State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 21, 2023

Aubrey Pawelka **VIA EFILE TEXAS**

Jessica Anderson **VIA EFILE TEXAS**

Peter Gregg **VIA EFILE TEXAS**

Eric Allmon **VIA EFILE TEXAS**

Emily Rogers **VIA EFILE TEXAS**

RE: SOAH Docket Number 582-23-11653.TCEQ; TCEQ No. 2022-1732-MWD; *Application by Civitas at Buda, LLC for TPDES Permit No. WQ0016154001*

Dear Parties:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than December 19, 2022. Any replies to exceptions or briefs must be filed in the same manner no later than December 29, 2022.

This matter has been designated TCEQ Docket No. 2021-1216-MWD; SOAH Docket No. 582-22-2095. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www14.tceq.texas.gov/epic/eFiling/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

SOAH Docket No. 582-23-11653
TCEQ Docket No. 2022-1732-MWD

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY CIVITAS AT BUDA, LLC FOR TPDES PERMIT NO. WQ0016154001

TABLE OF CONTENTS

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY CIVITAS AT BUDA, LLC FOR TPDES PERMIT NO. WQ0016154001

PROPOSAL FOR DECISION

Civitas at Buda, LLC (Applicant or Civitas) filed an application (Application) on April 22, 2022, with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016154001. Applicant seeks the permit to discharge up to 0.50 million gallons of treated domestic wastewater per day during the final phase into Plum Creek Segment No. 1810 of the Guadalupe River Basin (Plum Creek). The Administrative Law Judge (ALJ) recommends the Application be granted.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party has challenged notice, which is set out in the proposed order without further discussion here.

A prehearing conference was held on August 21, 2023, via Zoom videoconference.

The hearing on the merits was held on August 24, 2023, before ALJ Megan Johnson of the State Office of Administrative Hearings (SOAH). Attorney Peter T. Gregg represented Applicant. Attorneys Emily Rogers and Stefanie Albright represented the Guadalupe Blanco River Authority (GBRA). Attorneys Eric Allmon, David Frederick, and Lauren Alexander represented Stanley and Kelly Kolodzey (collectively, the Kolodzeys). Attorney Aubrey Pawelka represented TCEQ's Executive Director (ED). Attorney Jennifer Jamison represented TCEQ's Office of Public Interest Counsel (OPIC). The record closed on September 27, 2023, with the filing of reply briefs.

II. BURDEN OF PROOF

The Application was filed after September 1, 2015, and TCEQ referred it under 30 Texas Administrative Code section 55.210. By rule, the issue at hearing in a direct referral is whether the application complies with all applicable statutory and regulatory requirements.[1]

[1] 30 Tex. Admin. Code § 55.210(b).

This case is subject to Texas Government Code section 2003.047(i-1)-(i-3),[2] which provides:

> (i-1) In a contested case regarding a permit application referred under Section . . . 5.557 [of the] Water Code, the filing with [SOAH] of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:
>
> (1) the draft permit meets all state and federal legal and technical requirements; and
>
> (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.
>
> (i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:
>
> (1) relates to a matter referred under Section 5.557 [of the] Water Code . . . ; and
>
> (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.
>
> (i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

[2] Acts 2015, 84th Leg., R.S., ch. 116 (S.B. 709), §§ 1 and 5, eff. Sept. 1, 2015.

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. Accordingly, the burden of proof remains with the Applicant to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.[3]

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), which are collectively referred to as the "Prima Facie Demonstration," were offered and admitted into the record for all purposes.[4]

III. WASTEWATER DISCHARGE PERMIT REQUIREMENTS

Chapter 26 of the Texas Water Code requires a person who seeks to discharge wastewater into Texas water to file an application with TCEQ. 30 Texas Administrative Code chapter 305, subchapter C contains TCEQ's application filing requirements. Once an application is filed, TCEQ reviews the application in accordance with 30 Texas Administrative Code chapter 281. Based on a technical review, TCEQ prepares a draft permit that is consistent with U.S. Environmental Protection Agency (EPA) and TCEQ rules and a technical summary that discusses

[3] 30 Tex. Admin. Code § 80.17(a), (c).

[4] ED Exs. A-D, Applicant Exs. A-B, which were admitted at the preliminary hearing.

the application facts and significant factual, legal, methodological, and policy questions considered while preparing the draft permit.

A domestic wastewater treatment facility in Texas is subject to wastewater discharge permit requirements. 30 Texas Administrative Code chapter 305, subchapter F contains standard permit requirements, which TCEQ has adapted specifically for use in wastewater discharge permits. All wastewater discharge permits are also subject to regulations found in 30 Texas Administrative Code chapter 319, which require the permittee to monitor its effluent and report the results as required in the permit.

Finally, TCEQ has adopted water quality standards applicable to wastewater discharges in accordance with section 303 of the Clean Water Act and section 26.023 of the Texas Water Code. These standards, known as the Texas Surface Water Quality Standards (TSWQS), are found in 30 Texas Administrative Code chapter 307. The TSWQS identify appropriate uses for the state's surface waters (e.g., aquatic life, recreation, and public water supply), and establish narrative and numerical water quality standards to protect those uses. The TCEQ has standard procedures for implementing the TSWQS, referred to as the Implementation Procedures (IPs), which are approved by the EPA.[5] The TSWQS and IPs are used in reviewing permit applications.[6]

[5] 30 Tex. Admin. Code § 307.2(e).

[6] ED Ex. ED-JL-3 (referring to ED Ex. ED-JR-5) contains the "Procedures to Implement the Texas Surface Water Quality Standards" (IPs) (RG-194) (Jun. 2010).

