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

APPLICATION OF RESTORE THE GRASSLANDS LLC	**§**	**BEFORE THE STATE OFFICE**
AND HARRINGTON/TURNER ENTERPRISES, LP	**§**	**OF**
(TPDES PERMIT NO. WQ0016003001)	**§**	**ADMINISTRATIVE HEARINGS**

PILGRIM EXCEPTIONS TO 04-27-2023 PROPOSAL FOR DECISION AND ORDER Re SOAH DOCKET No. 582-22-02856 and TCEQ No. 2022-0326-MWD FOR NEW TPDES PERMIT No. WQ0016003001

NOW COMES pro se Protestant Lindy M. "Buddy" Pilgrim (Pilgrim) filing this "Pilgrim Exceptions" to the April 27, 2023 Proposal for Decision (PFD) and Order of the Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH) re SOAH Docket No. 582-22-02856 and TCEQ Docket No. 2022-0326-MWD (collectively the Matter). In addition to the exceptions set forth directly herein by Pilgrim, Pilgrim further joins with the North Texas Municipal Water District (NTMWD), the City of Murphy (Murphy), the City of Parker (Parker), and any other pro se protestants (the Individual Protestants), (all collectively Protestants), and, to the fullest extent permissible by law, does now incorporate herein by reference all exceptions any Protestant files to the PFD and Order in this Matter. Pilgrim hereby gives notice and takes exception to the findings, PFD and Order as follows:

I. Introduction and General Exceptions

The above-referenced dockets deal with (i) the Texas Pollutant Discharge Elimination System (TPDES) Draft Permit No. WQ0016003001 (the Permit or Draft Permit) and (ii) the Permit application related thereto (the Application), as filed with TCEQ jointly by Harrington/Turner Enterprises, LP (H/TE) and Restore the Grasslands, LLC (RTG) (H/TE and RTG each may also be referred to as Applicant or Co-Applicant), with the Matter being heard in the February 7 – 9, 2023 SOAH Hearing.

Pilgrim does not take exception to the ALJ's and PFD's recommendation that the TCEQ deny the Application. Pilgrim also does not take exception to the findings that (i) the mandatory requirements were not met for compliance with Texas Water Code sections 26.081 and 26.0282 requiring Regionalization of waste collection, treatment, or disposal systems (Issue E), or that (ii) the rules *do* affirmatively provide that the North Texas Municipal Water District (NTMWD), the undisputed

regional service provider for the defined area in question, *"shall provide regional wastewater collection and treatment service to all legal entities requiring such services within the defined area, upon such terms as may be agreed upon by the parties or as may be ordered by the [TCEQ] if agreement cannot be reached* (emphasis added)*."* However, no party to this Matter qualifies as a legal entity requiring such service. Collin County Municipal Utility District No. 7 (CCMUD7), which according to all evidence *on the record* in this case is the only potential intended owner and operator of the currently proposed but non-existent Wastewater Treatment Facility (WWTF), does not itself yet exist as a legal entity requiring any service, and if it did exist, CCMUD7 is not a party to this Matter. Additionally, there is nothing definitive *on the record* in this Matter as to which specific entity (whether legal or not) will even own the land[1] on which the proposed WWTF might sit – either at the time of construction or subsequently during its proposed operation, or, which legal entity will definitively construct the proposed WWTF and therefore be the entity which will have need of the Permit. Therefore, there is no existing legal entity *of record* which will definitively require such services, (i) as owner of land on which a WWTF actually sits (during and/or after construction), (ii) as owner of the WWTF while under construction, or (iii) as owner of the WWTF while operating.[2]

[1]The land is currently owned by H/TE but at no time during H/TE's ownership will there be any WWTF on the land (either operating or not operating, or even partially existing in any phase of construction); therefore, H/TE will at no time be a legal entity requiring such services. H/TE's *sole* role is to sell the land, period, full stop. The *only* case for a landowner who is not the owner or operator of an existing or proposed WWTF requiring services, to be a Co-Applicant for the permit, is when a landowner maintains ownership of the land during construction and/or operation of the WWTF and leases the land (under an accompanying long term lease) to the person/entity constructing and/or operating the WWTF requiring services. In such case the landowner must either be a co-applicant or provide a copy of a long-term lease on the land for the WWTF. H/TE is merely selling the land prior to any commencement of construction or operation of a WWTF, not leasing the land for future use by a third party for a WWTF, and therefore H/TE has no role as a Co-Applicant.

