

**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	§	

**GUADALUPE-BLANCO RIVER AUTHORITY’S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now the Guadalupe-Blanco River Authority (GBRA), Protestant in this matter, and files these Exceptions to the Proposal for Decision (PFD) and, in support thereof, would show the following:

I. INTRODUCTION

GBRA excepts to the Administrative Law Judge’s (ALJ) recommended action, proposed Findings of Fact, and proposed Conclusions of Law. The proposed Texas Pollution Discharge Elimination Program (TPDES) permit that is the subject of this proceeding that would allow the Applicant, Studio Estates L.L.C. (“Applicant”) to discharge a daily average flow of 150,000 gallons per day of treated wastewater (Draft Permit) is not protective of water quality in the Plum Creek watershed, and issuance of such a permit is contrary to the agreed-upon measures in the 2008 Plum Creek Watershed Protection Plan (2008 Plan).

II. EXCEPTIONS AND CORRECTIONS

A. Exceptions to the PFD’s analysis and recommendations regarding the 2008 Plan that was approved by the TCEQ.

In 2008, thirty local, state, and federal entities, including the Texas Commission on Environmental Quality (“TCEQ”), worked together to create the 2008 Plan to restore water quality in the Plum Creek watershed. A key component of this 2008 Plan is a provision that all

wastewater treatment facilities would work towards a permit treatment level of 5 mg/L biochemical oxygen demand (BOD), 5 mg/L total suspended solids (TSS), 2 mg/L ammonia nitrogen (NH₃), and 1 mg/L total phosphorus (TP) (“5-5-2-1 Effluent Limit”) for new facilities and voluntary action by existing plants. GBRA Exhibit No. 4, Page 75 (Bates No. 000113). Although the ALJ is correct in stating that the Applicant did not agree to follow the 2008 Plan, the TCEQ, as the agency with the authority to issue wastewater discharge permits, *did* approve the 2008 Plan and agreed to abide by its recommendations. In fact, TCEQ’s participation and commitment to the 2008 Plan was instrumental in the Environmental Protection Agency’s (EPA) review of Texas’ 2010 submittal under Section 303(d) of the Clean Water Act. *See* GBRA Exhibit No. 6, Pages 10-26 (Bates Nos. 000292-000308). The EPA determined that the alternative pollution control requirements agreed upon in the 2008 Plan would result in water quality standards attainment in the Plum Creek watershed, and therefore authorized moving Segment 1810, which includes the Plum Creek watershed, from the 303(d) list to the 4b category. GBRA Exhibit No. 6, Pages 10-11 (Bates Nos. 000292-000294). Ignoring the 2008 Plan, the Executive Director is now recommending the issuance of the Permit without a 5-5-2-1 Effluent Limit. In its preliminary decision and final decision, the Executive Director asserted that the Application met the requirements of law, and proposed the Draft Permit. However, the Executive Director failed to consider the 2008 Plan in preparing the Draft Permit – a document with the primary purpose of protecting water quality in the Plum Creek watershed. GBRA excepts to and recommends rejection of Findings of Fact 32 and 33, which states that:

“ 32. The [2008] Plan describes itself as “a guidance document” and notes that it is “a voluntary, non-regulatory alternative to addressing water quality issues.”

33. The TCEQ assisted with the creation of the [2008] Plan but has not adopted its standards.”

GBRA also excepts to and recommends rejection of Conclusions of Law 9 which states that:

“The [2008] Plan’s standards are not regulatory, and the TCEQ is not required to follow them in issuing permits.”

GBRA additionally excepts to and recommends correction of Conclusions of Law 38 as follows:

“Segment 1810 has been removed from the 303(d) list, the state’s list of impaired and threated waters. The EPA removed Segment 1810 from the 303(d) list in 2010 because it determined that pollution control requirements contained in the Plum Creek Watershed Protect Plan and agreed to implemented by local and state entities, including TCEQ, would work to achieve water quality standards.”

GBRA disagrees with this characterization of the 2008 Plan and its importance in actions taken by the Executive Director on behalf of TCEQ. TCEQ was not only involved with the creation of the 2008 Plan, but approved the 2008 Plan and then presented it to EPA as evidence of alternative pollution control requirements that would be implemented to avoid listing Segment 1810 on the 303(d) list. EPA relied on this representation that alternative pollution control requirements, such as a 5-5-2-1 Effluent Limit in discharge permits in the watershed, would be implemented. GBRA Exhibit No. 6, Pages 10-11 (Bates Nos. 000292-

000294). Now, the Executive Director is choosing to disregard the 2008 Plan in drafting permits affecting water quality, such as the Draft Permit.

