

**TCEQ Docket No. 2021-1001-MWD
SOAH Docket No. 582-22-0585**

APPLICATION BY CITY OF
GRANBURY FOR NEW TEXAS
POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT
NO. WQ0015821001

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STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**CITY OF GRANBURY'S
REPLY TO EXCEPTIONS**

TO THE HONORABLE COMMISSIONERS:

In virtually all of their exceptions to the Proposal for Decision (PFD) the Protestants merely repeat the arguments they made in their closing argument and reply to closing arguments. Their exceptions offer little new to the discussion, and thus have largely been previously addressed through the parties' closing arguments, replies, and the PFD itself. To the extent necessary, the City incorporates its closing argument and reply to closing arguments into this reply. The City also offers the responses below. For purposes of consistency, the City adopts the terms and abbreviations included in the Table of Abbreviations in the PFD.¹

A. Nuisance odor and buffer zone requirements

The BNR selector zones and temporary EQ basin proposed for the East Plant are not the types of "zones" referenced in Title 30, section 309.13(e)(1) of the Texas Administrative Code. In addition, the temporary EQ basin will be aerated by virtue of

¹ PFD at *iv-v*.

mechanical mixing. The distinctions are not verbal gymnastics. They are terms and concepts understood and used by wastewater treatment plant engineers with experience in MBR system project management and design. Two expert witnesses in this case—Luci Dunn, P.E. and Joshua Berryhill, P.E.—fit this description. None of the Protestants’ witnesses do. The ALJs accurately describe the evidence demonstrating how oxygen reduction potential in wastewater treatment is measured as well as what constitutes lagoons with zones of anaerobic activity. They accurately describe the evidence that (1) illustrates the distinction in treatment technologies between the proposed East Plant MBR treatment versus the anachronistic facultative lagoon and true unaerated equalization basin processes, and (2) demonstrates how the proposed East Plant will have no lagoons with zones of anaerobic activity.² The ALJs also accurately note that the Protestants offered no credible testimony (in fact, little evidence at all) to the contrary. The Protestants’ near-exclusive reliance on conjecture in place of evidence in their exceptions validates the ALJs’ assessment of Protestants’ claims. The ALJs’ assignment of weight to the evidence on this issue, and their corresponding analysis and conclusions, are supported by the record.

In addition, no legal support exists for Protestants’ novel “conclusive presumption” theory. If labels in an application were the determining factor of buffer zone requirements under section 309.13(e)(1), an applicant could simply employ imaginative terminology to avoid Protestants’ simplistic “conclusive presumption” interpretation. The Protestants advocate replacing a substantive assessment of the intended design with form labeling. The

² PFD at 10-13.

ALJs' analysis of the intended design of the East Plant, and their application of section 309.13(e)(1) to those facts, tracks the clear language and purpose of the rule.

B. Water Quality

Protestants' new arguments regarding the Margin of Safety in Default QUAL-TX Modeling Analyses³ grossly mischaracterize the Draft Permit as well as the statements made in the analyses. The Draft Permit imposes a 5.0 mg/L limit for CBOD5 concentrations, not 30 mg/L as represented by the Protestants. The analyses notes that “[f]acilities with BOD5/CBOD5 concentration limits of 30 mg/L typically represent oxidation pond treatment systems.”⁴ The East Plant will not be an oxidation pond treatment system (*e.g.*, a lagoon with a zone of anaerobic activity)—it will be an MBR system.

Additionally, Tim Osting did not make any fundamental errors in the performance of his modeling, nor did he admit to any, contrary to Protestants' representations. The City's reply to closing arguments covers the issue of the modeling parameters Mr. Osting used in his work, including reaeration rates, SOD, channel depths, and a host of other site-specific data.⁵ The ALJs' analysis of the evidence and the parties' respective arguments is straightforward.⁶ The Protestants raise nothing new on this issue in their exceptions. No evidence in the record supports the Protestants' characterizations of Mr. Osting's QUAL-TX modeling or his testimony regarding that work.