[2] The future owner of the land was falsely alluded to, but not definitively sworn to, as RTG. However, there was not and is not any definitive statement *on the record* that RGT will actually ever be the owner of the land where the WWTF will sit, or, the even owner of the WWTF itself, at any stage of construction or operation; therefore, RTG will at no time definitively be a legal entity requiring such services. To the exact contrary of *any* certainty regarding RGT's role respecting the land, ***"Purchaser"*** is a specific defined term in the *Contract of Purchase and Sale* (Land Contract) for H/TE's land. The Land Contract, on the record, expressly defines ***"Purchaser"*** as *"[RTG], and/or its assigns"* (emphasis added). Further, to the contrary of any *definitive* role of RTG as the actual future owner (buyer or purchaser) of the land, the Land Contract, *on the record*, instead specifically requires *"[a]t the Closing, Seller **shall** deliver to Purchaser: (ii) Special Warranty Deeds… in the [precise] form attached hereto as Exhibit B (the Deed), **conveying** to Purchaser indefeasible fee simple **title to** the Property...* (emphasis added)*."* Exhibit B thereto expressly defines the *"Grantee"* of **title to** the land as an unidentified person *"whose [specific] address is c/o 8200 Douglas Avenue, Suite 300, Dallas, TX 75225"*, which is specifically *on the record* as the address of Huffines Communities, and specifically on the record as NOT the address at any time of RTG. The address *on the record* as that of RTG is instead 4801 W. Lovers Lane, Dallas, TX 75209. It is a requirement of the Deed specified in the assignable Land Contract that the Purchaser of the land be a yet unidentified person or entity whose address is the same as that of Huffines Communities, and not that of RTG; therefore RTG will not be the legal entity landowner requiring services.

Therefore, Pilgrim *does* take exception to the PFD's recommendation that the TCEQ order these *Applicants* and the NTMWD come to agreement on terms for providing wastewater service, failing which, the TCEQ will decide on those terms itself. For reasons set forth above and others detailed throughout the Pilgrim Exceptions to follow, neither of the current Applicants (consisting jointly of H/TE and RTG) are proper or legal Co-Applicants requiring *regional wastewater collection and treatment service* for which the Permit applies; therefore, the NTMWD has no authority to negotiate or agree to any terms of service with the current Applicants, H/TE or RTG, neither of whom qualify as legal entities requiring the aforementioned services. Nor do the Co-Applicants have any authority to negotiate or agree to terms of service for a Permit for a WWTF which will not be owned and/or operated by either of them and for which there is no definitive plan *on the record* in this Matter as to who will actually (i) own the land at any time during which the proposed WWTF in any phase of construction or operation might exist, (ii) own and construct the WWTF itself, (iii) own and operate the WWTF itself. There exists only complete uncertainty as to who might ever own the land, who might own the WWTF during construction, who might own the WWTF during operation, and who might operate the WWTF.

Further, exception is taken in that the PFD specifies that the NTMWD engage Applicants, *plural*, in negotiations to attempt to come to agreement of terms of service. The PFD does not specify or allow for the NTMWD to engage with only one Applicant, but instead requires NTMWD to attempt to come to terms of Agreement with both Applicants, H/TE and RTG. H/TE is *on the record* as an unengaged, uninvolved, uninterested, uninformed, and wholly unqualified party for all matters of substance regarding the WWTF, Permit, Application, Proposed Development to be served by the WWTF, and all related issues; other than selling its land, putting the money in its bank account, and being done. As such, H/TE is not a party having any legitimate, bonified interest in engaging in negotiations for terms of service, nor is H/TE qualified to either engage in any such discussion of terms of service or to empower or provide power of attorney to RTG to engage such discussions on H/TE's behalf – having no prior knowledge of John Cox or RTG or of their capabilities. Further, as previously mentioned, H/TE is not a legitimate Co-Applicant at all and the Application is therefore invalid. NTMWD has no business or authority to negotiate with an illegitimate Co-Applicant, and RTG has no authority to unilaterally agree or disagree to any terms of service when RTG knowingly entered into the Application jointly with H/TE.

