

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 18, 2021

TO: Persons on the attached mailing list.

RE: Van Ruiten Dairy Partners
TPDES Permit No. WQ0003290000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central Office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Texas Commission on Environmental Quality Region 4, Stephenville Office, 580 West Lingleville Road, Suite D, Stephenville, Texas 76401.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director’s decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/mo

Enclosure

MAILING LIST
for
Van Ruiten Dairy Partners
TPDES Permit No. WQ0003290000

FOR THE APPLICANT:

Bart Van Ruiten, General Partner
Van Ruiten Dairy Partners
3813 County Road 396
Dublin, Texas 76446

Jourdan Mullin, Consultant
Enviro-Ag Engineering, Inc.
9855 Farm-to-Market Road 847
Dublin, Texas 76446

Matthew Gray, Consultant
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9855 Farm-to-Market Road 847
Dublin, Texas 76446

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Director
Texas Commission on Environmental
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Attorney
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FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
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STEPHENVILLE TX 76401-1779

ICE , BENNY & PEGGY
710 PRIVATE ROAD 746
STEPHENVILLE TX 76401-1443

MACKEY , JEFF & SANDY
PO BOX 2457
GLEN ROSE TX 76043-2457

MONSOUR , HOWARD & SUZANNE
3516 COUNTY ROAD 196
BLUFF DALE TX 76433-4928

WARDEN , MONICA J
945 COUNTY ROAD 201
IREDELL TX 76649-3511

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916 FAIRWAY VIEW DR
MANSFIELD TX 76063-3469

TPDES PERMIT NO. WQ0003290000

APPLICATION BY	§	BEFORE THE TEXAS
VAN RUITEN DAIRY PARTNERS, FOR	§	COMMISSION ON
MAJOR AMENDMENT TO TPDES	§	ENVIRONMENTAL QUALITY
PERMIT NO. WQ0003290000	§	

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application by Van Ruiten Dairy Partners (Applicant) for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003290000. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comment letters from Ms. Monica Warden; Mr. Jeff Mackey and Mrs. Sandy Mackey (Mr. and Mrs. Mackey); Mr. Charles S. Brown and Cyd F. Brown (Mr. and Mrs. Brown); Mr. Benny Ice and Mrs. Peggy Ice (Mr. and Mrs. Ice); Mr. Craig Welch and Mrs. Kim Welch (Mr. and Mrs. Welch); and Mr. Howard P. Monsour, Jr. and Mrs. Suzanne Monsour (Mr. and Mrs. Monsour). This response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ web site at <https://www.tceq.texas.gov/>.

I. BACKGROUND

The Applicant is seeking a major amendment of an existing concentrated animal feeding operation (CAFO) individual permit. The Applicant seeks to replace Table 2 to Attachment E of the permit that relates to the alternative crops and yield goals; add one new land management unit (LMU) #4 - 18 acres; increase the acreage of LMU #1 from 41 to 56 acres and LMU #2 from 40 to 54 acres; and decrease the acreage of LMU #3 from 12 to 10 acres. If approved, the total land application area will increase from 93 to 138 acres.

In addition, one new freestall barn is being proposed to be added to the dairy production area; one existing water well (Well #5) was added to the permit; and the drainage areas of the retention control structures (RCSs) were reconfigured which caused the design calculations for the RCSs to be revised, and the required capacity for RCS #1 changed from 14.62 to 15.46 acre-feet and RCS #2 changed from 5.87 to 7.29 acre-feet. The authorized maximum capacity of 990 head, total dairy cattle, all of which are milking cows will not change.

A permit ownership transfer was submitted with the application which changed the ownership of the dairy facility from Peter Wilfridus DeRidder to Van Ruiten Dairy Partners and site name changed from DeRidder Dairy to Van Ruiten Dairy.

A. Description of Facility

The facility is located at 1572 County Road 202, Iredell, Erath County, Texas. The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin. The facility consists of two Retention Control Structures (RCSs),

and one Settling Pond. The RCSs total required capacities without freeboard (acre-feet) are RCS #1 - 15.46 and RCS #2 - 7.29. The facility also includes four (4) land management units (LMUs) (acres): LMU #1 - 56, LMU #2 - 54, LMU #3 - 10, LMU #4 - 18.

