

SOAH DOCKET NO. 582-22-1222  
TCEQ DOCKET NO. 2021-0999-MWD

APPLICATION OF § BEFORE THE STATE OFFICE  
CITY OF LIBERTY HILL FOR TPDES § OF  
PERMIT NO. WQ0014477001 § ADMINISTRATIVE HEARINGS

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

To the Commissioners of the Texas Commission on Environmental Quality:

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) submits his Exceptions to the Proposal for Decision relating to the application by the City of Liberty Hill (City) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014477001 in Williamson County. As discussed in detail below, the Executive Director respectfully requests the Commission issue the permit as drafted by the Executive Director, without the new conditions recommended by the Administrative Law Judges (ALJs).

**I. Background**

The TCEQ received an application from Liberty Hill for a renewal of an existing permit with minor amendment on September 5, 2018. The application was deemed administratively complete on November 9, 2018. The application was deemed technically complete on March 12, 2020. A virtual public meeting was held on August 17, 2020. The public comment period ended at the close of the public meeting. As required by Texas Water Code (TWC) and the Texas Administrative Code (TAC), the Executive Director reviewed the comments submitted during the comment period and prepared a Response to Comments, which was provided to everyone who commented and the persons on the mailing list maintained by the Office of the Chief Clerk.<sup>1</sup> The Hearing Request/Request for Reconsideration period ended on July 23, 2021. During an Open Meeting on October 6, 2021, the Commission considered the hearing requests, responses to hearing requests, all timely public comments, and the Executive Director’s Response to Comments.

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<sup>1</sup> Tex. Water Code § 5.555 and 30 Tex. Admin Code § 55.156.

The Commission found Sharon Cassady, Terry Ira Cassady, Stephanie Morris, Daniel Morris, and Jeff Wiles were affected persons and referred them to SOAH. The Commission determined to refer the hearing requests of Jon and Carolyn Ahrens, David and Louise Bunnell, Gerald and Susan Harkins, Carrol Holley, Jessica Jensen, LaWann Tull, and Mark Tummons to the State Office of Administrative Hearings (SOAH) for an affectedness determination.

The Commission referred ten issues to SOAH for a Contested Case Hearing:

Issue A. Whether the draft permit is protective of water quality, groundwater, and uses of the receiving waters of the South Fork San Gabriel River in accordance with the Texas Surface Water Quality Standards, including recreational use and with consideration of the maximum volume of the proposed discharge;

Issue B. Whether the draft permit includes adequate provisions to protect the health of the requesters and their families and aquatic and terrestrial wildlife;

Issue C. Whether the draft permit adequately addresses nuisance conditions, including odor, in accordance with 30 TAC § 309.12(e);

Issue D. Whether the draft permit includes appropriate provisions to protect against excessive growth of algae and comply with the aesthetic parameters and requirements of 30 TAC § 307.4, including aquatic nutrient limitations;

Issue E. Whether the draft permit should be denied or altered based on the Applicant's compliance history;

Issue F. Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of need and Regional Treatment Options;

Issue G. Whether the draft permit complies with applicable antidegradation requirements;

Issue H. Whether the draft permit requires adequate licensing requirements for the operator of the facility and adequate requirements regarding operator supervision;

Issue I. Whether the draft permit includes sufficient monitoring and reporting requirements, including necessary operational requirements.

The preliminary hearing took place via Zoom on March 28, 2022. The ALJs determined that SOAH had jurisdiction, named parties, and set the procedural schedule. The parties that were represented by Counsel at the preliminary hearing and that were admitted parties: City of Liberty Hill, the Executive Director of the TCEQ (Executive Director), TCEQ's Office of Public Interest Counsel (OPIC), and Stephanie Morris. The individual protestants that were self-represented at the time and admitted as parties were: Daniel Morris, Jeff Wiles, Jon and Carolyn Ahrens, David and Louise Bunnell, Gerald and Susan Harkins, Frank and LaWann Tull, Andrew and Elizabeth Engelke, Pamala Sylvest, Joanne and John Swanson, Tom and Valerie Erikson, Carolyn and Donnie Dixon, and Sharon, Terri Ira, and Jackson Cassady. Subsequently, all of the self-represented individuals except for Daniel Morris and Jeff Wiles hired counsel. This group of protestants became referred to as the "Bunnell Protestants." Daniel Morris withdrew as a party prior to the hearing on the merits, and Jeff Wiles did not participate in the hearing on the merits.

The hearing on the merits was conducted via Zoom from July 20, 2022, through July 22, 2022. The record closed on August 23, 2022. The ALJs issued their Proposal for Decision (PFD) on October 24, 2022.

## **II. ALJs' Recommendation**

The ALJs recommend that the Commission grant the City of Liberty Hill's Application for a TPDES permit with the following changes: the permit be revised to require a total phosphorus limit of 0.05 mg/L for all phases; both the operator and third-party operator to have a Class A license; a nutrient sampling plan to be conducted; and a public posting and notification of monitoring and reporting requirements on a public website dedicated to providing information about the treatment plant and discharge. The Executive Director respectfully requests the Commission deny these changes and issue the permit as drafted by the Executive Director. Each of the ALJs' recommendations is discussed in detail below.

