DOCKET NO. 2022-0274-MWD

APPLICATION BY§BEFORE THEPARADISE INDEPENDENT SCHOOL§TEXAS COMMISSIONDISTRICT FOR TPDES PERMIT§ONNO. WQ0013439001§ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by the Paradise Independent School District ("Applicant" or "Paradise ISD") to renew existing TCEQ Permit Number WQ0013439001 and the ED's preliminary decision. The Office of the Chief Clerk received a contested case hearing request (CCH) from Billy Paddack.

Attached for Commission consideration are the following:

Attachment A--- Compliance History Report

Attachment B— Executive Director's Satellite Map

Description of Facility

The Applicant applied for a permit renewal to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day (gpd). The facility is located at 338 School House Road, Paradise, in Wise County, Texas 76073. The Wastewater Treatment Facility (WWTF) served Paradise Independent School District.

Treatment units include an equalization basin, grinder pumps, a flow splitter box with bar screens, two aeration basins, two final clarifiers, two aerobic digesters, and two chlorine contact chambers. The facility is in operation.

The effluent limitations of the draft permit, based on a 30-day average, are 20 mg/l five-day biochemical oxygen demand (BOD_5), 20 mg/l total suspended solids (TSS), 126 CFU or MPN of *E. coli* per 100 ml, and 2.0 mg/l minimum dissolved oxygen (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.

The treated effluent is discharged to an unnamed tributary, thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 0810 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

Segment No. 0810 is currently listed on the state's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria in water in the lower 25 miles of the segment (Assessment Unit 0810_01). This facility is designed

to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Procedural Background

The application was received on May 11, 2021, and declared administratively complete on June 24, 2021. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in English on June 30, 2021 in the *Wise County Messenger*. The application was determined technically complete on August 13, 2021. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on October 13, 2021, in the *Wise County Messenger*. The comment period for this application closed on November 12, 2021. This application was filed on or after September 1, 2015; therefore, it 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. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

The Evaluation Process for Hearing Requests

House Bill 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. Senate Bill 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 Executive Director, the Office of the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1. whether the requestor is an affected person;
- 2. whether issues raised in the hearing request are disputed;

- 3. whether the dispute involves questions of fact or of law;
- 4. whether the issues were raised during the public comment period;
- 5. 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 ED's RTC;
- 6. whether the issues are relevant and material to the decision on the application; and
- 7. a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e)

Hearing Request Requirements

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 filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1. give the name, 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;
- 2. 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;
- 3. request a contested case hearing;
- 4. 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
- 5. provide any other information specified in the public notice of application.
- 30 TAC § 55.201(d).

Requirement that Requestor be an "Affected Person" as defined in the rules

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.

- 1. 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.
- 2. 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.
- 3. In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - 1. whether the interest claimed is one protected by the law under which the application will be considered;
 - 2. distance restrictions or other limitations imposed by law on the affected interest;
 - 3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - 4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - 5. likely impact of the regulated activity on use of the impacted natural resource by the person;
 - 6. whether the requestor timely submitted comments on the application which were not withdrawn; and
 - 7. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203

- 4. In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
 - 1. 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;
 - 2. the analysis and opinions of the executive director; and
 - 3. 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 (SOAH)

"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.

TAC § 50.115(c).

Permit Applications Where There is No Right to a Contested Case Hearing

30 TAC § 55.201(i)(5) outlines when a renewal or amended permit application proposed to be issued under the Texas Water Code, Chapter 26, is not subject to a contested case hearing. A permit renewal or amendment is not subject to a contested case hearing when:

(A) The applicant is not applying to:

- (i) increase significantly the quantity of waste authorized to be discharged; or
- (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.
- 30 TAC § 55.201(i)(5).

Analysis of the Requests

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules and if the requestor qualifies as an affected person.

Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d)

(1) Billy Paddack submitted a timely contested case hearing request in writing that raised issues presented during the public comment period that have not been withdrawn. Mr. Paddack provided contact information and raised disputed issues. Mr. Paddack raised issues regarding: 1) accuracy of the discharge route; 2) standing water in the stock pond of another individual; 3) an alternative discharge route; 4) accuracy of the map in the application.

The Executive Director recommends the Commission find that the hearing request of Billy Paddack substantially complied with 30 TAC §§ 55.201(c) and (d).

There Is No Right to a Contested Case Hearing on this Renewal Application

This is an application for a renewal to an existing Texas Pollutant Discharge Elimination System Permit No. WQ0013439001 and the Commission must determine whether there is a right to a contested case hearing. The contested case hearing request in this case should be denied under TWC § 26.028(d) and 30 TAC § 55.201(i)(5), because there is no right to a contested case hearing for this permit renewal.