³ ED-24.

⁴ ED-24 at 0014.

⁵ Response to Closing Arguments by City of Granbury at 14.

⁶ PFD at 46-47 (summarizing Mr. Osting's QUAL-TX modeling work), 50 (summarizing Protestants' arguments on this issue), and 52-53 (analyzing the evidence and explaining the ALJs' rationale for their findings on this issue).

Finally, on pages 11-12 of their exceptions, Protestants discuss material that was not admitted into the record. The City incorporates by reference its prior objections to Protestants' attempts to introduce this material.⁷

C. The Lake Granbury Watershed Protection Plan and Regional Treatment

The Protestants have misconstrued the ALJs' assessment of the goals and purposes of the Lake Granbury WPP and the relationship between it and the East Plant project. Tim Osting, one of the authors of the Lake Granbury WPP, explained that its goal was to promote centralized wastewater treatment over on-site sewage facilities. Specifically, Mr. Osting testified that the "intent [of the Lake Granbury WPP] is for residents of the watershed to move away from hundreds of residential septic systems and move toward centralized waste treatment at one or more wastewater treatment plants."⁸ He went on to testify that "[t]he proposed draft permit to the City of Granbury and subsequent construction of the [East Plant] is consistent with the centralized waste treatment concept that is intended by the [Lake Granbury] WPP."⁹ In addition, the ALJs recognized that the East Plant discharges into Rucker Creek Cove will increase cove circulation, therefore disrupting and improving conditions that otherwise encourage the accumulation and proliferation of *E. coli*. This is also consistent with the findings of the Lake Granbury WPP. Stated another way, the ALJs' findings reflect that the proposed East Plant discharges follow

⁷ Applicant's Response to Protestants' Motion to Strike and Motion for Continuance; Tr. Vol. 3 at 479:22 – 486:09.

⁸ COG Exh. 600 at 39.

⁹ COG Exh. 600 at 39.

and are consistent with the Lake Granbury WPP's main solution to E. coli in the reservoir—*i.e.*, (1) add centralized wastewater treatment capacity to the area, and (2) increase cove circulation by introducing the quality and quantity of flow that will be discharged pursuant to the Draft Permit.

D. Transcription Costs

The City believes that it is reasonable to assess transcription costs among the parties as proposed in the City's closing arguments.¹⁰ However, the City took no exception to the ALJs' recommended assessment of costs in the PFD, and it takes none here. The Protestants agreed to the procedural schedule in this case, including the deadline for transcript preparation. The court reporting service required an expedited turn-around time to meet the agreed deadline. Contrary to Protestants' representations, they were equally as responsible as the City for necessitating an expedited turn-around time for the transcripts.

Conclusion and Prayer

The City of Granbury has proposed an advanced-technology wastewater treatment plant at a strategic location to serve an imminent and growing unmet demand. The application has satisfied all applicable Commission rules. The Draft Permit meets all state and federal legal and technical requirements, and it will protect human health and safety, the environment, and physical property. Denying the application would not only have profound consequences on the Granbury community and surrounding area, such a

¹⁰ Closing Arguments of City of Granbury at 53-54.

decision would be unsupported by the record. With the overwhelming weight of evidence supporting the ALJs' Proposal for Decision and recommended Findings of Fact and Conclusions of Law, the City of Granbury respectfully requests that the Commissioners:

- (1) adopt the ALJs' proposed Findings of Fact and Conclusions of Law, modified as requested in the City of Granbury's Brief on the Proposal for Decision;
- (2) APPROVE the Application by the City of Granbury for New TPDES Permit No. WQ0015821001;
- (3) ISSUE the Draft Permit proposed by the Executive Director, as recommended by the ALJs; and
- (4) GRANT the City of Granbury all other relief to which it is entitled in law and in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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