B. Procedural Background

The TCEQ received the application for a major amendment on April 22, 2020 and declared it administratively complete on September 29, 2020. The Executive Director completed the technical review and prepared the proposed permit, which if approved, would establish the conditions under which the facility must operate. The Applicant published the Notice of Receipt of application and Intent to Obtain a Water Quality Permit (NORI) in the *Stephenville Empire Tribune* on October 7, 2020. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in the *Stephenville Empire Tribune* on March 31, 2021 and the public comment period closed on April 30, 2021. This application was filed on or after September 1, 2015; therefore it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, (1999) and Senate Bill 709, 84th Legislature (2015), which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

C. Access to Rules, Laws and Records

- All administrative rules: Secretary of State Website: <https://www.sos.state.tx.us/>
- TCEQ rules: Title 30 of the Texas Administrative Code: <https://www.sos.texas.gov/tac/index.shtml>. (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: <https://statutes.capitol.texas.gov/>
- TCEQ website: <https://www.tceq.texas.gov/> (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <https://www.epa.gov/laws-regulations>
- Environmental or citizen complaints may be filed online at: <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> or by sending an email to the following address: cmplaint@TCEQ.state.tx.us

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building E, Room 103 (Central Records, for existing or past permits), or Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, proposed permit, factsheet, and the Executive Director’s preliminary decision have been available for viewing and copying at the Texas Commission on Environmental Quality Region 4, Stephenville Office, 580 West Lingleville Road, Suite D, Stephenville, Texas 76401.

The Executive Director has determined that the draft permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if you would like to file a complaint about the facility

concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ's statewide toll-free number at 1-888-777-3186 or you may contact the TCEQ Region 4 Office in Stephenville, Texas at 1-800-687-7078 or (254) 552-1900 to address potential permit violations. If an inspection by the Regional Office finds that the facility is out of compliance, the facility may be subject to enforcement actions.

II. COMMENTS

Comment #1

Ms. Warden, Mr. and Mrs. Brown, Mr. and Mrs. Ice, and Mr. and Mrs. Welch expressed concern that the proposed changes to the dairy may negatively impact public health and safety and the health of their families.

Response #1

The TCEQ implements and enforces standards that are established to protect human health, safety, and the environment. The Applicant must operate the facility in compliance with Chapter 26 of the Texas Water Code, TCEQ's rules, and the terms of the draft permit. The proposed permit is drafted to be protective of human health and the environment provided the Applicant operates and maintains the facility according to the TCEQ rules and requirements in the proposed permit.

The proposed permit requires that the permittee develop a pollution prevention plan (PPP), as required by 30 TAC § 321.46 and Section VII.A.1 of the draft permit, for proper operation and maintenance of the dairy. The PPP must be prepared in accordance with good engineering practices to include measures necessary to limit the discharge of pollutants to or adjacent to water in the state, develop and implement a water quality management plan developed by the Texas State Soil and Water Conservation Board (TSSWCB), and implement a comprehensive nutrient management plan.

The certified water quality management plan is a site-specific plan for agricultural or silvicultural lands that includes appropriate land treatment practices, production practices, management measures, technologies, or combinations thereof that when implemented, will achieve a level of pollution prevention or abatement determined by the TSSWCB, in consultation with the local Soil and Water Conservation District, to be consistent with state water quality standards.

The comprehensive nutrient management plan is a resource management plan containing a grouping of conservation practices and management activities that, when implemented in a conservation system, will help ensure that both agricultural production goals are achieved, and natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality are minimized.

Comment #2

Ms. Warden, Mr. and Mrs. Ice, and Mr. and Mrs. Welch are concerned about rainfall runoff during times of heavy flooding that may carry manure from the dairy and pollute water ways, neighboring land, and water wells.

Response #2

As indicated in Response #1, the Applicant must prepare a PPP in accordance with good engineering practices and must implement the PPP for proper operation and

maintenance of the dairy. The plan describes practices used to limit the discharge of pollutants to surface water in the state. The PPP must include the following provisions:

