

**SOAH DOCKET NO. 582-22-02856
TCEQ DOCKET NO. 2022-0326-MWD**

APPLICATION BY RESTORE THE	§	BEFORE THE STATE OFFICE
GRASSLANDS LLC AND	§	
HARRINGTON/TURNER	§	
ENTERPRISES, LP FOR NEW TEXAS	§	OF
POLLUTION DISCHARGE	§	
ELIMINATION SYSTEM	§	
PERMIT NO. WQ0016003001	§	ADMINISTRATIVE HEARINGS

CITY OF PARKER’S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW THE CITY OF PARKER (“City”), and presents to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) this its Exceptions to the Administrative Law Judge’s (“ALJ”) Proposal for Decision (“PFD”) filed on April 27, 2023, for the Application by Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP (“Applicants”) for a TPDES Permit in Collin County in the above-referenced docket.

I. INTRODUCTION

The application which is the subject of this proceeding (the “Application”) seeks to construct a wastewater treatment facility within the extraterritorial jurisdiction of the City. The Applicant did not provide a complete application. As the Application fails to complete a proper regionalization review, the City agrees with the recommendation to deny the Application. However, the City agrees that other testimony adduced at the hearing supports further negative findings necessary by the Commission. The City agrees that the subject permit should be denied. The errors contained in the PFD are simply requested to make the record more complete.

II. ANALYSIS

The City finds the ALJ's analysis regarding the failure of the Applicant to perform a regionalization review to be honest and accurate. The Applicants did, indeed, fail to meet the regionalization rules for the region. While Parker agrees with the ALJ conclusions regarding regionalization, the City supports the arguments asserted by Murphy regarding other portions of the Application.

Regarding Issues A, F, G, and K, the City supports the arguments made by the City of Murphy in its Exceptions to the PFD filed on May 17, 2023.

III. CHANGES TO PFD

Because of the errors discussed above, the City requests the following changes to the proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs.¹

Findings of Fact

35. Although the ED's original DO modeling did not account for some of the site-specific data about Maxwell Creek, Gunnar Dubke created two new models using that data. However, the preponderance of the evidence favors the modeling conducted by Murphy witness Mr. Chris Pasch who testified and determined that Mr. Dubke failed to model the existence of pools downstream of the discharge point on Maxwell Creek. Thus, the TCEQ underestimated the extent to which D.O. would be depleted in the creek because in pooled areas, D.O. concentrations decrease due to slowed velocities which provides biological processes additional time to consume D.O. ~~While the results of the new models were slightly different from the initial ones, the new models also confirmed that the effluent limits in the draft permit would maintain the DO criterion of 5.0 mg/L for Maxwell Creek.~~

¹ Insertions are shown as underlines. Deletions are stated or shown by a strikethrough.

36. ~~Because the Draft Permit will~~ does not maintain the 5.0 mg/L DO criterion for Maxwell Creek. ~~its DO limits comply with the TSWQS.~~

Conclusions of Law

10. The Draft Permit does not comply ~~ies~~ with the TSWQS and is protective of surface and groundwater quality.

12. The Draft Permit is not protective of the requesters' and their families' health and safety.

IV. CONCLUSION

The City of Parker respectfully requests that the findings of fact, conclusions of law, and ordering paragraphs be accepted and incorporated in the Commission's Final Order.

Respectfully submitted,

Messer Fort & McDonald
4201 W. Parmer Lane, Suite C-150
Austin, Texas 78727
(512) 600-2308
(972) 668-6414 (Fax)

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEY FOR THE CITY OF PARKER

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2023, a true and correct copy of the foregoing document has been sent via electronic mail, electronic service, facsimile, first class mail, or hand-delivered to all counsel of record.

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.

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