The TCEQ has not adopted numeric criteria for nutrients in streams and rivers, so they are evaluated based on the general narrative criteria for nutrients and the antidegradation rules. Those general narrative criteria are that the nutrients must not cause excessive growth of aquatic vegetation that impairs uses of the waterbody. According to the IPs, the factors to be considered in this determination include the size of the discharge; instream dilution; sensitivity to growth of algae, attached vegetation, and aquatic vegetation; sensitivity to nutrient enrichment; streamflow sustainability; impoundments and pools; consistency with other permits; and the existence of a listed concern for nutrients in the TCEQ's integrated report.[7]

The TSWQS also require that proposed wastewater discharges undergo an antidegradation review.[8] Antidegradation review is divided into two tiers. Tier 1 requires that "[e]xisting uses and water quality sufficient to protect those existing uses must be maintained."[9] Tier 2 is more stringent and generally prohibits the lowering of water quality by more than a de minimis amount for waters that exceed fishable/swimmable quality, unless it can be shown that lowering is necessary for important economic or social development.[10]

[7] ED Ex. ED-JR-5.

[8] 30 Tex. Admin. Code § 307.5(b).

[9] 30 Tex. Admin. Code § 307.5(b)(1).

[10] 30 Tex. Admin. Code § 307.5(b)(2).

IV. THE DRAFT PERMIT

The Application describes a wastewater treatment facility (Facility) that will be located approximately one mile northeast of the intersection of County Road 120 and County Road 107, in Hays County, Texas.[11] The Facility is an activated sludge with nitrification process plant. The Draft Permit provides for three phases, the Interim I phase, Interim II phase, and the Final phase. The wastewater treatment facilities will be package plants.[12] The treatment units for the Interim I phase are two aeration basins, a secondary clarifier, one chlorine contact basin, and an aerated sludge holding tank. Additional units for the Interim II phase are two aeration basins, a secondary clarifier, one chlorine contact basin, and an aerated sludge holding tank. The additional units for the Final phase are four aeration basins, two secondary clarifiers, one chlorine contact basin, dichlorination basin, and an aerated sludge holding tank.[13]

During the Interim I phase, the Facility may not discharge more than 0.125 million gallons per day (MGD).[8] The Interim II phase discharge may not exceed 0.250 MGD, and, in the final phase, the Facility would be authorized to discharge up to 0.50 MGD.[14] There is no limit on how long the Facility can remain in the interim phases.

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[11] ED Ex. D at 019.

[12] ED Ex. D at 027.

[13] ED Ex. D at 027.

[14] ED Ex. C at 2-2b.

The Draft Permit contains the following limits for all phases:[15]

Effluent Characteristic	Discharge Limitations
5-day Biochemical Oxygen Demand (BOD5)	10 milligrams (mg) / liter (L)
Total Suspended Solids (TSS)	15 mg/L
Ammonia Nitrogen (NH3-N)	3 mg/L
Phosphorus	1.0 mg/L
E. coli	126 colony forming units (CFU) or most probable number (MPN)
Dissolved Oxygen (DO)	4.0 mg/L
Effluent pH	Not less than 6.0, not more than 9.0
Chlorine residual	At least 1.0 mg/L

As set out in the Application, the proposed discharge route is first to Elm Creek, then to Plum Creek in Segment No. 1810 of the Guadalupe River Basin.[16]

V. SUMMARY OF THE EVIDENCE

The administrative record established a prima facie demonstration that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property.[17]

[15] ED Ex. C at 2-2b.

[16] ED Ex. D at 020.

[17] Tex. Gov't Code § 2003.047(i-1); ED Exs. A-E, App. Exs. A-B.

At the hearing on the merits, the Protestants offered evidence for the purpose of rebutting Civitas's prima facie demonstration.[18] GBRA had eight exhibits admitted, which included the prefiled testimony of Tim Osting.[19] The Kolodzeys had five exhibits admitted, which included the prefiled testimony of Stanley Kolodzey.[20]

The ED and Civitas presented additional evidence in response to evidence offered by Protestants. At the hearing, Civitas had five exhibits admitted (including the two admitted at the preliminary hearing), which included the prefiled testimony of Janet Sims.[21] The ED had eighteen exhibits admitted, which included the prefiled testimony of Deba Dutta, Jenna Lueg, and Josi Robertson.[22]

VI. ANALYSIS

The parties submitted three agreed issues to be adjudicated in this matter by SOAH:

A. Whether the Draft Permit is protective of water quality in accordance with applicable Texas Water Quality Standards;

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[18] Tex. Gov't Code § 2003.047(i-1)-(i-3).

[19] GBRA Exs. 1-8.

[20] Kolodzey Exs. 100-104.

[21] App. Exs. A-E.

[22] ED Exs. ED-JR-1 to -12; ED-JL-1 to -5; ED-DD-1.

B. Whether the Draft Permit complies with applicable requirements regarding the location standards of the TCEQ Rules for domestic wastewater plants set forth in subchapter B of chapter 309, including prevention of nuisance odor; and

C. Whether the Draft Permit is consistent with the State's regionalization policy pursuant to Texas Water Code section 26.0282.

With respect to each of the referred issues, and for the reasons set forth below, the ALJ finds that Civitas has met its burden to prove by a preponderance of the evidence that the Draft Permit should be issued without changes.

A. WHETHER THE DRAFT PERMIT IS PROTECTIVE OF WATER QUALITY

After reviewing the Application, the ED concluded that the Draft Permit meets the applicable requirements for the TSWQS for the protection of surface water quality in Elm and Plum Creeks. The ED explained that the federal Clean Water Act requires states to adopt a continuing planning process that includes a plan for implementing the state's water quality standards.[23] At TCEQ, this process resulted in the IPs, which had to receive Commission and EPA approval before they were implemented.[24] TCEQ then uses the IPs as guidance to take a consistent approach when reviewing applications, which includes making site-specific assessments and determinations based on available information.[25]

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[23] 33 U.S.C. § 1313(e)(1), (3)(F).

[24] 30 Tex. Admin. Code § 307.2(e); *see also* ED Ex. ED-JR-5 at 12.

[25] *See* ED's Resp. to Closing Args. at 4.