Similarly, the TCEQ has no business or authority deciding on terms of service between the NTMWD and the Applicants, *plural*, for all of the reasons set forth in the preceding paragraph. Pilgrim takes exception to the PFD calling for the TCEQ to order terms by which the NTMWD must provide services to any illegitimate Applicant or Co-Applicant individually, and to any such Applicant or Co-Applicant unilaterally accepting such terms. Pilgrim takes further exception to the PFD's recommendation that the TCEQ decide unilaterally on any terms itself because throughout this process the TCEQ has shown disproportionate bias in favor of Applicants and in self-defense of the TCEQ's own work product, and disproportionate bias and disregard against every single Protestant.

In addition to the aforementioned general exceptions, Pilgrim takes <u>significant</u> exception to the PFD alternative recommendation of granting the Application, with the *"installation of carbon scrubbers and a partial enclosure of the plant that were agreed to during the hearing."* The ALJ cites Mr. Cox's statement under oath that he will install partial enclosures and carbon scrubbers; however, Mr. Cox stated that he would agree to do so <u>if required</u>. Doing as one is required is no significant concession. It is compliance. Mr. Cox can be counted on to do not one thing more than the absolute minimum required – as has been demonstrated throughout his march to build more than 600 homes, regardless of what it does to the neighbors, schools, cities, or the environment. Further, and more importantly, there is literally nothing *on the record* as to the type or degree of containment or type or specifications for carbon scrubbers that might be installed. Given that LJA Engineering (LJA) omitted them from its initial design, recommended and argued against them as unnecessary in testimony and at the hearing, and only sought generally to meet the minimal legal requirements on virtually every environmental protection it specified, it is not now credible or reliable to believe that LJA will specify anything other than a minimalist approach to any such air quality engineering measures that it does not believe are really necessary. The developer is a long-time client of LJA and the only party to whom LJA owes any degree of loyalty or protection. That long-time client relationship is ultimately with Huffines Communities and the Huffines family, the affiliate, financial backer and owner of RTG. LJA cannot be relied upon to specify the design criteria for such enclosures and scrubbers. Additionally, those measures do nothing to address the other environmental, health and related concerns of Protestants.

Likewise, the TCEQ cannot be relied upon to specify sufficiently effective enclosures and carbon scrubbers. TCEQ staff continuously defended a minimalist approach and their initial work product. Even after Mr. Cox had made his public commitment to install enclosures and carbon scrubbers, the TCEQ ED made no revised recommendations for any such revisions, showing instead antipathy for the concerns of homeowners who know that odors are not stopped by invisible 150' buffer zones. TCEQ cannot be entrusted with issuing a permit where it determines the standards. The ED did not even close out her arguments at the hearing by stating that TCEQ would undertake a reasonable re-examination of the nuisance odor issue and consider what form of covers and carbon filter might be effective. Instead, she *"maintain[ed] her position"* that nuisance odor apparently just cannot travel more than 150' because that's the absolute minimum distance TCEQ is *required* to mandate for abatement of nuisance odors.

Pilgrim respectfully disagrees with and takes exception to anything other than that the Draft Permit and Application be denied and dismissed *with prejudice* respecting these Applicants and any affiliates thereof. No evidence was presented which contradicts the ***fact*** that (notwithstanding all of the other inaccuracies and omissions in the Application and Draft Permit that call for denial anyway), it is premature to approve the Draft Permit prior to a final ruling on the related issue for the formation of *Collin County Municipal Utility District No. 7* (CCMUD 7) (SOAH Docket 582-23-01498), which is the ***ONLY*** planned and intended owner and operator[3] of *"Collin County MUD No. 7 WWTF"* (the WWTF), the subject facility of this Docket. This is an undisputed overriding fact.[4]