According to TCEQ rules, 30 TAC § 55.201(i)(5), there is no right to a contested case hearing for applications that seek to renew or amend a permit under Texas Water Code, Chapter 26, if: (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, (2) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged, (3) any required opportunity for public meeting has been given, (4) consultation and response to all timely received and significant public comment was done, and (5) the Applicant's compliance history for the previous five years raises no issues regarding the Applicant's ability to comply with a material term of the permit.

The Paradise ISD application seeks to renew Texas Pollutant Discharge Elimination System Permit No. WQ0013439001. The Paradise ISD permit was previously renewed in 2017. Effluent limitations and monitoring requirements in the draft permit remain the same as the existing permit effluent limitations and monitoring requirements. This permit renewal would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. Paradise ISD is not applying to increase the quantity of wastewater authorized to be disposed of. Therefore, the ED recommends finding that the application does not materially change the place or pattern of wastewater disposal from the existing permit and that the permit will maintain the quality of waste authorized to be discharged. Required opportunity for a public meeting has been given, only one public comment request was received. The Applicant has a satisfactory compliance history classification and an 8.69 numerical rating. See Attachment A. The Applicant has demonstrated its general ability to operate the facility in compliance with the permit. Therefore, the Applicant's compliance history raises no issues regarding the Applicant's ability to comply with the material terms of the permit.

The Executive Director recommends finding that this permit renewal application meets all of the conditions in 30 TAC § 55.201(i)(5) and that there is no right to a contested case hearing in this case.

Whether the Requestor Meets the Affected Person Requirements

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person, and recommends the Commission find Billy Paddack is not an affected person. Mr. Paddack failed to demonstrate that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. According to the address provided in his hearing request, Mr. Paddack lives approximately .97 miles from the facility. *See* Attachment B. Mr. Paddack raised issues regarding to the accuracy of the discharge route, standing water in the stock pond of another individual, an alternative discharge route, and accuracy of the map in the application. Mr. Paddack's request did not illustrate how the issues raised would impact him personally. Thus, he failed to illustrate a personal justiciable interest in the permit application. The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person, and recommends the Commission find that Billy Paddack is not an affected person.

<u>Therefore, the Executive Director recommends that the Commission find that</u> <u>Billy Paddack is not an affected person.</u>

Conclusion

The Executive Director recommends the following actions by the Commission:

- 1) Find that there is no right to a contested case hearing on this application under TWC § 26.028(d) and 30 TAC § 55.201(i)(5);
- 2) Find that Billy Paddack is not an affected person; and
- 3) Deny Mr. Paddack's hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Charmaine Backens, Deputy Director Environmental Law Division

Bobby Salehi, Staff Attorney Environmental Law Division State Bar No. 24103912 P.O. Box 13087, MC 173 Austin, Texas 78711-3087 Phone: (512) 239-5930 Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 23, 2022, the "Executive Director's Response to Hearing Request" for renewal of TCEQ Permit WQ0013439001 for Paradise ISD was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

Bobby Salehi, Staff Attorney

MAILING LIST PARADISE INDEPENDENT SCHOOL DISTRICT DOCKET NO. 2022-0274-MWD; PERMIT NO. WQ0013439001

FOR THE APPLICANT:

via electronic mail:

Paul Uttley, Superintendent Paradise Independent School District 338 School House Road Paradise, Texas 76073 Tel: (940) 969-5002 <u>puttley@pisd.net</u>

Glenn Breisch, P.E. Wasteline Engineering, Inc. 208 South Front Street Aledo, Texas 76008 Tel: (817) 441-1300 gbreisch@wasteline-eng.com

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FOR THE CHIEF CLERK

via eFilings: https://www14.tceq.texas.gov/epic/eFiling/

Docket Clerk Texas Commission on Environmental Quality Office of Chief Clerk, MC-105 P.O. Box 13087 Austin, Texas 78711-3087 Tel: (512) 239-3300 Fax: (512) 239-3311

REQUESTER(S):