Josi Robertson, a modeler on TCEQ's Water Quality Assessment Team, performed the modeling for the Application (in the same manner she has done with over 800 permit applications)[26] using the QUAL-TX model coupled with the Continuously Stirred Tank Reactor (CSTR) model, which, the ED proffers, is a standard analytical tool that has a long history of accepted use by water quality experts.[27] She testified that she reviewed the Application "for the purposes of evaluating potential impacts to dissolved oxygen as those potential impacts pertain to the dissolved oxygen criteria standards as defined in the [TSWQS]."[28] She stated the DO modeling is used in the permitting process to determine effluent limits in proposed wastewater discharge in order to maintain the relevant DO criteria for the receiving waters.[29] In this case, Ms. Robertson researched numerous factors that may negatively affect DO, such as the size and quality of proposed discharge, the discharge route, and the DO criteria of the receiving waters.[30] Her analysis indicated that the Draft Permit's effluent limits would be sufficient to ensure that DO levels will be maintained above the criteria for Elm Creek and for SCS Reservoir No. 16.[31]

Jenna Lueg, an aquatic scientist on the Standards Implementation Team in the Water Quality Assessment Section of the Water Quality Division of TCEQ (who has

[26] ED Ex. ED-JR-1 at 0003, 09.

[27] ED Ex. ED-JR-1 at 0009.

[28] ED Ex. ED-JR-1 at 0005.

[29] ED Ex. ED-JR-1 at 0006.

[30] ED Ex. ED-JR-1 at 0008.

[31] ED Ex. ED-JR-1 at 0011.

worked on over 1700 permit applications), performed the antidegradation review for the Application.[32] During her review of permit applications, Ms. Lueg evaluates the water quality criteria associated with the uses of the receiving waters of a proposed discharge; confirms or finds the discharge route; assigns the aquatic life and human health water quality criteria associated with the uses of the unclassified receiving streams; finds appropriate uses for the classified receiving water; identifies endangered species in the watershed; and performs antidegradation reviews.[33]

In this case, Ms. Lueg testified that she performed a Tier 1 antidegradation review for the proposed discharge in a manner that complies with applicable TCEQ rules and regulations in the same way she performs all reviews.[34] The ED's permit evaluation regarding DO states that a concentration value of higher than 3.0 mg/L in Elm Creek and 5.0 mg/L in SCS Reservoir No. 16 are predicted, and that these concentrations meet state water quality standards.[35] Mr. Lueg testified that her review determined that existing water quality uses will not be impaired by this permit action.[36]

Protestants challenge the Application's compliance with the TSWQS on three grounds: (1) TCEQ's modeling utilized improper geometry; (2) the TCEQ water quality analysis results are not conservative because they are based on permit limit

[32] ED Ex. ED-JL-1 at 0388.

[33] ED Ex. ED-JL-1 at 0390.

[34] ED Ex. ED-JL-1 at 0399.

[35] GBRA Ex. 1 at 12.

[36] ED Ex. ED-JL-1 at 0399.

inputs that are less stringent than permit limits approved by the Plum Creek Watershed Protection Plan (Plan); and (3) that the degradation resulting from the discharge is not de minimis, failing to protect the high aquatic life use.

1. TCEQ Modeling Geometry

Protestants maintain that the TCEQ utilized incorrect assumptions and parameters in their water quality modeling analysis. They also contend that TCEQ failed to use the most conservative assumptions. Protestants argue that these modeling issues raise questions as to the accuracy of the model predictions.

a) The Protestants' Position

Protestants first argue that the TCEQ erred in using incorrect assumptions and parameters in water quality monitoring, leading to inaccurate results demonstrating that the proposed discharge is protective of water quality. They proffered four bases for this position.

First, Protestants argue that the TCEQ inaccurately measured the discharge route down Elm Creek, using an approximately 6.8-kilometer distance instead of an approximately 5.4-kilometer distance.[37] Protestants maintain route length accuracy is imperative in determining the potential impact of proposed discharge on water

[37] Hearing on the Merits Transcript (Tr.) at 16-17. TCEQ used aerial photographs to determine the stream path and reach lengths. Tr. at 57. GBRA's expert, Mr. Osting, used the NHDPlus dataset to determine the distance of the discharge route. Tr at 17. The Kolodzeys also point out that Ms. Sims, who is not an engineer, relied on the input model from the TCEQ and a four-year-old USGS map for her modeling. Tr. 1t 101. Protestants maintain that Mr. Osting's characterization of the flow path is more credible because it is derived from greater experience and a greater data set. *See* Kolodzey Resp. to Closing Args. at 5; GBRA Reply to Closing Args. at 2.

quality. More specifically, Protestants explain that a longer discharge route would incorrectly provide additional time for the discharge to travel down the discharge route, which, in turn, results in increased consumption of NH3-N and the biological oxygen demand entering the downstream reservoir.[38]

Protestants next contend that TCEQ inaccurately modeled the headwaters of SCS Reservoir 16 with stream modeling versus lake modeling.[39] Mr. Osting determined that this particular area was more akin to a reservoir and modeled it as such.[40] He explained that using reservoir versus stream modeling has an impact on determining biological oxygen demand.[41]

Third, Protestants maintain that TCEQ erred in underestimating the depth of the SCS Reservoir 16 at 1.5 meters in its CSTR modeling and in utilizing a smaller surface area of the reservoir.[42] Ms. Robertson testified that she developed the model geometry using a historic range of aerial imagery from Google Earth; however, she admitted that it was unable to tell her the depth of Elm Creek.[43] Mr. Osting utilized a depth of 3.5 meters, which Protestants argue is more accurate.[44]

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[38] Tr. at 18.

[39] Tr. at 22.

[40] Tr. at 22.

[41] Tr. at 22.

[42] Tr. at 83.

[43] Tr. at 107-08.

[44] Tr. at 83.