The PFD includes several statements representing that the 2008 Plan is not a regulatory document, and that the TCEQ is not obligated to follow provisions in the 2008 Plan when issuing wastewater discharge permits. *See* Findings of Fact 32, 33; Conclusions of Law 9. It is not disputed that 2008 Plan, with dozens of entities participating in the partnership and creation of the document, is not a regulatory document. It is a guidance document that should be used to inform decisions, including those of the TCEQ when permitting new facilities. The Executive Director should not ignore the recommendations in the 2008 Plan, or the fact that Plum Creek is listed on the 2020 Texas Integrated Report – Waterbodies with Concerns for Use Attainment and Screening Levels. *See* Leug Cross, Page 78, Lines 11-15. The Executive Director should have at least considered the recommendations in the 2008 Plan when preparing the Draft Permit, and should encourage those that seek the privilege of discharging wastewater into state waters to adhere to the 2008 Plan’s recommendations. As the state entity with the authority to implement plan measures, such as the 5-5-2-1 Effluent Limit in discharge permits in the watershed, TCEQ’s role in creation and approval of the 2008 Plan was seen as a crucial commitment to the implementation of the 2008 Plan. Instead, the Executive Director is ignoring the recommendations that TCEQ agreed to in the 2008 Plan, and is recommending the Draft Permit with interim limits of 20 mg/L BOD and 20 mg/L TSS, and final limits of 10 mg/L BOD and 15 mg/L TSS, and no water quality limits relating to nutrients. Such effluent limits are not protective of water quality in the Plum Creek watershed, and are contrary to the goals in the 2008 Plans to restore water quality in the Plum Creek watershed. The Executive Director’s recommendation in the Draft Permit is also concerning because it sends a message

to the other partners in the 2008 Plan as well as future permit applicants that even though the TCEQ committed to implementation of the goals in the 2008 Plan, the Executive Director is not willing to include wastewater discharge permit conditions consistent with the 2008 Plan. The Executive Director's unwillingness to even consider the 2008 Plan in reviewing Plum Creek watershed permit applications could discourage other partners from following the 2008 Plan, and the partners to the Plan will have a difficult time meeting plan objectives. If inadequate progress is made in meeting the milestones in the 2008 Plan and subsequent updates, the "EPA will take appropriate action to add...Plum Creek to the 303(d) list...". GBRA Exhibit No. 6, Page 22 (Bates No. 000304).

B. Exceptions to the PFD's analysis and recommendations regarding whether the Draft Permit is protective of water quality in the Plum Creek watershed.

GBRA excepts to the PFD's statements that the Draft Permit is protective of water quality in the Plum Creek watershed. *See* Findings of Fact 11. The Executive Director's recommendation of the Draft Permit is contrary to the public policy of the Clean Water Act and water quality standards, and the Draft Permit is not protective of water quality in the Plum Creek watershed. The Draft Permit allows the Applicant to discharge effluent with limits of only 20 mg/L BOD and 20 mg/L TSS. Such permit limits are not protective of a watershed of concern. Not only is the permit limit of 20 mg/L BOD and 20 mg/L TSS one of the least stringent permit levels possible, there is no other municipal wastewater discharge permit in the Plum Creek watershed that allows a discharge of 20 mg/L BOD and 20 mg/L TSS, and no other municipal wastewater discharge permit in the watershed excludes a limit on ammonia nitrogen. The following Table 1 lists the discharge permits in the Plum Creek watershed – all permits that have been admitted as exhibits as GBRA Exhibits 9-23. Table 1 demonstrates the

disparity of the Draft Permit in comparison to other permits similar in flow within Segment 1810. The Draft Permit for Studio Estates is not only significantly less restrictive in the interim phase than other permits, but in both the interim and final phases, it is the only permit without an ammonia nitrogen effluent limit.