### **a) 0.05 mg/L Total Phosphorus Limit**

The Executive Director maintains his position that the draft permit meets all applicable statutory and regulatory requirements. The Executive Director has

recommended a Total Phosphorus limit of 0.15 mg/L for all phases.<sup>2</sup> This limit will be protective of the receiving waters, including aquatic life uses and aesthetic parameters. The purpose of the Texas Surface Water Quality Standards (TSWQS) is to “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life use.”<sup>3</sup> The designated uses for Segment No. 1250 at the South Fork San Gabriel River, where the discharge point is located, includes primary recreation, high aquatic life use, public water supply, and aquifer protection.<sup>4</sup> Staff on the Standards Implementation Team evaluate the uses of the receiving waters and use that information to draft a permit that will protect designated uses and comply with the TSWQS.<sup>5</sup> No evidence was presented at the hearing on the merits that a 0.15 mg/L Total Phosphorus limit, continued compliance with the permit, and the third-party operator requirement recommended by the Executive Director will not significantly improve conditions downstream of the discharge point. The Executive Director recommends the commission issue the permit with the 0.15 mg/L Total Phosphorus limit.

#### **b) Class A Operator Requirement**

The Executive Director maintains his recommendation that a third-party operator with the licensing level determined by the proper applicable statute is proper for the City of Liberty Hill Permit. The Executive Director’s staff uses 30 TAC 30.350 when classifying a wastewater treatment facility and determining appropriate licensing requirements. The City of Liberty Hill has applied to discharge 4,000,000 gallons per day from an activated sludge treatment system. An activated sludge treatment system with a permitted daily average flow of 1.0 to 10.0 million gallons per day are classified as a Category B system.<sup>6</sup> The Chief Operator of such facility must have the same level license equal to or higher than the category rating of the treatment facility.<sup>7</sup> The Executive Director added Other Requirement No. 2 to the draft permit, which requires the City to enter into a contract with a third-party operator company to operate the

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<sup>2</sup> ED-JL-1 at 13:9-13.

<sup>3</sup> 30 Tex. Admin. Code § 307.1

<sup>4</sup> ED-JL-1 at 4:27-29.

<sup>5</sup> ED-JL-1 at 4:12-14.

<sup>6</sup> See Figure 30 Tex. Admin. Code § 30.350(e).

<sup>7</sup> 30 Tex. Admin. Code § 30.350(i).

facility.<sup>8</sup> The City has hired an double A licensed operator to operate and maintain the facility.<sup>9</sup> As such, the ALJs suggestion to require the plant be operated by a Class A license holder has already been satisfied and does not need to be added to the draft permit.

### **c) Nutrient Sampling Plan**

The Executive Director does not recommend the addition of a nutrient sampling plan to the City of Liberty Hill draft permit. The water quality is already being monitored near the outfall. As documented during the hearing on the merits, there already exists a significant amount of sampling data on the South Fork San Gabriel River via the Surface Water Quality Monitoring (SWQM) station in the area.<sup>10</sup> The draft permit also already includes effluent sampling on a regular basis to verify it meets permit required effluent limits.<sup>11</sup> The draft permit includes testing frequencies for total suspended solids, ammonia-nitrogen, total phosphorus, and carbonaceous oxygen demand which have been increased to being measured five time a week from twice a week in the previous permit.<sup>12</sup> Additionally, Other requirement No. 9 has been added to the draft permit, requiring a total dissolved solids, chloride, and sulfate source identification and reduction study. As a result, the Executive Director recommends that the Commissioners not adopt the ALJs' recommendation to adopt a nutrient sampling plan because there is no indication that this plan would add any additional protectiveness to the draft permit.

### **d) Public Posting on Website**

The ALJs propose adding a provision to the draft permit requiring the posting and notification of reported information on a public website dedicated to providing information and alerts about the wastewater treatment plant and discharge. The Executive Director does not recommend adding this provision to the draft permit. There is no TCEQ rule or requirement requiring an Applicant to publish and maintain a website about a wastewater treatment facility and discharge. The Texas Legislature granted the TCEQ regulatory authority over discharges of pollutants to Texas surface

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<sup>8</sup> AR-Tab C- Page 0037.

<sup>9</sup> Ex. APP 9 Thomison at 000004:16-19.

<sup>10</sup> ED-JM-1 at 16:4-7.

<sup>11</sup> ED-AM-1 at 6:1-6.

<sup>12</sup> ED-AM-1 at 14:25-28.

water. TCEQ has a statutory responsibility to protect water quality in the State of Texas and to authorize wastewater discharges into Texas surface water under Texas Water Code Chapter 26, and in accordance with 30 Texas Administrative Code Chapters 217, 305, 307, and 309. As there are no rules requiring the publication and maintenance of a website by a permittee, the Executive Director requests the Commission not add this requirement to the permit

### **III. Conclusion**

The Executive Director respectfully recommends that the Commission issue the City of Liberty Hill draft permit as drafted by the Executive Director. The draft permit as written is in compliance with all applicable statutory and regulatory requirements. The Executive Director recommends the Commissioners reject the proposals of the ALJs in their PFD and issue the City of Liberty Hill permit.

Respectfully submitted,

Texas Commission on Environmental Quality

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of November, 2022, a true and correct copy of the foregoing document was sent via first class mail, electronic mail, or hand delivery to all parties of record.



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