

TCEQ DOCKET NO. 2021-1216-MWD

APPLICATION BY	§	BEFORE THE TEXAS
Studio Estates LLC	§	COMMISSION ON
TPDES No. WQ0015933001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. RECOMMENDATION

The Executive Director (ED) recommends that the Commission find that the Guadalupe-Blanco River Authority is not an affected person and deny its hearing request.

II. INTRODUCTION

The ED of the Texas Commission on Environmental Quality (TCEQ) files this Response to Hearing Request on the application submitted by Studio Estates LLC for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015933001. Attachment A includes a satellite map of the area for Commission consideration.

The following persons submitted timely hearing requests:

Courtney Kerr-Moore, representing GBRA.

There were no Motions for Reconsideration submitted.

III. FACILITY DESCRIPTION

Studio Estates LLC has applied to the TCEQ for new TPDES Permit No. WQ0015933001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.075 million gallons per day (MGD) in the Interim phase and a daily average flow not to exceed 0.15 MGD in the Final phase. The proposed wastewater treatment facility (WWTF) will serve a multitude of proposed office buildings, restaurants, warehouses, and grocery/retail stores.

The facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim phase will include a bar screen, a flow equalization basin, an aeration basin, a final clarifier, a sludge digester, and a chlorine

contact chamber. Treatment units in the Final phase will include a bar screen, a flow equalization basin, two aeration basins, two final clarifiers, two sludge digesters, and two chlorine contact chambers. The facility has not been constructed.

The WWTF will be located approximately 1.03 miles southeast of the intersection of Goforth Road and Niederwald Strasse Road, in Hays County, Texas 78640. The treated effluent will be discharged to Brushy Creek, thence to Soil Conservation Service (SCS) Site 14 Reservoir, thence to Brushy Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Brushy Creek. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. Aquifer Protection applies to the contributing, recharge, and transition zones of the Edwards Aquifer. The discharge point and the discharge route are downstream of the contributing, recharge, and transition zones of the Edwards Aquifer and therefore aquifer protection does not apply. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

In accordance with 30 Texas Administrative Code (TAC) Section (§) 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The effluent limitations in the Interim phase of the draft permit, based on a 30-day average, are 20 milligrams per liter (mg/l) five-day biochemical oxygen demand (BOD₅), 20 mg/l total suspended solids (TSS), 126 colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. Coli*) per 100 milliliters (ml), and 3.0 mg/l minimum dissolved oxygen (DO). The effluent limitations in the Final phase of the

draft permit, based on a 30-day average, are 10 mg/l BOD₅, 15 mg/l TSS, 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum DO. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

IV. PROCEDURAL BACKGROUND

The TCEQ received the permit application on October 1, 2020, and declared it administratively complete on December 18, 2020. The ED completed the technical review of the application on March 15, 2021, and prepared the proposed permit which, if approved, would establish the conditions under which the facility must operate.

The Notice of Receipt of Application and Intent to Obtain Permit was published in English on January 13, 2021, in *The Daily Record* and in Spanish on January 12, 2021, in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision was published in English on May 6, 2021 in *The Daily Record* and in Spanish on May 18, 2021, in *La Prensa Comunidad*. The comment period ended on June 17, 2021. The ED's Final Decision and Response to Comments was mailed on August 10, 2021. The Hearing Request/Request for Reconsideration period ended on September 9, 2021.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

V. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The ED, the Office of Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- whether the issues are relevant and material to the decision on the application;
- and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person.

For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.

Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;

- distance restrictions or other limitations imposed by law on the affected interest;

- whether a reasonable relationship exists between the interest claimed and the activity regulated;

- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- likely impact of the regulated activity on use of the impacted natural resource by the person;

- whether the requestor timely submitted comments on the application which were not withdrawn; and

- for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

- the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

- the analysis and opinions of the executive director; and

- any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

VI. ANALYSIS OF THE REQUESTS

Analysis of the Hearing Requests

The ED has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Individual Requesters Meet the Affected Person Requirements

Guadalupe-Blanco River Authority (GBRA)

GBRA submitted a timely hearing request in writing; provided the required contact information; and raised the issues that are the basis of its hearing request in its timely comments.

