes the discharge of treated domestic wastewater from Outfall 001 at an annual average flow not to exceed 10.0 MGD, from Outfall 002 at an annual average flow not to exceed 1.08 MGD, and from Outfall 003 at an annual average flow not to exceed 1.08 MGD. The draft permit authorizes a combined annual average flow not to exceed 10.0 MGD from Outfalls 001, 002, and 003.

5. The effluent limitations in the draft permit for Outfall 001, based on a 30-day average are: 5 mg/l Biochemical Oxygen Demand (BOD<sub>5</sub>), 12 mg/l total suspended solids (TSS), 2 mg/l ammonia nitrogen (NH<sub>3</sub>-N), 0.02 mg/l total copper, 0.08 mg/l total zinc, 4.0 mg/l dissolved oxygen (DO), and 35 colony forming units (CFU) or most probable number (MPN)/100 ml Enterococci.
6. The effluent limitations in the draft permit for Outfalls 002 and 003, based on a 30-day average are: 5 mg/l BOD<sub>5</sub>, 12 mg/l TSS, 2 mg/l NH<sub>3</sub>-N, 0.02 mg/l total copper, 0.08 mg/l total zinc, 4.0 mg/l DO, and 35 CFU or MPN/100 ml *E. coli*.
7. Under the draft permit, CLCWA shall use an ultraviolet light (UV) system for disinfection.
8. During shut-down of the UV disinfection system for occasional maintenance or during periods of stormwater flow that exceed the 2-hour peak flow, the effluent shall be routed to the chlorine contact chamber and shall contain a chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on a peak flow) and shall be monitored daily by grab sample. CLCWA shall dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual and shall monitor chlorine residual daily by grab sample after the dechlorinating process.
9. The treated effluent is currently discharged and would continue to be discharged via Outfall 001 to Horsepen Bayou, then to Armand Bayou Tidal.
10. Under the terms of the draft permit, the treated effluent would also be discharged via Outfall 002 to a pond on the west side of El Dorado Boulevard, then to Harris County Flood Control District (HCFCD) ditch B104-03-00, then to Horsepen Bayou, then to Armand Bayou Tidal; and from Outfall 003 to a series of ponds on the east side of El Dorado Boulevard, then to HCFCD ditch B104-02-00, then to Horsepen Bayou, then to Armand Bayou Tidal in Segment No. 1113 of the San Jacinto-Brazos Coastal Basin.
11. The unclassified receiving water uses are high aquatic life use for Horsepen Bayou (tidal), HCFCD ditch B104-03-00 (tidal), and HCFCD ditch B104-02-00 (tidal); intermediate aquatic life use for a pond on the west side and a series of ponds on the east side of El Dorado Boulevard; and limited aquatic life use for HCFCD ditch B104-02-00 (above tidal).
12. The designated uses for Segment No. 1113 are primary contact recreation and high aquatic life use.

### **Procedural History**

13. The CLCWA application was received on February 26, 2013, and declared administratively complete on April 29, 2013.

14. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published on May 24, 2013, in the *Houston Chronicle*, and in Spanish on May 24, 2013 in *Rumbo*, Harris County, Texas.
15. The Executive Director (ED) completed technical review of CLCWA's application on November 5, 2013, and prepared a draft permit.
16. The combined Notice of Public Meeting and Notice of Application and Preliminary Decision (combined PM/NAPD) was published on April 17, 2014, in the *Houston Chronicle*, and in Spanish on April 27, 2014, in *La Voz de Houston*, in Harris County, Texas. The combined PM/NAPD was also published on April 24, 2014, in the *Bay Area Citizen* in Harris County, Texas.
17. A public meeting was held on May 29, 2014, at the Clear Lake Recreation Center in Houston, Texas.
18. Public comments were accepted during the public meeting and were also received by TCEQ in writing.
19. In order to provide mailed notice and an opportunity to comment to additional landowners who were identified after the close of the original comment period, the Chief Clerk of the Commission mailed a combined NORI/NAPD to the individuals on the updated adjacent landowners list on September 8, 2014, and the ED extended the comment period to October 8, 2014.
20. The Commission considered the hearing request during an open meeting on July 1, 2015. The Commission found five individuals and one organization to be affected persons and granted their hearing requests. The commission also found six issues that were raised during the comment period to be relevant and material to the Commission's decision on the application.
21. This matter was referred to SOAH, and a preliminary hearing was held on September 24, 2015, in Houston, Texas.
22. At the preliminary hearing, the following persons and entities were admitted as parties: CLCWA; the ED; the Office of Public Interest Counsel; Leigh Baxter, Raymond Halyard, Charles Howard, Kenneth Proctor, Tom Reed, and the Friends of the Old Golf Course.
23. Following a motion to dismiss, Mr. Howard was dismissed as a party because he was no longer an affected person.
24. At the hearing, CLCWA, the ED, the Office of Public Interest Counsel, Ms. Baxter, Mr. Halyard, Mr. Reed, and the Friends of the Old Golf Course appeared.