GBRA Exhibit No.	Permittee Name	Permit Number	Permit Phase	Flow Limit in MGD	Effluent Limits CBOD/TSS/Ammonia Nitrogen/Total Phosphorus in mg/l
23	Plum Creek Utility Company LLC	15635-002	Interim 1	0.02	10-15-3-1
20	Windy Hill Utility Co., LLC	15478-001	Interim 1	0.03	5-5-2-2
17	Aqua Texas, Inc.	13293-001	Final	0.0424	10-15-3
21	Walton Texas, LP	15323-001	Interim 1	0.06	5-5-2-1
9	Continental Homes of Texas, L.P. and Ky-Tex Properties, LLC	15940-001	Interim 1	0.066	7-15-2-0.5
16	Aus-Tex Parts & Services	14060-001	Interim 1	0.075	10-15-Report
16	Aus-Tex Parts & Services	14060-001	Interim 2	0.075	10-15-3
ED-9	Studio Estates, LLC	15933-001	Interim	0.075	20-20
23	Plum Creek Utility Company LLC	15635-002	Interim 2	0.09	10-15-3-1
15	Walton Texas, LP	14439-001	Interim 1	0.1	10-15-3
20	Windy Hill Utility Co., LLC	15478-001	Interim 2	0.12	5-5-2-1
16	Aus-Tex Parts & Services	14060-001	Final	0.12375	10-15-3
23	Plum Creek Utility Company LLC	15635-002	Final	0.15	10-15-3-1
ED-9	Studio Estates, LLC	15933-001	Final	0.15	10-15
21	Walton Texas, LP	15323-001	Interim 2	0.25	5-5-2-1
9	Continental Homes of Texas, L.P. and Ky-Tex Properties, LLC	15940-001	Interim 2	0.251	7-15-2-0.5
15	Walton Texas, LP	14439-001	Interim 2	0.33	10-15-3
22	Walton Texas, LP	15064-001	Interim	0.35	10-15-2-0.5
19	North Hays Municipal Utility District No. 1	14431-00	Interim	0.372	5-5-2-1
20	Windy Hill Utility Co., LLC	15478-001	Interim 3	0.4	5-5-2-1
21	Walton Texas, LP	15323-001	Final	0.42	5-5-2-1
9	Continental Homes of Texas, L.P. and Ky-Tex Properties, LLC	15940-001	Final	0.495	7-15-2-0.5
18	Sunfield/GBRA	14377-001	Interim 1	0.5	5-5-2-1
18	Sunfield/GBRA	14377-001	Interim 2 - Outfall 2	0.6	5-5-2-0.5

Table 1

Additionally, a permit that does not, in the interim phase nor the final phase, impose an ammonia nitrogen or total phosphorus limit on the proposed discharge, which is not protective of water quality. Ammonia nitrogen and total phosphorus limits are nutrient limits imposed to protect the receiving waters from elevated nutrient levels that cause algae blooms. Partners in the 2008 Plan, including the TCEQ, agreed to work to achieving the permit discharge levels of a 5-5-2-1 Effluent Limit, which would include an ammonia nitrogen and total phosphorus

limit, to ensure that water quality within the Plum Creek watershed is protected and restored. Every permit authorizing the discharge of treated wastewater into the Plum Creek watershed has at least an ammonia nitrogen limit, and almost half of these permits also have a total phosphorus limit.

The Executive Director made the determination not to include an ammonia nitrogen or total phosphorus limit in the Draft Permit without any on-site analysis regarding the wastewater discharge, and no nutrient screening was performed to confirm that nutrient limits would not be needed. Leug Cross, Page 83, Lines 22-25; Page 84, Lines 1-5. Later in cross examination, TCEQ's expert recognized that excluding nutrient limits from the Draft Permit was in error when scoring most of the screening criteria as "moderate" or "high" level of concern, thus warranting limits on nutrients in the Draft Permit. Leug Cross, Page 85, Lines 1-25; Page 86, Lines 1-25; Page 87, Lines 1-25; Page 88, Lines 1-16. In other words, at the time the Draft Permit was prepared, the Executive Director did not adequately evaluate the Plum Creek watershed to determine whether nutrient limits were needed, but later recognized that nutrient limits should have been considered for the Draft Permit.

GBRA excepts to and recommends rejection of Conclusions of Law 12 which states:

"The Draft Permit's effluent limitations are protective of water quality in the receiving waters."

GBRA excepts to the above-referenced Findings of Fact and Conclusions of Law as the Draft Permit does not meet the legal requirements because the effluent limits in the Draft Permit are not protective of water quality in the Plum Creek watershed.

C. Exceptions to the recommended actions.

GBRA disagrees with the PFD's recommendation to grant the Draft Permit with the 20 mg/L BOD and 20 mg/L TSS effluent limits requested by the Applicant. Based on the reasons cited above, GBRA asserts that issuance of the Draft Permit should not be granted. In the alternative, if the Draft Permit is to be issued, GBRA asserts that the Draft Permit should contain an 5-5-2-1 Effluent Limit. If a 5-5-2-1 Effluent Limit is not included in the Draft Permit, GBRA requests that the PFD recommend that the Draft Permit include an ammonia nitrogen and total phosphorus limit of 2 and 1 respectively and that the Commission adopt such limits for the Draft Permit.

III. CONCLUSION AND PRAYER

GBRA respectfully requests that the Commission grant its exceptions and recommend the PFD with the corrections as set out above. GBRA requests any other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, a true and correct copy of the above and foregoing document was served on all parties on the mailing list via electronic or regular mail.

Emily W. Rogers
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