Finally, Protestants contend that Mr. Osting estimated a smaller surface area of SCS Reservoir 16 than the TCEQ did, which means less exposure to the atmosphere and less opportunity to absorb oxygen from the atmosphere which, in turn, results in lower DO levels.[45]

Protestants also argue that TCEQ failed to use the most conservative assumptions, despite Ms. Robertson testifying that the proposed discharge was evaluated using "conservative assumptions."[46] In addition to the four reasons above, Protestants contend that TCEQ failed to include an impoundment on channel in the stream geometry.[47] Moreover, they point out that TCEQ used an uncalibrated QUAL-TX model to anticipate the impact of the proposed discharge on DO.[48] Protestants argue that calibrated modeling, which relies on site-specific criteria, more accurately predicts the impacts of the proposed discharge on water quality.[49] Given these purported modeling issues, Protestants question the accuracy of the TCEQ's model predictions.

b) Applicant, ED, and OPIC's Positions

The ED first supports its modeling by stating that its DO modeling analysis was carried out following TCEQ's Standard Operating Procedures (SOPs) and IPs.[50]

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[45] Tr. at 84, 122.

[46] *See* ED Ex. ED-JR-1 at 0010.

[47] Tr. at 28.

[48] Tr. at 104.

[49] *See* Tr. at 105.

[50] ED Ex. ED-JR-1 at 0020.

Ms. Robertson used National Hydrography Dataset (NHD) flow lines in combination with recent historical aerial imagery from Google Earth to measure Elm Creek stream reaches.[51] The ED points out that Mr. Osting also used NHD flow line measurements but only checked that they matched the flow path seen in Google Earth imagery for the first reach.[52] Moreover, the ED contends that Mr. Osting's QUAL-TX model was shorter than TCEQ's because he omitted Reach 6 from his model and extended the CSTR model upstream into a narrow stream. This modeling, the ED argues, is not compliance with TCEQ's modeling practices as outlined in the CSTR modeling SOP document.[53]

The ED similarly argues that modeling the headwaters of SCS Reservoir with a lake model—the CSTR model—versus including it in the stream model—the QUAL-TX model—directly conflicts with the guidance in TCEQ's modeling SOPs.[54]

Regarding the contention that TCEQ underestimated the depth of SCS Reservoir 16 in its CSTR modeling, as well as using a small surface area of the reservoir, the ED responded that best professional judgment was used to estimate the average depth because no normal pool elevation boundary definition was found

[51] ED Ex. ED-JR-1 at 0014.

[52] Tr. at 74.

[53] ED Ex. ED-JR-1 at 0015.

[54] ED Ex. ED-JR-8 at 9.

for this reservoir.[55] Mr. Osting also used his best professional judgement in estimating a depth of 10-11 feet. Nonetheless, the ED proffers that even running an alternate deeper depth of 41 feet, the DO criterion was still met.[56]

Finally, regarding the surface area of the reservoir, the ED explains that the overall area of a larger reservoir is divided into sections, with sections being at most 10 acres in area.[57] Each individual sub-divided portion of the reservoir is then modeled. This is what Ms. Robertson did here.[58]

The ED also responded to Protestants' contention that TCEQ did not use the most conservative assumptions by reiterating that Ms. Robertson used TCEQ's SOPs when evaluating the Application.[59] The SOPs, they confirm, are standard guidance documents used for DO modeling by the Water Quality Assessment Team.[60] Moreover, the ED argues that even though Protestants demonstrated alternative modeling methods were possible, they failed to show that their alternate model would yield a result that is not in compliance with TCEQ rules and

[55] ED Ex. ED-JR-1 at 0015. The ED states that the only information available on USACE's National Inventory data page for this impoundment is the overall dam height. ED Ex. ED-JR-1 at 0015.

[56] ED Ex. ED-JR-1 at 0016.

[57] ED Ex. ED-JR-5 at 0075.

[58] Tr. at 122-24.

[59] ED Ex. ED-JR-1 at 0009.

[60] ED Exs. ED-JR-6 to -8.

regulations; therefore, they failed to provide any evidence that the modeling failed to meet the DO criteria of Elm Creek of the SCS Reservoir No. 16.[61]

Applicant's expert, Janet Sims, similarly contends that Mr. Osting's model failed to accurately reflect the physical features of the receiving waters and that he failed to adhere to TCEQ protocols for evaluating DO in the headwaters of SCS Reservoir No. 16.[62]

OPIC concludes that Applicant carried its burden with respect to this issue.

2. The Plum Creek Watershed Protection Plan

Protestants next contend that the TCEQ water quality analysis results are not conservative because they are based on permit limit inputs that are less stringent than permit limits approved by the Plan.

In 2008, GBRA, along with several other entities, developed the Plan to restore water quality in Plum Creek and its tributaries and to ensure future watershed quality and health.[63] According to the Plan, the two main areas of concern were high levels of *E. coli* bacteria and high nutrient levels.[64] The plan was the result of work by stakeholders, with assistance from TCEQ. The Plan describes itself as "a guidance

[61] *See* ED's Resp. to Closing Args. at 3.

[62] App. Ex. C at 019.

[63] *See generally* GBRA Ex. 3 (the Plum Creek Watershed Protection Plan).

[64] GBRA Ex. 3 at 000053.

document"[65] and notes that it is "a voluntary, non-regulatory alternative to addressing water quality issues."[66] Funding for the process of creating the Plan was provided through a federal grant.[67] As part of the Plan, all wastewater treatment facilities would work towards a permit treatment level of 5 mg/L BOD5, 5 mg/L TSS, 2 mg/L NH3-N, and 1 mg/L of total phosphorus.[68] This aspect of the Plan applied both to new facilities and to voluntary action by existing plants. The Draft permit, however, has permit limits at 10 mg/L BOD5, 15 mg/L TSS, 3 mg/L NH3-N, and 1 mg/L phosphorus.[69]

GBRA maintains that allowing the Draft Permit to proceed with effluent limits less stringent than those in the Plan will reduce the ability of the Plan to meet its water quality goals and will result in more loading and exceedances of screening criteria.[70] Mr. Osting testified that the Draft Permit limits are not protective because the permit limits applied in the TCEQ's analysis do not meet the more stringent limits agreed to by local governments and the EPA in the Plan.[71] GBRA also

[65] GBRA Ex. 3 at 000053.

