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SOAH DOCKET NO. 582-22-2095  
TCEQ DOCKET NO. 2021-1216-MWD

APPLICATION BY STUDIO ESTATES,	§	BEFORE THE STATE OFFICE
L.L.C. FOR NEW TEXAS POLLUTANT	§	OF
DISCHARGE ELIMINATION SYSTEM	§	ADMINISTRATIVE HEARINGS
PERMIT NO. WQ0015933001	§	

**APPLICANT’S REPLY TO GBRA’S EXCEPTIONS TO PROPOSAL FOR DECISION**

COMES NOW, STUDIO ESTATES, LLC (“Studio Estates” or “Applicant”) and files its Reply to GBRA’s Exceptions to Proposal for Decision, and in support thereof would show the following.

**I. SUMMARY**

The Administrative Law Judge (“ALJ”) correctly applied the facts to the applicable law in developing the proposal for decision (“PFD”). The protestant’s exceptions to the PFD do nothing to call into question the correctness of the PFD. Studio Estates urges that the ALJ reject the protestant’s exceptions and proposed corrections to the PFD.

**II. DISCUSSION**

The protestant asks the ALJ to reverse the reasoned decision set out in the PFD based on two issues: (1) the applicability of the 2008 Plan; and (2) a comparison to other area permits.

**A. The 2008 Plan**

The protestant again seeks to turn the 2008 Plan into something it is not. It does so with a variety of statements and characterizations that are not supported anywhere in the record (and for which there are no citations to the record). As correctly set out in the PFD and supported in the record, the 2008 Plan is a “guidance document” and a “voluntary, non-regulatory alternative to addressing water quality issues.” PFD at p. 9. The protestant’s position regarding the relevance of the 2008 Plan conflicts with position of OPIC and all other parties to the proceeding, as well as the protestant’s own representative. Transcript at 31:11-18.

Regarding EPA and the 303(d) list, the PFD reflects a thorough evaluation of that issue and a proper rejection of the protestant's position that EPA's evaluation of the Plan requires TCEQ compliance with the Plan. As the ALJ succinctly captures it, "removal from the list based on voluntary action does not turn the voluntary action into a regulatory standard. Non-parties to the agreement are not subject to it." PFD at p. 17. The protestant's assertions that TCEQ is a "partner" in the plan, that it has an obligation to consider the plan in evaluating discharge applications, and other such assertions the protestant offers in its exceptions are incorrect and have no basis in the record. Mr. Urrutia, the protestant's representative, confirmed that the TCEQ was not among the authors of the voluntary plan, that TCEQ did not adopt any rules in any way adopting the plan, and, critically, that TCEQ has no obligation to follow the plan in evaluating domestic wastewater discharge permits. Transcript at 36:1-24.

### **B. Protectiveness of Water Quality**

The protestant argues that because several other facility permits in the area contain nutrient limits, the Studio Estates' permit should therefore contain such limits. The PFD correctly considered and rejected that argument. The ALJ notes in the PFD that GBRA did not present evidence from modelers or any other experts to support its assertion regarding the impacts of discharge. PFD at p. 18. The ALJ also correctly relies on the evidence in the record that the ammonia nitrogen limits set out in the referenced permits were properly considered by the ED and determined to be unnecessary because, given the distance from Plum Creek, the constituents would not make it to Plum Creek. PFD at p. 18. And, the PDF properly recognizes that the protestant did not present any evidence to suggest that the ED was required to or should have conducted more than the Tier 1 antidegradation review in developing the effluent limits. PFD at p. 18. Ultimately, while the protestant asserts that the Draft Permit is not protective of water quality in the Plum Creek watershed, the protestant does nothing other than point to certain area permits with more restrictive effluent limits to support that broad position.

### **III. CONCLUSION**

Studio Estates asserts that the PFD is correct in all respects and that the ALJ should reject the protestant's exceptions and proposed corrections to the PFD.

Respectfully submitted,

**GREGG LAW PC**



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***ATTORNEYS FOR APPLICANT  
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CERTIFICATE OF SERVICE

I hereby certify by my signature above, that a true and correct copy of the foregoing has been served via email to the parties below on December 29, 2022.

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