Billy Paddack 1130 County Road 3390 Paradise, Texas 76073

Attachment A

The TCEQ is committed to accessibility. To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN600794473, RN101519387, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator:	CN600794473, Paradise Isd	Classification: SATISFACTORY	Rating: 8.69		
Regulated Entity:	RN101519387, PARADISE ISD	Classification: SATISFACTORY	Rating: 8.69		
Complexity Points:	7	Repeat Violator: NO			
CH Group:	14 - Other				
Location:	338 SCHOOL HOUSE RD PARADISE, TX 76073-2619, WISE COUNTY				
TCEQ Region:	REGION 04 - DFW METROPLEX				
ID Number(s): WASTEWATER LICENSING		PETROLEUM STORAGE TANK REGISTRAT	ION		
WASTEWATER PERMIT WQC		WASTEWATER EPA ID TX0103446	ing Date: 00/01/2021		
	iod: September 01, 2016 to August		ing Date: 09/01/2021		
Date Compliance Histor	y Report Prepared: December	10, 2021			
Agency Decision Requir		nit - Issuance, renewal, amendment, modification of a permit.	tion, denial, suspension, or		
Component Period Sele	cted: September 01, 2016 to Aug	ust 31, 2021			
TCEQ Staff Member to C	ontact for Additional Informa	tion Regarding This Compliance Hist	ory.		
Name: hnielsen		Phone: (512) 239-1000	-		
Site and Owner/Oper	ator History:				
	nce and/or operation for the full five	vear compliance period? YES			
	change in ownership/operator of the	,			
Components (Multime	<u>edia) for the Site Are Listed</u>	<u>d in Sections A - J</u>			
1 Effective Date: 0 Classification: 1 Citation: 30 T Rqmt Prov Mon Description: Fa	Moderate AC Chapter 305, SubChapter F 305.1 . & Rep. Reqs. No. 7(c) PERMIT iled to report to the TCEQ in writing,	R 2020-0203-MWD-E (1660 Order-Agreed O .25(1) any effluent violation which deviates from the	permitted effluent		
	not provide noncompliance notification May 2017.	s of becoming aware of the noncompliance. S ons for the exceedances during the monthly m			
	AC Chapter 317 317.3(e)(5)				
baseball field di	ion: Failed to provide a functioning audiovisual alarm for all lift stations. Specifically, the lift station at the field did not have a functioning audiovisual alarm ation: Moderate				
	AC Chapter 305, SubChapter F 305.1				
	AC Chapter 305, SubChapter F 305.1	25(5)			
	rational Reqs. No. 1 PERMIT iled to ensure the Facility and all of it	s systems of collection, treatment, and dispos	al are properly		
maintained. Sp		on at the elementary school contained excessi			

B. Criminal convictions:

C. Chronic excessive emissions events: \$N/A\$

D. The approval dates of investigations (CCEDS Inv. Track. No.):

i ne approva	al dates of investigation	-
Item 1	September 15, 2016	(1373774)
Item 2	November 09, 2016	(1385860)
Item 3	December 19, 2016	(1392020)
Item 4	March 06, 2017	(1405531)
Item 5	May 08, 2017	(1419123)
Item 6	May 30, 2017	(1426756)
Item 7	July 18, 2017	(1441318)
Item 8	August 07, 2017	(1444995)
Item 9	September 21, 2017	(1451577)
Item 10	November 06, 2017	(1457453)
Item 11	December 07, 2017	(1462892)
Item 12	January 15, 2018	(1476010)
Item 13	March 08, 2018	(1488195)
Item 14	April 17, 2018	(1495152)
Item 15	May 16, 2018	(1502074)
Item 16	June 12, 2018	(1509196)
Item 17	July 17, 2018	(1515501)
Item 18	August 28, 2018	(1521552)
Item 19	September 11, 2018	(1528741)
Item 20	October 08, 2018	(1535064)
Item 21	November 14, 2018	(1542919)
Item 22	January 07, 2019	(1564092)
Item 23	February 08, 2019	(1564090)
Item 24	April 03, 2019	(1573292)
Item 25	May 16, 2019	(1586191)
Item 26	June 05, 2019	(1586192)
Item 27	July 08, 2019	(1594639)
Item 28	September 06, 2019	(1607854)
Item 29	October 02, 2019	(1614721)
Item 30	December 24, 2019	(1627860)
Item 32	January 16, 2020	(1635487)
Item 33	February 06, 2020	(1642104)
Item 34	March 16, 2020	(1648616)
Item 35	April 15, 2020	(1654971)
Item 36	May 20, 2020	(1661530)
Item 37	June 15, 2020	(1668064)
Item 38	July 17, 2020	(1675011)
Item 39	September 18, 2020	(1688357)
Item 40	September 28, 2020	(1681779)
Item 41	October 19, 2020	(1694715)
Item 42	November 19, 2020	(1716736)
Item 43	December 16, 2020	(1716737)
Item 44	January 15, 2021	(1716738)
Item 45	February 20, 2021	(1729822)
Item 46	March 12, 2021	(1729823)
Item 47	April 14, 2021	(1729824)
Item 48	June 16, 2021	(1742202)
Item 49	July 19, 2021	(1753119)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 04/30/2021 (1742201)

Self Report? YES

Classification: Moderate

Compliance History Report for CN600794473, RN101519387, Rating Year 2021 which includes Compliance History (CH) components from September 01, 2016, through August 31, 2021.

Citation:2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)Description:Failure to meet the limit for one or more permit parameter

2 Date: 07/31/2021 (1758524) Self Report? YES Classification: Moderate Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1) Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits:

N/A

- G. Type of environmental management systems (EMSs): N/A
- H. Voluntary on-site compliance assessment dates: $_{\mbox{N/A}}$
- I. Participation in a voluntary pollution reduction program: $_{\mbox{N/A}}$
- J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Attachment B