[66] GBRA Ex. 3 at 000058.

[67] GBRA Ex. 3 at 000186.

[68] GBRA Ex. 1 at 14.

[69] GBRA Ex. 1 at 14.

[70] Tr. at 79-80.

[71] GBRA Exs. 1 at 3, 4, 12.

contends that the Plum Creek Watershed is not on Texas's EPA 303(d) list[72] of impaired and threatened waters only because the Plan was implemented.[73]

Both Applicant and the ED proffer that the Plan is voluntary, and its guidance documents do not apply a binding set of standards.[74] Ms. Robertson testified, however, that the modeling analysis she performed was designed to ensure that the effluent limit recommendations would be environmentally protective.[75] Moreover, the ED states that the outfall location for the Draft Permit is located approximately twelve miles upstream from the point at which the discharge would enter Plum Creek, making it unlikely that the wastewater from the discharge would even reach Plum Creek, much less have a significant impact on it.[76] Ms. Robertson also testified that as part of the TCEQ's Water Quality Management Plan with the EPA, all new domestic TPDES permits must be submitted for review and approval by the EPA before the permit can be issued.[77] She confirmed that her memo, modeling checklist, and other modeling documents for the Application were submitted to the EPA and that the effluent limits were approved by the EPA.[78]

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[72] Section 303(d) refers to the section in the 2020 Clean Water Act, 33 U.S.C. section 1251 *et seq*.

[73] *See* GBRA's Closing Args. at 7; GBRA Ex. 5 at 000311-23.

[74] App. Ex. C at 017; *see also* GBRA Ex. 3 at 000058.

[75] ED Ex. ED-JR-1 at 0010.

[76] ED Ex. ED-JR-1 at 0020.

[77] ED Ex. ED-JR-1 at 12.

[78] ED Exs. ED-JR-3, -12.a.

Additionally, Applicant's expert, Janet Sims, highlights that the only water quality standard for which Plum Creek is listed as impaired is bacteria. The Facility will disinfect the secondary treated wastewater prior to discharge such that it is not expected to contribute *E. coli* to Plum Creek in an amount greater than the water quality standard for primary recreational use.[79]

OPIC agrees with Applicant's contention that the Plan represents a voluntary agreement and, as such, it is not binding or subject to regulatory enforcement, and concludes that the limits in the Draft Permit are consistent with applicable water quality standards.

3. Antidegradation

The Kolodzeys maintain that Applicant failed to demonstrate that the degradation resulting from the discharge is de minimis or otherwise necessary for important social or economic development, as required by 30 Texas Administrative Code section 307.5(b)(2). The Kolodzeys argue that the IPs provide certain factors should be reviewed to determine whether the discharge is necessary or important for development, including an evaluation of alternatives that could eliminate or reduce anticipated degradation.[80] However, TCEQ did not conduct a Tier 2 assessment on the Application.[81] Mr. Osting testified that the proposed discharge may constitute a

[79] App. Ex. C at 018.

[80] ED Ex. ED-JL-5.

[81] Tr. at 138.

lowering of water quality that exceeds the Tier 2 criteria, [82] and the Kolodzeys highlight that the TCEQ modeling predicts nitrate and phosphorus concentrations that exceed the Tier 2 screening levels.[83]

The ED refuted the need for a Tier 2 antidegradation review for the Application because no water bodies with exceptional, high, or intermediate aquatic life uses are present in the stream reach assessed.[84] Therefore, the ED proffers, the antidegradation review was performed in accordance with the TCEQ IPs.[85] Ms. Lueg testified the stream reach she assessed is 3 miles, and the SCS Reservoir 16 is approximately 4 miles, from the discharge point. However, Ms. Lueg stated that she did conduct a Tier 2 antidegradation review that included a nutrient screen to help control algal growth in the SCS Reservoir 16.[86] She testified that she also performed a nutrient screen for Segment 1810 to review nitrate and total phosphorus.[87] Ms. Lueg testified that she believes the antidegradation review complies with the applicable regulations and includes adequate nutrient limits.[88] Existing uses will be maintained under the Tier 1, and a total phosphorus limit of 1.0 mg/L will ensure that water quality will be maintained.[89]

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[82] GBRA Ex. 1 at 18.

[83] GBRA Ex. 1 at 18.

[84] ED Ex. ED-JL-1 at 0399.

[85] ED Ex. ED-JL-1 at 0397.

[86] ED Ex. ED-JL-1 at 0399.

[87] ED Ex. ED-JL-1 at 0399.

[88] ED Ex. ED-JL-1 at 0399.

[89] ED Ex. ED-JL-1 at 0399.

4. ALJ Analysis on Water Quality

The ALJ finds that the preponderance of the credible evidence proves that the Draft Permit's proposed limits are in accordance with TCEQ standard operating procedures and are sufficiently protective of water quality in accordance with applicable TSWQS.

a) TCEQ Modeling Geometry

Applicant and ED witnesses credibly testified that the Application was reviewed in accordance with TCEQ's rules, standards, and procedures; and that the Draft Permit is protective of water quality. Some of the modeling inputs were based upon professional judgment for both TCEQ and Protestants. There is no evidence that TCEQ's modeling geometry ran afoul of the TCEQ SOPs or IPs, and, in fact, the greater weight of the credible evidence demonstrates that the modeling was correctly performed.

b) The Plan

Protestants argue that the Draft Permit should be revised to contain limits that comply with the Plan. Applicant, the ED, and OPIC, citing the voluntary nature of the Plan, argue that the Draft Permit is not required to include the Plan's limits.