- A. The facility must have a description of waste handling procedures in its PPP and these procedures are subject to review by TCEQ for compliance with TCEQ rules.
- B. A Nutrient Management Plan (NMP) prepared in accordance with the Texas Natural Resources Conservation Service Practice Standard Code 590. Application rates of wastewater shall not exceed the nutrient uptake (agronomic rate) of cover crop and hydrologic capacity. This helps prevent odors and other nuisance conditions caused by standing water or excess water.
- C. Application of wastewater must be managed to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions.
- D. The owner must conduct a thorough site inspection of the facility to identify all potential pollutant sources. Potential pollutant sources include any activity or material of sufficient quantity that may reasonably be expected to add pollutants to surface water in the state from the facility. The inspection must include all land that is part of the production area and LMUs. An evaluation of pollutant sources shall identify the types of potential pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources.
- E. When manure is stockpiled, it is to be stored in a well-drained area with no ponding of water, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage. Runoff from manure storage piles must be retained on site. If the manure areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff in the case of the design rainfall event, the manure areas must be located within the drainage area of the RCS and accounted for in the design calculations of the RCS.
- F. The solids must be cleaned out of the RCS to prevent the accumulation of solids from exceeding the sludge volume designed for the structure. The Applicant is required to remove solids only when there are favorable wind conditions that carry odors away from nearby receptors.
- G. Carcass disposal must be addressed in the potential pollutant sources section of the PPP with management practices to prevent contamination of surface or groundwater, control access, and minimize odors. Dead animals must be properly disposed of within 3 days of death, unless otherwise provided by the Executive Director.

No discharges of manure or wastewater from this facility are allowed except where rainfall events, either chronic or catastrophic, cause an overflow. Each lagoon must be designed, constructed, and properly operated to contain all stormwater runoff from a 25 year, 10-day storm event (12.2 inches for this dairy) and a minimum of 1-year sludge accumulation. The facility is required to have combined capacity of 22.75 acre-feet storage capacity in the lagoons. The certified capacity of the lagoons total 35.11 acre-feet. Therefore, they have 12.36 acre-feet of additional storage capacity above what is required. The Applicant is required to conduct a preventative maintenance program that includes weekly inspections of all control facilities as well as equipment used for land application of manure and wastewater.

The Applicant is required to report all discharges to the TCEQ; provide a report to the TCEQ to substantiate a chronic rainfall discharge; and collect grab samples for analysis for Biochemical Oxygen Demand, Escherichia coli, Total Dissolved Solids, Total Suspended Solids, Nitrate, Total Phosphorus, Ammonia Nitrogen and pesticides. The Executive Director may require the permittee to submit an engineering evaluation by a licensed Texas Professional Engineer to the TCEQ. The report and engineering evaluation may be used to verify that the facility was maintained and operated according to the permit conditions. Information reviewed may include rainfall records at the CAFO, RCS wastewater levels preceding the discharge, irrigation records, sludge cleanout records and the current sludge volume. This requirement allows for closer scrutiny by TCEQ for discharges resulting from chronic conditions and provides documentation for enforcement of unauthorized discharges.

Discharge of wastewater from irrigation is prohibited, with the exception of a discharge resulting from irrigation events associated with imminent overflow conditions. Precipitation-related runoff from LMUs is allowed by the permit when land application practices are consistent with an NMP. If a discharge from the irrigation system is documented as a violation, the permittee may be required by the Executive Director to install an automatic emergency shutdown or alarm system to notify the permittee of system problems. Illegal discharges may be reported to the TCEQ Regional Office at (254) 552-1900.

Comment #3

Ms. Warden, Mr. and Mrs. Brown, Mr. and Mrs. Ice, and Mr. and Mrs. Welch expressed concern that the proposed new wells drilled at the dairy may affect the water supply and pressure, and may possibly dry up the water wells of neighboring homes, and may lower the water table. Ms. Warden commented further that she feels the permittee should be responsible for drilling new wells for the neighbors if their wells go dry because of the Applicant's proposed new wells.

Response #3

According to the application that was received, Well #5 is an already drilled, domestic water well that the Applicant is proposing to add to the list of onsite wells in the permit. Table 3 of the permit, relating to wells and best management practices, and Attachment D to the permit, showing the well location map, were updated to include the well. The TCEQ does not authorize the drilling of wells in a CAFO but must know how many wells are onsite to ensure that there is adequate protection of groundwater and surface water quality. The CAFO rules at 30 TAC § 321.38(b) and the proposed permit require that the following buffers must be maintained around water wells:

- public drinking water supply wells - 500 feet;
- drinking water wells used for private water supply - 150 feet; or
- water wells used exclusively for agriculture irrigation - 100 feet.