II. Additional General Exceptions

Regarding Issues A, F, G, H, I and K, Pilgrim specifically supports, agrees with, and incorporates herein by reference the arguments made by Murphy in its Exceptions to the PFD filed on May 17, 2023. Pilgrim also specifically incorporates herein by reference, Murphy's Exhibit 1 to its Exceptions, especially including the HTEM's 12-01-2021 Application for Reinstatement and Request to Set Aside Tax Forfeiture. Pilgrim agrees and takes note of the fact HTEM did not seek reinstatement of its 02-10-2012 forfeiture until 12-10-2021, which is well past the 36 month deadline to have the reinstatement be retroactive and close the gap when the forfeiture was effective. Pilgrim made this

[3] See: *Protestant Pilgrim's Written Closing Arguments*, p. 8, Sect. III., B., #1.- 5, espec. #1. at par. 1.
[4] See also: Pilgrim Closing Responses to Applicants', ED's, and OPIC's Closing Arguments, p. 2 and all footnotes thereto.

point in its Closing Arguments and Response to Closing Arguments and included the same documents as attachments thereto, for the record. Pilgrim takes exception to the PFD's claim that there is nothing on record indicating that HTEM had not reinstated prior to making it Application. To the contrary, there was nothing on the record that HTEM had in fact timely applied for reinstatement – which it did not. Furthermore, any person checking to see if HTEM was in 2022 a valid legal entity could have seen on the same Texas SOS website the 12-10-2021 reinstatement date that proved it was not a valid, legal entity prior to 12-10-2021.

Regarding Changes to the PFD in Findings of Fact and Conclusions of Law, Pilgrim specifically supports, agrees with, and incorporates herein by reference the arguments made by Parker in Section III of its Exceptions to the PFD filed on May 17, 2023.

III. Exceptions Regarding Whether the Application is Accurate and Complete (Issue H)

Pilgrim takes significant exception to the PFD's findings regarding Issue H, which was referenced in a rather dismissive way in Section C of the PFD, grouping numerous issues together with each only being addressed briefly. The ALJ only casually mentioned "Murphy and Mr. Pilgrim raise several on this issue with little attention given to specifics of the arguments.

Specifically, exception is taken to the allegation that because "land" is referenced as being part of the definition of a "facility", then the owner of the land is the only owner of the facility, and H/TE is the *"current owner of the land… Thus, as owner of the land, H/TE necessarily had to be on the Application, even if it intends to sell the Property."* In this finding, the ALJ shows a fundamental misunderstanding of the definition of a landowner who has to be a co-applicant for a permit. The instructions provide that if the owner of the facility is different than the owner of the land on which the facility will sit, that the owner of the land must be a co-applicant ***or*** provide a long-term lease to the facility owner for the use of the land for the WWTF. This reference to providing a long-term lease informs the applicant and the reader as to the proper understanding of the landowner being referenced. A person cannot be the Lessor of land it does not own. A Lessee cannot lease from someone who does not still own the land – even if the person used to own the land, but later sold it.

In some cases, the owner of the WWTF might not be the same person as the one who owns the land on which it sits or on which it will sit once constructed. In such cases, the person who owns the land or who will own the land at the time during which the WWTF exists or is under construction must apply as a Co-Applicant, **or**, in the alternative, that landowner must provide a long-term lease to the owner of the WWTF. Since one cannot lease land one does not own, it becomes easy to see that the reference to landowner is to one who owns the land at the time of the existence of a WWTF thereon (and who could otherwise provide a long-term lease to the facility owner instead of serving and a co-applicant for the facility), but it does NOT refer to a person who is merely selling the land to another person who otherwise claims (as does Cox intermittently but not definitively) that he (RTG) will be the owner of the facility and the owner of the land. The separate landowner cannot rightfully be interpreted as one who owned the land and sold it before the WWTF ever existed, instead of the one who, as a separate person, owned the land while the WWTF existed. Its not even logical that the reference to "landowner" would be to a person who at all time only owned the land prior to the existence of the WWTF.