The ALJ finds that the Plan was, and is, voluntary, as specifically denoted in the Plan itself. Moreover, although it does appear that the EPA relied on the Plan in excluding Plum Creek from the 303(d) list, it also appears that the EPA's concerns involved bacteria, not nutrients (even though both bacteria and nutrients are

specifically addressed in the Plan).[90] However, EPA's reliance and decision to exclude based on a voluntary plan do not convert the Plan into a regulatory standard. Non-parties to the agreement are not subject to it. Moreover, the Application and related analysis documents were submitted to the EPA for approval here, and the EPA approved the Draft Permit's effluent limits.

c) Antidegradation

Protestants did not present evidence that sufficiently rebutted the presumption that anything more than a Tier 1 antidegradation review was necessary. Ms. Lueg testified that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed (which is three miles from the discharge point). Moreover, Mr. Dutta testified that the unclassified receiving water use is limited aquatic life use for Elm Creek, and the designated uses for Segment 1810 are primary contact recreation, aquifer protection, and high aquatic life use.[91] Nonetheless, Ms. Lueg also stated that she conducted a Tier 2 antidegradation review, which included a nutrient screen, to help control algal growth in the SCS Reservoir 16. She further testified that she performed a nutrient screen for Segment 1810 to review nitrate and total phosphorus. Finally, Ms. Lueg credibly testified that the antidegradation review complies with the applicable regulations and includes adequate nutrient limits that will maintain existing uses and water quality. Mr. Osting, on the other hand, testified that the discharge *may*

[90] GBRA Ex. 5 at 000312.

[91] ED Ex. ED-DD-1 at 6.

constitute a lowering of water quality that exceeds Tier 2 criteria according to his modeling.

The ALJ concludes that the greater weight of the credible evidence demonstrates that the TCEQ performed sufficient antidegradation analysis.

In sum, the ALJ finds that Applicant carried its burden regarding this issue and that Protestants' evidence does not sufficiently rebut the presumption that TCEQ's modeling used proper geometric inputs, that the Plan is not binding upon the Applicant or the TCEQ, and that a Tier 2 antidegradation review was not necessary.

B. WHETHER THE DRAFT PERMIT COMPLIES WITH APPLICABLE REQUIREMENTS REGARDING THE LOCATION STANDARDS OF THE TCEQ RULES, INCLUDING PREVENTION OF NUISANCE ODOR.

Under 30 Texas Administrative Code section 309.13(e), applicants have options to abate and control nuisance odor prior to construction of a new wastewater treatment plant unit.[92]

Mr. Kolodzey testified that he is concerned his property will potentially have a smell from the Facility and, if he sells his property, the contamination and smell would potentially devalue his property and deter potential buyers.[93] He also testified

[92] 30 Tex. Admin. Code § 309.13(e).

[93] Kolodzey Ex. 100 at 4-5.

that he is concerned his cattle could get sick and die, which would affect his agricultural exemption and cause his taxes to rise.[94] Finally, he stated that he is concerned that, if the property becomes contaminated, people will no longer be able to use his property for education and recreational purposes.

Mr. Dutta testified that that the Draft Permit limits nuisance conditions such as odors, vectors, and compliance with floodplain and wetland siting requirements.[95]

While the ALJ understands the Kolodzeys' concerns that the Facility may impact his property through odor, illness, and reduction in taxes and third-party enjoyment of the property, no evidence was presented on these issues other than just that—concerns. Accordingly, the Kolodzeys did not present evidence that rebutted the presumption of Applicant's prima facie demonstration, and Applicant met its burden of proof with regard to this issue.

C. WHETHER THE DRAFT PERMIT IS CONSISTENT WITH THE STATE'S REGIONALIZATION POLICY PURSUANT TO TEXAS WATER CODE SECTION 26.0282.

1. Legal Background

The Texas Legislature adopted section 26.003 of the Texas Water Code to encourage and promote regionalization:

> It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public

[94] Kolodzey Ex. 100 at 5.

[95] ED. Ex. ED-DD-1 at 6-7.

> health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.[96]

TCEQ implements regionalization through section 26.0282 of the Texas Water Code, which provides:

> In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter.[97]

2. The Parties' Positions[98]

Protestants argue that Applicant has failed to meet the regionalization requirements for two reasons: (1) TCEQ did not conduct an independent review of the cost analysis relating to GBRA's facility; and (2) service was not requested from

[96] Tex. Water Code § 26.003.

[97] Tex. Water Code § 26.0282.

[98] Applicant states that it was prepared to present David Tuckfield on the regionalization issue; however, because there was no prefiled testimony challenging Applicant's prima facie demonstration on the issue of regionalization, Applicant did not present further evidence on it. *See* Applicant's Closing Statement at 4; Applicant's Resp. to Closing Statements at 3.

all existing or proposed entities with wastewater facilities within three miles of the proposed facility.

Protestants first highlight it is undisputed that at least one wastewater treatment facility—owned by Protestant GBRA—is located within a three-mile radius of the Facility and is willing to accept the additional wastewater.[99]

Protestants also state that the ED sent the Applicant an administrative notice of deficiency on May 2, 2022, specifically instructing it to provide a cost comparison of connecting to the GBRA system in lieu of building the Facility.[100] Applicant responded estimating it would cost between $2,761,345 to $4,511,345 more to connect to the GBRA system than to construct the Facility.[101] Protestants argue that this estimate was inadequate because it omitted any detail or explanation of the total estimated cost for the Facility.[102] Moreover, Protestants contend that because TCEQ did not conduct a review of the analysis, the Applicant has not adequately demonstrated that an exception should apply.

The second reason Protestants contend the Draft Permit fails to comply with the regionalization policy is because Applicant did not request service from three

[99] Tr. at 147; *see also* ED Ex. D, attach. K at 125.

[100] ED Ex. D at 103.

[101] ED Ex. D at 128.

[102] ED Ex. D at 128.

additional TPDES permitholders within a three-mile radius of the Facility.[103] Applicant provided no evidence that it attempted to contact these facilities.[104] Protestants cite to the required consideration of "the availability of *existing or proposed* areawide or regional waste collection" in Texas Water Code section 26.0282.[105] They do concede, however, that two of the permits have not been issued and the facility for the third has not been constructed.[106] Nonetheless, Protestants maintain that the Application cannot ignore these regional facilities.