The Executive Director acknowledges the comments; however, the TCEQ does not regulate water well drilling or regulate the levels in water tables. TCEQ does not have the statutory authority to regulate the amount of groundwater that can be pumped from wells. Local and regional groundwater conservation districts may have restrictions on well spacing and pumping. Such restrictions, if they exist locally, are beyond the scope of the draft permit. However, the draft permit does not authorize any invasion of personal rights nor any violation of federal, state, or local laws and regulations.

The Texas Department of Licensing and Regulation and the local Groundwater Conservation District provide authorization to drill non-exempt wells. The local groundwater conservation district regulates pumping of water from groundwater wells. The Middle Trinity Groundwater Conservation District (MTGCD) has jurisdiction over groundwater in Erath County. The public may contact the MTGCD by phone at (254) 965-6705 or by email: mtgcd1@centurylink.net.

Comment #4

Ms. Warden, Mr. and Mrs. Mackey, Mr. and Mrs. Brown, Mr. and Mrs. Ice, and Mr. and Mrs. Welch are concerned about the potential odor. Ms. Warden, Mr. and Mrs. Mackey, Mr. and Mrs. Ice, and Mr. and Mrs. Welch commented further on the associated flies with the odor from this current operation which may worsen if the permit amendment is approved. In addition, Ms. Warden and Mr. and Mrs. Ice are concerned about the diseases that are carried by the flies, which Ms. Warden listed to include cholera, Salmonella, Tuberculosis, conjunctivitis and Typhoid amongst others, including diarrheal diseases and skin and eye infections that the flies can cause.

Response #4

Several requirements in 30 TAC Chapter 321, Subchapter B and the draft permit are designed to address nuisance odors or air pollution conditions. The CAFO rules at 30 TAC § 321.43(j)(1)(A) requires that CAFO facilities be operated in such a manner as to prevent the creation of a nuisance condition as defined by 30 TAC § 321.32(36) (relating to definitions) and Texas Health and Safety Code § 341.011, and as prohibited by 30 TAC § 101.4 (relating to nuisance). The rules also require facilities to operate in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code § 382.003(3). Additionally, the rules require an operator to take the necessary action to identify any nuisance conditions that occur and to take action to abate such conditions as soon as practicable or as specified by the Executive Director. 30 TAC § 321.32(36) defines “nuisance” as:

“Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.”

To obtain an air standard permit, the facility must also meet the requirements of 30 TAC § 321.43. The Applicants’ facility was constructed before August 19, 1998 and meets the odor control plan requirement in 30 TAC § 321.43(j)(2).

In addition to the requirements for the abatement of odor and nuisance condition listed in Response #2 above, the application also included the following site-specific odor control plan in the application:

- A. Pen surfaces will be maintained to reduce ponding.
- B. The manure in the confinement pens will be removed on a regular basis (at least once annually) to prevent the manure from building up in the pens.
- C. Removal of manure and pond solids will be done in favorable wind conditions that carry odors away from nearby receptors. The TCEQ must be notified prior to RCS cleanout.

- D. Land application shall only occur from one hour after sunrise until one hour before sunset, unless written consent is obtained from current occupants of all residences within 1/4 mile of the LMU boundary that receives waste or wastewater.
- E. Dust will be controlled on facility roads with the use of a portable water truck on an as-needed basis to minimize fugitive dust emissions.
- F. Dead animals will be disposed of by a commercial rendering service within 72 hours or composted on site.

The draft permit and applicable rules, if followed, should prevent the Applicant's facility from causing odor or degradation of air quality. However, if any odor or other noncompliance issue is detected by the residents, please call the TCEQ Regional Office in Stephenville at (254) 552-1900 or the or the statewide toll-free number at 1-888-777-3186 to make an odor compliant. Citizens can also file online complaints at: <https://www.tceq.texas.gov/compliance/complaints>. Noncompliance with the terms of the permit may result in an enforcement action against the permittee.

Comment #5

Ms. Warden, Mr. and Mrs. Mackey, Mr. and Mrs. Ice, and Mr. and Mrs. Welch commented further that the rainfall runoff from the dairy, odor, flies, and the associated diseases that these proposed changes will cause or intensify the severity of, will devalue their property. Ms. Warden and Mr. and Mrs. Ice added that finding buyers will be difficult should they decide to sell their property; and Mr. and Mrs. Ice wrote that it will also make finding lenders difficult.