Pilgrim takes exception to any claim that the Application was complete and accurate. That statement is truly as astonishing as it is false. At a minimum, and as findings of fact, the Application and TCEQ's review thereof were demonstrated by Protestants' evidence to be inaccurate and incomplete in at least the following ways:

(i) a missing signature of Ashley Broughton (Broughton) on H/TE's Core Data Form (CDF),

(ii) a missing signatory title for Margaret Turner (Turner) with respect to HTEM and H/TE, or in the alternative, a wholly improper signature in her unauthorized, individual capacity as a limited partner of H/TE because limited partners have no such authority,

(iii) a false identification of Turner's "Title" as "N/A" in Application section 3. B., or in the alternative, admission that Turner was applying in her unauthorized individual capacity as a limited partner of H/TE; although, limited partners have no authority as such,

(iv) a missing federal tax ID number (which all LP's have) for H/TE in its CDF,

(v) a missing federal tax ID number for RTG in its CDF when its Co. Operating Agreement (7.1-2) specifically states it is to be *"disregarded for federal tax purposes as an entity separate from its sole member*", making the tax ID for RTG one-in-same as TPL's tax ID,

(vi) an incorrect marking of RTG in its CDF as independently owned and operated, instead of as a wholly owned subsidiary of Texas Prairie Land, LLC (TPL) completely dependent on TPL and the two Huffines Trusts for all its capital,

(vii) a falsely sworn signature statement by Applicant H/TE who's signatory, Turner, never read the Application,

(viii) a falsely sworn signature statement by Applicant RTG who's signatory, Cox, absolutely knew of Turners' lies, and of numerous other misrepresentations and omissions of its own making in its Application,

(ix) admission by Turner and Broughton that they never met or discussed any matter at all related to Broughton's completion of the Application,

(x) a false representation that H/TE is the intended "owner" of the WWTF,

(xi) a false representation that RTG is intended "owner" of the WWTF,

(xii) a false representation that H/TE will be ever the owner of the land at any time during which the WWTF will sit, instead of merely being the seller of that land to an unidentified and hidden party located at 8200 Douglas Ave., Suite 300, Dallas, TX, 75225.

(xiii) having H/TE as an improper Co-Applicant after admitting it will have no involvement in any matter (owning, constructing, or operating the WWTF) other than selling the land,

(xiv) the absence of any "financially responsible" party (CCMUD 7, TPL or the Huffines Trusts, etc.) as a co-applicant,

(xv) a missing co-applicant who will truly be the "owner of the land"; namely the entity specified in the Land Contract as having the same address as Huffines Communities,

(xvi) multiple maps falsely indicating the boundaries of Applicants' property includes the Gregory Lane property to the north,

(xvii) multiple maps falsely indicating the boundaries of Applicants' property includes portions of the Carpenter Farms' property to the east,

(xviii) multiple maps falsely indicating the boundaries of Applicants' property includes a Directors' Lot actually owned by five other persons and deeded by Turner through RTG's Coats Rose law firm during the month prior to making of the Application,

(xix) a false attestation by Ashley Broughton of *"no response"* from NTMWD when in fact NTMWD emailed a reply to Broughton within 7 days requesting additional information,

(xx) numerous false representations made in documentation submitted by LJA Engineering (LJA) in support of the alleged but false *"need"* for the WWTF, the whole of which inaccurately misrepresented the willingness and capacity of NTMWD, Parker and Murphy to assist in providing regionalized wastewater treatment services,

(xxi) a limited partnership Applicant (H/TE) which did not legally exist at the time of making Application because H/TE's general partner, HTEM, had forfeited its rights to transact business in Texas nine years prior (February 10, 2012) and had NOT been reinstated at time of Application (April 28, 2021), and whose later reinstatement (December 10, 2021) was NOT without interruption or retroactive to the Application date because the reinstatement was not made within the statutorily required 36 months of forfeiture,

(xxii) TCEQ's flawed process of merely "deeming" the application administratively complete,

(xxiii) TCEQ's wholesale failure to undertake any meaningful independent administrative verification other than the bare minimum of checking postal addresses, etc.,

(xxiv) TCEQ's wholesale failure produce any employee or other witness at the Hearing or through pre-filed testimony who could testify to validate any thoroughness of TCEQ's administrative review process,

Some of the 24 things in the list above may not have been known to the ED's staff at the time of their occurrence or during any initial administrative cursory review; however, when indisputable evidence was produced on the record, the ED should have accepted the new facts and admitted in that shortcomings are <u>now</u> known to exist which rightly call for TCEQ's rejection of the Application, or at a minimum, TCEQ should have requested it be remanded back for their thorough review of the suspect issues – rather than doubling down in its self-defense. The ALJ may could have argued that some of theses matter, in isolation, are insignificant, but taken as a whole one cannot with credibility claim that the Application was complete or accurate. Pilgrim tales exception to any and all claims of completeness or accuracy.