ED witness Deba Dutta testified that Applicant properly considered regionalization and that a cost analysis determined that it would be less expensive for Applicant to construct their own facility in comparison to regionalizing with the GBRA facility.[107] Moreover, the ED maintains that section 26.0282 instructs that regionalization is not compulsory, even if facilities exist within the three-mile radius from the Facility. The ED contends that it is in the discretion of the Commission to require regionalization when the circumstances demonstrate that regionalization would be reasonable.[108] Mr. Dutta also explained that the TCEQ does not review the details of an Applicant's cost analysis (and no cost-effectiveness requirement exists in section 26.0282) but considers the total figures as represented by

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[103] ED Ex. D, attach. K at 124. The three permits Protestants cite are Studio Estates (WQ0015933001), Creedmoor 216 Development (WQ0016106001), and Continental Homes of Texas (WQ0015940001).

[104] Tr. at 152.

[105] Tex. Water Code § 26.0282.

[106] ED Ex. D, attach. K at 125.

[107] Tr. at 153.

[108] *See* ED Resp. to Closing Args. at 5.

Applicant.[109] Indeed, the ED argues that Protestants failed to cite a TCEQ rule that requires otherwise.

OPIC concluded that, after considering the evidence presented, it is unable to find that Applicant failed to meet its burden with respect to regionalization.

3. ALJ Analysis

The ALJ concludes that Applicant met the requirements regarding regionalization and that the ED's review of the Application was sufficient. Neither Protestant presented any prefiled testimony challenging Applicant's prima facie demonstration on regionalization; the Kolodzeys did present evidence at the hearing through the cross-examination of Mr. Dutta; however, Mr. Dutta testified that the regionalization policy is evaluated in relation to existing facilities.[110] Applicant was required to identify any other facility or system within three miles of the Facility and provide information and relevant correspondence regarding whether they have sufficient capacity and are willing to accept the additional wastewater.[111] Here, Applicant identified two of the three facilities (two proposed and one existing) but provided correspondence with only the existing facility.[112] Ultimately, the ALJ need not reach the issue of whether the term "proposed" in the rule extends to

[109] Tr. at 154.

[110] Tr. at 147.

[111] *See* Tr. at 151-52.

[112] Tr. at 151-152.

unconstructed facilities; regionalization is not compulsory even if facilities exist within a reasonable distance from the Facility.

As for the cost analysis, the ED simply does not review the details of Applicant's cost analysis, and no party provided authority that such a review is required. Here, Applicant provided information showing that connection to the GBRA facility was more expensive than constructing its own facility. While a more-detailed report and analysis of cost may have been ideal, the ALJ concludes that it is not required.

The ALJ concludes that Applicant has met its burden regarding the regionalization issue.

VII. TRANSCRIPTION COSTS

30 Texas Administrative Code section 80.23(d) provides for the allocation of transcript costs among the parties, excluding the ED and OPIC. In allocating those costs, the Commission is to consider the following applicable factors in allocating reporting and transcription costs among the other parties:

(A) the party who requested the transcript;
(B) the financial ability of the party to pay the costs;
(C) the extent to which the party participated in the hearing;
(D) the relative benefits of the various parties of having a transcript; . . . and

(G) any other factor which is relevant to a just and reasonable assessment of costs.[113]

There was no evidence presented on transcription costs. Additionally, Applicant submitted the only argument on this issue and argued that one-third of reporting and transcription costs for the hearing on the merits should be allocated to each of the non-agency parties. The ALJ concludes that absent any evidence or additional argument, each party should bear its own transcription costs.

VIII. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order containing Findings of Fact and Conclusions of Law and issue the Draft Permit to Civitas. All requests for findings of fact that are not included in the Proposed Order are denied.

SIGNED NOVEMBER 21, 2023.

ALJ Signature:

Megan Johnson

Presiding Administrative Law Judge

[113] 30 Tex. Admin. Code § 80.23(d)(1).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION BY CIVITAS AT BUDA, LLC FOR NEW TPDES PERMIT NO. WQ0016154001; SOAH DOCKET NO. 582-23-11653 TCEQ DOCKET NO. 2022-1732-MWD

On __, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Civitas at Buda, LLC (Applicant or Civitas) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016154001. A Proposal for Decision (PFD) was presented by Megan Johnson, Administrative Law Judges (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the application on August 23, 2023, in Austin, Texas.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Application

1. Applicant filed its application (Application) for a TPDES permit with the Commission on April 22, 2022.

2. The Application requested authorization to discharge treated domestic wastewater from a wastewater treatment facility (Facility), that will be located approximately one mile northeast of the intersection of County Road 120 and County Road 107, in Hays County, Texas.

3. The proposed discharge route is first to Elm Creek, then to Plum Creek in Segment No. 1810 of the Guadalupe River Basin.

4. The Application requested authorization to discharge treated domestic wastewater at a daily average flow not to exceed 0.125 million gallons per day (MGD) in the Interim I phase, 0.250 MGD in the Interim II phase, and a daily average flow not to exceed 0.50 MGD in the final phase.

5. The Executive Director (ED) of the Commission declared the Application administratively complete on June 27, 2022.

6. The ED completed the technical review of the Application, prepared a draft permit (Draft Permit), and made it available for public review and comment.

The Draft Permit

7. The Facility is an activated sludge with nitrification process plant. The Draft Permit provides for three phases, the Interim I phase, the Interim II phase, and the Final phase. During the Interim I phase, the Facility may not discharge more than 0.125 MGD. The Interim II phase discharge may not exceed 0.250 MGD, and, in the final phase, the Facility would be authorized to discharge up to 0.50 MGD. There is no limit on how long the Facility can remain in the interim phases.

