

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 14, 2022

Laurie Gharis  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from Kendall West Utility, LLC for new TPDES Permit No.  
WQ0015787001, TCEQ Docket No. 2021-0755-MWD, SOAH Docket No. 582-22-  
0489

Dear Ms. Gharis:

I have enclosed the Executive Director's Exceptions to the Proposal for Decision. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing list

**SOAH Docket No. 582-22-0489**  
**TCEQ Docket No. 2021-0755-MWD**

<b>Application from Kendall West Utility, LLC for new Texas Pollutant Discharge Elimination System Permit No. WQ0015787001</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Before the State Office of Administrative Hearings</b>
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**Executive Director’s Exceptions to the Proposal for Decision**

**I. Overview**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) supports the administrative law judge’s (ALJ’s) conclusions that Kendall West Utility, LLC (KWU) has met its burden of proof regarding all the referred issues in this case and that KWU’s application for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015787001 should be granted. The ED does not have any exceptions to the Proposal for Decision per se but does have several recommended changes to the proposed order, as well as a recommended correction to a recently discovered typographical error in the proposed permit.

**II. Recommended Changes**

**(A) Page 7, effluent limits table**

“Five-day carbonaceous oxygen demand” should be changed to “five-day carbonaceous biochemical oxygen demand.”<sup>1</sup>

**(B) Finding of Fact No. 11**

“April 30, 2021” should be changed to “April 23, 2021.”<sup>2</sup> April 30, 2021 was the date on which the Office of the Chief Clerk mailed the ED’s Response to Public Comment.<sup>3</sup>

**(C) Finding of Fact No. 31**

The Outfall 001 unnamed tributary should be identified as an intermittent stream with perennial pools.<sup>4</sup>

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<sup>1</sup> Ex. ED-10, at 2–2b.

<sup>2</sup> Ex. APP-42, at 519.

<sup>3</sup> *Id.* at 468.

<sup>4</sup> Ex. ED-2, at 8:17–18.

**(D) Conclusion of Law No. 3**

Based on the context, the ED believes the reference to section 5.114 of the Texas Water Code should be to section 5.115 instead.

**(E) Conclusion of Law No. 9**

The ED recommends adding a citation to title 30, section 80.17(a) of the Texas Administrative Code to provide additional legal support that comes from TCEQ's rules.

**(F) Conclusion of Law Nos. 21 and 23**

The references to section 307.4(b)(1) should be changed to section 307.4(b)(4).

**(G) Conclusion of Law No. 39**

“Category” should be changed to “Class,” as facilities are referred to by category and licenses are referred to by class.<sup>5</sup>

**(H) Proposed permit**

On page 2a, Requirement No. 2 states that the chlorine residual must be monitored “at each chlorine contact chamber.” However, that language should have been included in Requirement No. 2 on page 2b instead, as the Final-phase facility is the only facility that will have more than one chlorine contact chamber.<sup>6</sup> Therefore, the ED recommends moving the phrase “at each chlorine contact chamber” from No. 2 on page 2a to No. 2 on page 2b.

**III. Conclusion**

The ED appreciates and fully supports the ALJ's finding that KWU met its burden of proof for the referred issues and his recommendation to grant KWU's application and issue the ED's proposed permit. Therefore, the ED respectfully requests that the Commission adopt the ALJ's proposed order with the ED's recommended changes presented herein and issue the proposed permit.

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<sup>5</sup> 30 TEX. ADMIN. CODE §§30.340, .350(e) (West 2022).

<sup>6</sup> Ex. APP-6, at 133-135.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

Toby Baker, Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division

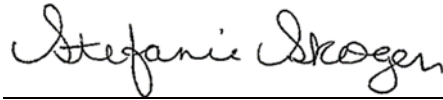
By: 

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## Certificate of Service

I certify that on June 14, 2022, a copy of the foregoing document was sent by electronic mail to the persons on the attached mailing list.



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Stefanie Skogen, Staff Attorney  
Environmental Law Division

### **Mailing List** **Kendall West Utility, LLC** **TCEQ Docket No. 2021-0755-MWD** **SOAH Docket No. 582-22-0489**

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#### **State Office of Administrative Hearings:**

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#### **Office of the Chief Clerk:**

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