Mr. Martinez's credibility was shown to be compromised and impeached in Pilgrim's Closing Arguments Section III., opening comments through part A.[5] and in all of Section IV. A.,[6] wherein

[5] Pilgrim's Closing Arguments, section III through A., p. 4-7.

[6] Pilgrim's Closing Arguments, Section IV. A., p. 19-20.

Martinez admitted he was only qualified to testify on technical issues,[7] not administrative issues, even though he was TCEQ's designated witness for its administrative review of the Application. Further, Martinez admitted on the record that he was unaware Turner had never read the Application[8] and she had thus sworn falsely to its accuracy and completeness in her signatory statement. Martinez was asked if that gave him concern and he replied, *"It would not."*[9] Yet, Martinez remained a representative that the PFD relied upon to claim the Application was accurate and complete. Exception is taken because Martinez was unaware, unconcerned, and unqualified to be cited and quoted as a reliable source. In fact, the disqualified Martinez was among the most cited witness in closing briefs, with virtually all of the cites of Martinez being on matters for which Martinez was either unqualified or too uninformed to testify meaningfully and accurately.

As to Broughton, her credibility was impeached when it was proven she blatantly misrepresented (lied about) NTMWD's email response to her inquiry as *"no response"* simply because she sent her inquiry letter via certified mail but Jerry Allen (NTMWD) responded via email instead of USPS.[10] Yet Applicants, like OPIC and the ED, continued to tout Broughton as credible in closing arguments, **including the ED repeating in closing argument the exact same lie, stating:** *"NTMWD, no response; however, the Certified Mail Receipt indicating that the request for services letter was received by NTMWD."*[11] (Emphasis added.) These people cannot be taken at their word.

Pilgrim also takes exception to Lueg and Dubke being referenced regarding Issue H (accuracy and completeness). The only opinions either one offered in their direct testimony or in cross was completely and only with respect to accuracy and completeness dealing with technical issues, and even those only within each one's own respective narrow scope of responsibility.[12] Neither one has offered any opinion regarding administrative accuracy or completeness, or as to the legal status of H/TE.[13] Cites of Lueg and Dubke respecting Item H overall, are particularly worthy of exception

[7] Tr. Trans. Day 3, at p. 681, Lns. 20-24.
[8] Tr. Tran. Day 3, at p. 684, Lns. 16-18.
[9] Tr. Tran. Day 3, at p. 686, Ln. 2.
[10] Pilgrim's Closing Arguments, Item 22. at p. 15-16. (Note: Email was an option Broughton presented in her letter as an acceptable means of responding.)
[11] ED's Closing Arguments at p. 11, Lns. 4-5.
[12] For Lueg, *See:* Exhibit ED-JL-1, Prefiled Testimony of Jenna Lueg, p. 17, Lns. 12-21, ED Bates 0473 ; and for Dubke *See,* ED-GD-1, Prefiled Testimony of Gunner Dubke, p. 17, Lns. 10-12, ED Bates 0788.
[13] Pilgrim's Closing Arguments, Item 22. at p. 15-16.

because almost every item referenced by Protestants with respect to Item H is a matter of lack of administrative completeness and administrative accuracy, and not a matter of technical accuracy or completeness; yet the findings rely completely on the unrelated testimonies for support.