GBRA stated that it is an affected person because: (1) the proposed WWTF and discharge are located within its ten-county statutory district; (2) GBRA’s enabling act grants it authority to preserve the waters of any rivers or streams in its district; (3) Section 26.171 of the Texas Water Code (TWC) authorizes GBRA to inspect the public water in its area to determine if the quality of the water meets the state water quality standards, to determine if persons discharging effluent into the public water have obtained permits, and to determine if those permit holders are complying with the

requirements of the permit; and (4) GBRA has a WWTF that discharges into the same segment of Plum Creek as the proposed WWTF.

Based on the authority cited, the ED recommends that the Commission not find GBRA as an affected person for the following reasons: (1) the general authority in GBRA's enabling act over water quality in its territory is not specific enough to demonstrate how GBRA will be affected by the proposed discharge without further evidence of how it will be affected in a manner not common to the general public; (2) TWC 26.171 does not indicate that its intent was to qualify a local entity as an affected person with respect to a specific discharge application within its district; and (3) the existence of a WWTF discharging to the same segment does not demonstrate any personal justiciable interest without further explanation of how it will be affected in a manner not common to the general public.

B. Whether Issues Raised Are Referable to SOAH for a Contested Case Hearing

The ED has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the Response to Comments. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.¹ The issues raised for this application follow.

Issue 1. Whether the final phase should include ammonia nitrogen and total phosphorus limits? (RTC No. 1)

The issue was raised by GBRA during the comment period. The issue involves a disputed question of fact, was not withdrawn, and is relevant and material to the issuance of the draft permit.

Issue 2. Whether the standards in the draft permit will be protective of water quality? (RTC No. 1)

The issue was raised by GBRA during the comment period. The issue involves a disputed question of fact, was not withdrawn, and is relevant and material to the issuance of the draft permit.

¹ Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

Issue 3. Whether the proposed permit is consistent with similar permits issued in the area? (RTC No. 2)

The issue was raised by GBRA during the comment period. The issue involves a disputed question of fact and was not withdrawn. However, there is no requirement for permits to be consistent with one another.

Issue 4. Whether the proposed permit is inconsistent with best management practices? (RTC No. 2)

The issue was raised by GBRA during the comment period. The issue involves a disputed question of fact and was not withdrawn. However, this issue is too vague to refer.

Issue 5. Whether the proposed permit is inconsistent with the Plum Creek Watershed Protection Plan? (RTC No. 2)

The issue was raised by GBRA during the comment period. The issue involves a disputed question of fact and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit.

VII. CONTESTED CASE HEARING DURATION

If there is a contested case hearing on this application, the ED recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VIII. CONCLUSION

The ED recommends the following actions by the Commission:

1. The ED recommends that the Commission not find GBRA as an affected person and deny its hearing request.
2. If referred to SOAH, the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by an affected person as identified by the Executive Director:

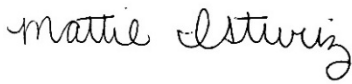
- Issue 1. Whether the final phase should include ammonia nitrogen and total phosphorus limits; and*
- Issue 2. Whether the standards in the draft permit will be protective of water quality.*

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

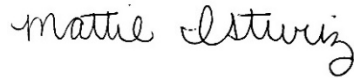
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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on December 13, 2021, the “Executive Director’s Response to Hearing Requests” for Permit No. WQ0015933001 was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk.



Mattie Isturiz, Staff Attorney
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DOCKET NO. 2021-1216-MWD; PERMIT NO. WQ0015933001**

