

**SOAH DOCKET NO. 582-22-09101  
TCEQ DOCKET NO. 2022-0610-MWD**

<b>APPLICATION BY CITY OF BRYAN</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>FOR NEW TPDES PERMIT NO.</b>	§	<b>OF</b>
<b>WQ0015930001</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**CITY OF BRYAN’S REPLY TO EXCEPTIONS TO THE  
PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS:

The exceptions filed by David and Gail Hyden (the “Hyden Protestants”) simply reiterate the arguments the Hyden Protestants made during the hearing and in their post-hearing briefs—that the City of Bryan’s application should be denied because Bryan “failed” to prove that its new wastewater treatment plant will not be built above the 100-year floodplain. The exceptions offer nothing new, and these arguments were thoroughly addressed by the parties at the hearing and in the parties’ post-hearing briefs, and analyzed in great length in the Proposal for Decision (PFD). To the extent necessary, Bryan incorporates its closing arguments and reply to closing arguments into this reply.

The draft permit, as determined by both the Executive Director and the ALJ, meets TCEQ’s floodplain requirements. Bryan’s proposed treatment units—the conceptual location of which are appropriately depicted in the Site Layout in the application—would not be located inside the 100-year floodplain, as shown on the existing FEMA Map. The draft permit is structured so that the treatment units, *as actually designed and constructed*, will comply with the floodplain requirements and the floodplain maps in effect at the time the facility is designed. The draft permit complies with 30 TAC § 309.14(a) (“the commission may not issue . . . a permit . . . if the facility does not meet the requirements of § 309.13”) through Other Requirements No. 4, which states: “The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d).” This provision ensures the facility, which has not yet been designed, will meet the requirements of § 309.13 and satisfy § 309.14(a)—*when it is designed*.

Bryan’s application was processed by the ED in accordance with TCEQ’s standard procedure for issuing wastewater discharge permits. The application provided the ED with sufficient information to draft the effluent limits and other provisions needed to ensure that when the facility is designed and constructed, it will meet TCEQ’s standards. After the permit is issued,

Bryan will need to obtain approval of its actual plans and specifications and will have to demonstrate that the plant, as designed, fully complies with the floodplain restrictions contained in the Commission's rules. In addition, that demonstration will be made using the most up-to-date FEMA floodplain map, which FEMA is currently working on. If Bryan cannot design a plant that complies with the floodplain requirements (or the more detailed treatment requirements), Bryan's plans will not be approved, and the plant will not be constructed. The Hyden Protestants will not have to rely on enforcement of the permit after the plant is constructed to protect their concerns, because the plant cannot be built unless it complies with the floodplain requirements.

This two-part evaluation is the standard procedure for review of wastewater discharge applications: the issuance of permits, and the review of plans and specifications. Without citation to any Commission rule, statute, or case law, the Hyden Protestants would turn this procedure on its head and require applicants to perform detailed floodplain studies and completely design wastewater treatment plants prior to submitting a discharge permit application with the Commission.

The PFD provides a well-reasoned justification for permit issuance. The City of Bryan respectfully requests the Commission adopt the ALJ's proposed order and issue the draft permit.

Respectfully submitted,

**/s/ C. Joe Freeland**

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**ATTORNEYS FOR THE  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been e-filed and served on the following counsel/persons by regular electronic mail or by electronic filing on May 26, 2023.

**/s/ C. Joe Freeland**

C. Joe Freeland

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