25. The record closed on April 22, 2016, the deadline for filing replies to written closing statements.
26. The effluent limits in the draft permit are designed to meet the Texas Surface Water Quality Standards.
27. The draft permit includes disinfection requirements to protect public health.
28. CLCWA's disinfection process will inactivate microorganisms, such as *Legionella pneumophila*.
29. The draft permit will adequately protect health and safety.
30. The draft permit will adequately maintain and support the recreational and aquatic life uses of the receiving waters.
31. The proposed discharge will not cause the excessive growth of aquatic vegetation.
32. The proposed discharge will not cause offensive odors.
33. The proposed discharge route has been properly characterized.
34. The draft permit's effluent limit for BOD should be changed to Carbonaceous Oxygen Demand (5-day).

## **II. CONCLUSIONS OF LAW**

1. TCEQ has jurisdiction over water quality and has jurisdiction to issue a TPDES permit under the Texas Water Code. Tex. Water Code §§ 5.013, 26.003, 26.011, 26.027, and 26.028.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law under the Texas Government Code and the Texas Water Code. Tex. Gov't Code §§ 2001.058, 2003.047; Tex. Water Code § 5.556.
3. Proper notice of CLCWA's Application and the preliminary hearing were provided. Tex. Gov't Code §§ 2001.051, 2001.052; Tex. Water Code §§ 5.552, 26.022, 26.028; 30 Tex. Admin. Code §§ 39.418, 39.419, 39.551.
4. Public notice of CLCWA's application substantially complied with 30 Texas Administrative Code chapter 39.

5. The public hearing on CLCWA's Application was held in compliance with Texas Water Code chapters 5 and 26, Texas Government Code section 2003.047, the Commission's rules, and SOAH's procedural rules.
6. CLCWA's Application was complete and complied with Texas Water Code § 26.027(b) and 30 Texas Administrative Code §§ 281.5 and 305.48.
7. The draft permit includes the terms and conditions that meet all of the requirements of Texas Water Code § 26.029.
8. The terms and conditions of the draft permit, as amended, are protective of the waters in the state and comply with the Commission's policies, and regulations, including 30 Texas Administrative Code chapter 307.
9. Discharges from the CLCWA's treatment facility in compliance with the draft permit, as amended, will not result in any adverse effects on human health or aquatic life, or the receiving water.

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

1. CLCWA's application is granted. TPDES Permit No. WQ0010539001 for municipal wastewater is hereby issued to Clear Lake City Water Authority, as set out in the attached draft permit with the following modifications:
  - a. the Biochemical Oxygen Demand (5-day) parameter is replaced with Carbonaceous Oxygen Demand (5-day) on pages 2, 2b, and 2c.
2. All other motions, requests for specific findings of fact or conclusions of law, and other requests for general and specific relief, if not expressly granted herein, are hereby denied for want of merit.
3. The effective date of this Order is the date the Order is final.
4. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.
5. If any provision, 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.
6. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

Issue Date:

**TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

---

**Bryan W. Shaw, Ph.D., P.E., Chairman  
For the Commission**