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Studio Estates, LLC

New TPDES No. WQ0015933001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

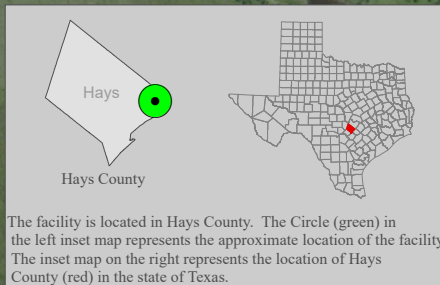
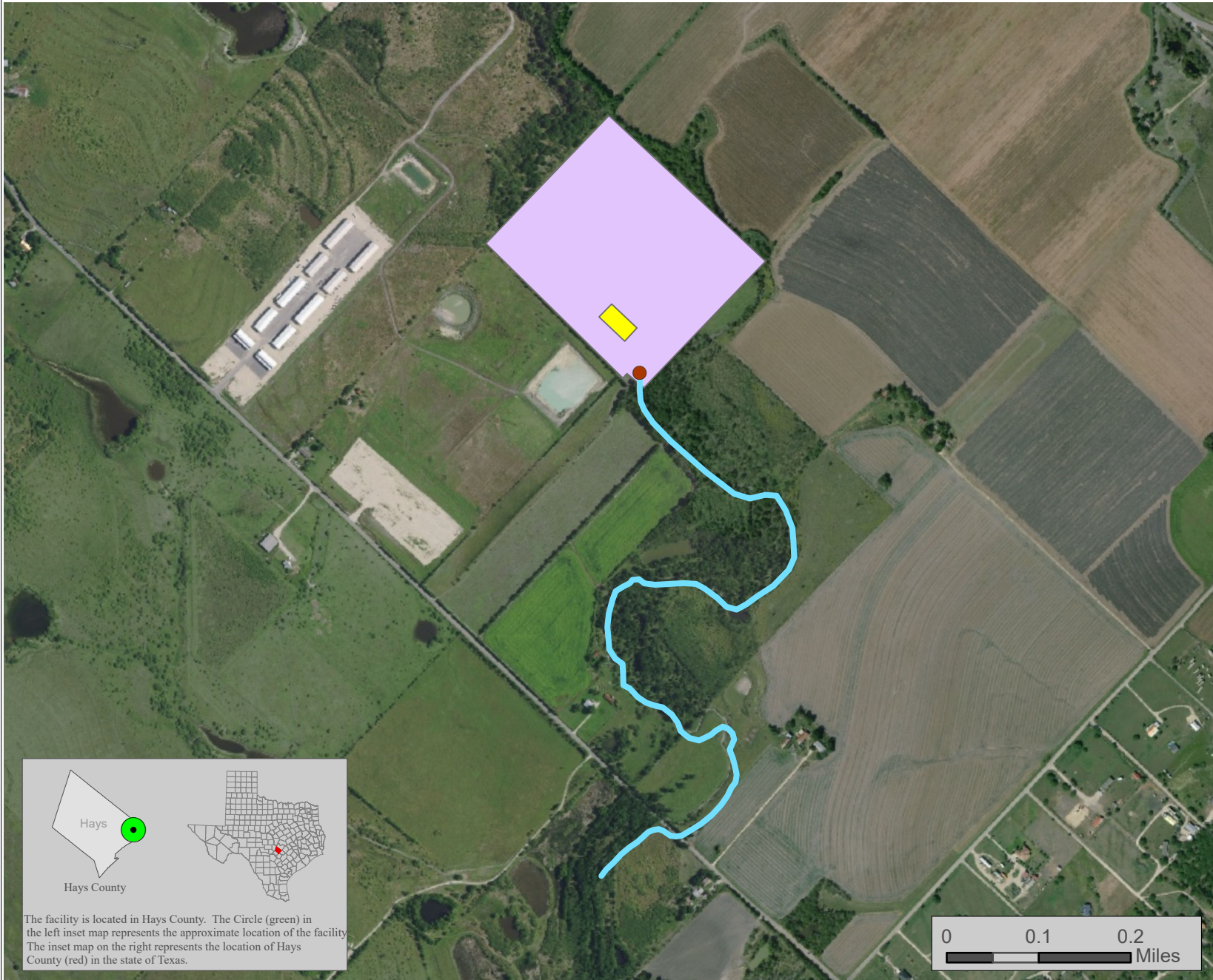


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
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Date: 10/1/2021
CRF 0059639
Cartographer: drfernan



- Outfall
- 1 Mile Discharge Route
- WWTP Boundary
- Property Boundary



The facility is located in Hays County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Hays County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