Response #5

The Executive Director acknowledges the significance of these concerns but notes that when reviewing a permit application, the TCEQ does not have the authority nor the jurisdiction to review the effect, if any, the permit might have on property values of nearby landowners. The TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, the Executive Director's review is limited to whether the application and proposed facility design and operation meet the requirements of the applicable TCEQ rules.

The rules do not address fly populations; however, nuisance conditions can have a direct relationship to the occurrence of fly populations and breeding ground and are controlled by the facility through best management practices (BMPs). BMPs are required by TCEQ rules and the proposed permit, and if properly implemented, should reduce the potential for insect and fly breeding. For example, the stockpiling of manure decreases the surface of the manure exposed to breeding flies.

However, the permit does not limit the ability of adjacent property owners to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property. If any noncompliance issue is detected by the residents, please call the TCEQ Regional Office in Stephenville at (254) 552-1900 or the or the statewide toll-free number at 1-888-777-3186 to make an odor compliant. Citizens can also file online complaints at: <https://www.tceq.texas.gov/compliance/complaints>. Noncompliance with the terms of the permit may result in an enforcement action against the permittee.

Comment #6

Mr. and Mrs. Monsour commented that the requested changes to the dairy, including the addition of a well and reconfiguration of the drainage areas, are of concern to them, but that the notice did not include details and such they could not determine the extent of the expansion and the potential environmental impact.

Response #6

The TCEQ issues notices that provide basic information about the application and include information about where the public may view a copy of the full application as well as contact information for the TCEQ and the applicant that the public may use to learn more about the application, facility, and related details. Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building E, Room 103 (Central Records, for existing or past permits), or Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, proposed permit, factsheet, and the Executive Director's preliminary decision have been available for viewing and copying at the TCEQ Region 4, Stephenville Office, 580 West Lingleville Road, Suite D, Stephenville, Texas 76401.

As stated above (Responses #1 through #4), the permit, if issued, is protective of human health and the environment. The Executive Director has reviewed the permit application in accordance with the applicable law, policy and procedures, and TCEQ's mission to protect our state's human and natural resources consistent with sustainable economic development. Therefore, the Executive Director has considered the public's concerns to the extent of his authority.

If the public is concerned about potential violations of the CAFO permit, the public may contact TCEQ's Region Office in Stephenville at (254) 552-1900 or the statewide toll-free number at 1-888-777-3186 or may file a complaint on line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>. TCEQ's regional staff investigates public complaints and the agency takes appropriate enforcement action if the investigator documents a violation.

Comment #7

Ms. Warden commented that the letter sent out by the TCEQ to the owners of neighboring properties to the dairy to notify them that they can request a public meeting was a false statement. According to her, four neighbors submitted a public hearing request when they received the first notice, and 15 neighbors were interested in a public hearing. She commented further that the TCEQ was notified that the changes to the CAFO operation were already made before the permit was ever issued, and the neighbors are disappointed and feel there was a disregard for the rights of property owners to protect the value and health of their lands, homes and families as individual property owners.

Response #7

The major amendment application is still in the permitting process and the draft permit has not been issued. The current stage of the permitting process is that the Executive Director has issued the response to all timely comments. After issuance of the response, all commenters will have an opportunity to submit a hearing request on the application. All timely hearing requests will be considered by the Commissioners at a regularly scheduled Commission Agenda meeting. The two public notices (notice of receipt of application and intent to obtain water quality permit (NORI) and notice of

application and preliminary decision for CAFO water quality permit (NAPD)) that were issued by the TCEQ and mailed to adjacent landowners regarding a pending major amendment application for this dairy are correct, and the information that they conveyed is consistent with the TCEQ's rules.

III. CHANGES MADE TO THE PERMIT IN REPOSE TO PUBLIC COMMENTS

No changes were made to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker

Executive Director

Robert Martinez, Deputy Director

Environmental Law Division



Jessie Spears, Staff Attorney

Environmental Law Division

State Bar No. 24121839

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

(512) 239-5641

(512) 239-0606 (fax)

REPRESENTING THE

EXECUTIVE DIRECTOR OF THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 16, 2021, the Executive Director's Response to Public Comment" for Permit No. WQ0003290000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Jessie Spears, Staff Attorney
Environmental Law Division
State Bar No. 24121839