



# State Office of Administrative Hearings

Chief Administrative Law Judge

June 28, 2022

Mary Smith  
General Counsel  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. F, Room 4225  
Austin, TX 78753

**Re: SOAH Docket No. 582-22-0489; TCEQ Docket No. 2021-0755-MWD, Application of Kendall West Utility, LLC**

Dear Ms. Smith:

The undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) and Proposed Order (PO) in this matter on May 25, 2022. Protestants and the Executive Director (ED) each filed exceptions. The ED also filed a reply in opposition to Protestants' exceptions, and the Applicant filed a reply opposing Protestants' exceptions and advising that it did not oppose the ED's exceptions.

The Protestants' exceptions implicate Referred Issues A, C, D, E, and F, also their chief focus at the hearing. Their arguments in support are rooted in basic disagreements with the ALJ's interpretation of the governing statutes and rules or,

within that framework, the inferences that can or should reasonably be drawn from their evidence. These matters were briefed extensively by the parties and addressed at length in the PFD. For the reasons set forth there, the ALJ recommends, respectfully, that Protestants' exceptions be rejected.

The ED's exceptions, in contrast, propose merely a series of isolated typographical or technical corrections to the PFD, PO, and draft permit as written. The ALJ agrees that these corrections are appropriate. Namely, the ALJ would make the following revisions (additions and other changes underlined):

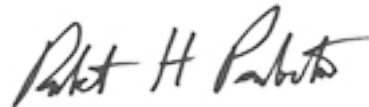
- On page 5 of the PFD,<sup>1</sup> the title of the second column should refer to "Five-Day Carbonaceous Biochemical Oxygen Demand."
- PO Finding of Fact (FoF) No. 11 should read, "The ED filed its Response to Public Comment on April 23, 2021, and the Chief Clerk mailed notice of same on April 30, 2021."
- PO FoF No. 31 should read, "The unnamed tributary below Outfall 001 is an intermittent stream with perennial pools, and having a corresponding DO criterion of 3.0 mg/L."
- The citation in Conclusion of Law (CoL) No. 3 to Texas Water Code § 5.114 should refer instead to Texas Water Code § 5.115.
- CoL No. 9 should also include a citation to 30 Texas Administrative Code § 80.17(a).

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<sup>1</sup> Although the ED states that the table is on page 7 of the PFD, the substance of its recommendation implicates a table that appears instead on page 5.

- In CoL Nos. 21 and 23, the citations to 30 Texas Administrative Code § 307.4(b)(1) should instead refer to § 307.4(b)(4).
- In CoL No. 39, the reference to “. . . Category C license” should instead be “Class C license.”
- Within the draft permit, the phrase “at each chlorine contact chamber” should be moved from Requirement No. 2 on page 2a (concerning Interim II Phase) to Requirement No. 2 on page 2b (concerning Final Phase, when the Facility will first have more than one chlorine contact chamber).

With the foregoing recommended revisions, the PFD and PO are ready for the Commission’s consideration.



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Robert Pemberton

Presiding Administrative Law Judge

cc: Mailing List