This entire process by H/TE-RTG-TPL and the Huffines fails in transparency and Pilgrim therefore takes exception thereto. **It cannot be in the public interest of the citizens of the State of Texas to allow the deceptive, incomplete, and inaccurate Application at hand, to be approved.**

IV. With Respect to Issue I (Legal Entities or Not).

Pilgrim takes exception to the finding that H/TE was a legal entity **at the time of the making Application as a Co-applicant** and now incorporates herein by reference all of Section II, A. of Pilgrim's Response to Closing Arguments as Filed 02-28-2023 as is applicable to Issue I. One additional point is worth calling out through. Throughout the depositions, prefiled testimony, and Hearing in this Docket, Applicants have repeatedly claimed that H/TE *"is"* (present tense) a legal entity. They've walked a fine line trying to give the false impression that because Turner got H/TE's general partner, HTEM, reinstated and *"is"* now a legal entity with rights to transact business in Texas, that everyone will assume it *"was"* (past tense) reinstated at the time the Application was made. Pilgrim has debunked that false impression several times clarifying that *"is"* and *"was"* are not the same, just like present tense and past tense are materially different. And, H/TE had not been reinstated at the time the Application was made and signed by Turner (April 28, 2021). See Pilgrim's Closing Argument regarding Issue I, for lengthy, documented, and detailed discussion on this topic. Perhaps the ALJ is relying on the false statement made in the ED's Closing Arguments:

*"Mr. Martinez testified that both Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP "**were**" (past tense) legal entities registered with the Texas Secretary of State **at the time it was reviewed** by the Administrative Review team."* (Emphasis added.)

Pilgrim takes exception that it is a patently false statement both in terms of characterization of Martinez's testimony, and much more importantly in terms of the substance of the issue. The ED affirmed in its Introduction to closing arguments that the Application, made April 28, 2021, was received May 26, 2021 and *"determined to be Administratively Complete on August 25, 2021 and*

technically complete on October 13, 2021."[14] Unfortunately for the ED and Applicants, H/TE did not even make application to have HTEM reinstated as a legal entity with rights to transact business in Texas (including to serve as H/TE's required General Partner) until **December 10, 2021**, some six and one-half months (6 ½) after H/TE made the Application and three and one-half (3 ½) after the Application was wrongfully declared administratively complete!

It is false to claim that HTEM and H/TE were legal entities **at the time** the Application was made or deemed complete. The Application is therefore null and void.

Some parties may believe that once a business is reinstated that the reinstatement is retroactive to the date of forfeiture; however, that is only correct in certain specific circumstances. There is no time limit to how long one can wait to apply for reinstatement and receive it (if otherwise meeting all qualifications); however, an entity is ***"only considered to have continued in existence without interruption if reinstated within 36 months"***[15] of forfeiture. HTEM was forfeited February 10, 2012, and did not apply for reinstatement for more than nine (9) years, precluding any possibility of qualifying (within 36 months) for consideration as having continued in existence without interruption during the interim period. Further, it strains credulity to imply that Martinez checked on any of this when he testified that the Application was merely "*deemed"* complete. End of story, to quote Ms. Turner.

I. SUMMARY

In applying for TPDES Permit No. WQ0016003001 Applicants have set forth numerous false, misleading, inaccurate and incomplete statements in their Application while falsely signing a sworn statement under penalty of law that their untruths and partial statements are true, correct and complete. TCEQ wholly failed in its duty to independently verify the misrepresentations which were

[14] ED's Closing Arguments at p. 1, par. 1.

[15] See LMP EX. 15 attached to Pilgrim's Response to Closing Arguments and offered for admission as a rebuttal exhibit. That is a printout of the Texas Secretary of State rules for Terminations and Reinstatements, accompanied by the HTEM 02-10-2012 Notice of Forfeiture and 12-10-21 Reinstatement, along with a printout of the Annual Public Information Report for HTEM for 2008 – 2022, showing no report submitted, as required by law for instated companies, between 07-11-2015 and 12-10-2021. It is irrefutable that HTEM was NOT a legal entity at the time of H/TE's Application on 04-28-2021 or when the Application was deemed Administratively Complete on 08-25-2021.

brought to its attention in public comments before issuing the Draft Permit. TCEQ cannot now be entrusted to simply have this Application remanded back for its review or modification.

Respectfully submitted,

/s/ *Lindy M. (Buddy) Pilgrim*

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CERTIFICATE OF SERVICE

I certify that on May 17, 2023, a true and correct copy of the foregoing was filed with SOAH and TCEQ and a copy sent to the below-listed parties of record Via Email as shown below.

/s/ *Lindy M. (Buddy) Pilgrim*

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