8. The wastewater treatment facilities will be package plants. The treatment units for the Interim I phase are two aeration basins, a secondary clarifier, one chlorine contact basin, and an aerated sludge holding tank. Additional units for the Interim II phase are two aeration basins, a secondary clarifier, one chlorine contact basin, and an aerated sludge holding tank. The additional units for the Final phase are four aeration basins, two secondary clarifiers, one

chlorine contact basin, dichlorination basin, and an aerated sludge holding tank.

9. The Draft Permit contains the following effluent limits all phases:

Effluent Characteristic	Discharge Limitations
5-day Biochemical Oxygen Demand (BOD5)	10 milligrams (mg) / liter (L)
Total Suspended Solids (TSS)	15 mg/L
Ammonia Nitrogen (NH3-N)	3 mg/L
Phosphorus	1.0 mg/L
E. coli	126 colony forming units (CFU) or most probable number (MPN)
Dissolved Oxygen (DO)	4.0 mg/L
Effluent pH	Not less than 6.0, not more than 9.0
Chlorine residual	At least 1.0 mg/L

Notice and Jurisdiction

10. The Notice of Receipt of Application and Intent to Obtain TPDES Permit was published in English on June 29, 2022, in *Hays Free Press* and in Spanish in *El Mundo* on June 30, 2022.

11. The Applicant published the Notice of Application and Preliminary Decision in English in *Hays Free Press* on September 21, 2022, and in Spanish in *El Mundo* on that same day.

12. The public comment period closed on October 24, 2022.

13. The ED filed the Response to Comments.

14. Applicant filed a request for direct referral on November 17, 2022.

15. The ED's Final Decision letter was mailed on December 29, 2022.

16. On February 7, 2023, this matter was referred to SOAH.

17. The parties submitted three agreed issues to be adjudicated by SOAH:

Issue A: whether the Draft Permit is protective of water quality in accordance with applicable Texas Water Quality Standards;

Issue B: whether the Draft Permit complies with applicable requirements regarding the location standards of the TCEQ Rules for domestic wastewater plants set forth in Subchapter B of Chapter 309, including prevention of nuisance odor; and

Issue C: whether the Draft Permit is consistent with the State's regionalization policy pursuant to Texas Water Code section 26.0282.

18. On March 22, 2023, notice of the preliminary hearing was published in the *Hays Free Press*. Known parties received mailed notice. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

Proceedings at SOAH

19. On August 21, 2023, SOAH ALJ Megan Johson convened the preliminary hearing in this case via videoconference. Applicant, the ED, TCEQ's Office of Public Interest Council (OPIC), Guadalupe Blanco River Authority (GBRA), and Stanley and Kelly Kolodzey (the Kolodzeys) appeared.

20. The Administrative Record was admitted into the record as ED Exhibits A-E and Applicant's Exhibits A and B.

21. The hearing on the merits was convened on August 23, 2023, at SOAH's offices at 300 West 15th Street, 4th Floor, Austin, Texas 78701. The record ultimately closed on September 27, 2023, the date on which the last post-hearing written arguments were filed.

The Texas Surface Water Quality Standards

22. The Texas Surface Water Quality Standards (TSWQS) designate uses for the state's surface waters and establish narrative and numerical water quality standards to protect those uses.

23. The TCEQ has adopted standard procedures to implement the TSWQS, which are approved by the U.S. Environmental Protection Agency (EPA) and

set forth in "Procedures to Implement the Texas Surface Water Quality Standards" (IPs).

24. The TSWQS and IPs are used to set permit limits for wastewater discharges.

25. Nutrients in streams and rivers are evaluated based on the general narrative criteria for nutrients and the antidegradation rules.

26. Nutrients must not cause excessive growth of aquatic vegetation that impairs uses of the waterbody.

27. Under a Tier 1 antidegradation review, existing uses and water quality sufficient to protect those uses must be maintained. 30 Tex. Admin. Code § 307.5(b)(1).

The Plum Creek Watershed Protection Plan

28. In 2008, GBRA, along with several other entities, developed the Plum Creek Watershed Protection Plan (Plan) to restore water quality in Plum Creek and its tributaries and to ensure future watershed quality and health.

29. The two main areas of concern addressed in the Plan were the high levels of *E. coli* and high nutrients levels.

30. The Plan is a guidance document and a voluntary, non-regulatory alternative to addressing water quality issues.

31. The TCEQ assisted with the creation of the Plan but has not adopted its standards.

32. As part of the Plan, all wastewater treatment facilities discharging to Plum Creek would work towards a permit treatment level of 5 mg/L BOD5, 5 mg/L TSS, 2 mg/L NH3-N, and 1 mg/L of total phosphorus.

33. Applicant has not agreed to abide by the Plan.

Protection of Water Quality

34. Plum Creek is over twelve miles away from the proposed discharge point.

35. Segment 1810 has been removed from the 303(d) list, the state's list of impaired and threatened waters.

36. TCEQ utilized proper geometric inputs in its water quality modeling analysis.

37. The Tier 1 antidegradation review, which examined uses within three miles of the proposed discharge point, determined that existing water quality uses would not be impaired.

38. A Tier 2 antidegradation review was not required because no water bodies with exceptional, high, or intermediate aquatic life were within the stream reach.

39. The Draft Permit's proposed permit limits are in accordance with TCEQ standard operating procedures (SOPs) and are sufficiently protective of water quality and uses of the waters in the state.

40. Protestants did not present evidence that the Draft Permit violates a specifically applicable state or federal requirement.

Regionalization

41. To effectuate its policy of encouraging regionalization of wastewater services, TCEQ requires an applicant to provide certain information to allow TCEQ to conduct a regionalization analysis.

42. As part of its Application, Applicant provided email correspondence to and from GBRA regarding whether they would provide sewer service.

43. Applicant's written communications with GBRA were sufficient.

44. GBRA's facility is located within a three-mile radius of the Facility, and GBRA is willing to accept the additional wastewater.

45. The ED requested from Applicant a cost analysis of expenditures that includes the cost of connecting to the GBRA facility versus the cost of constructing the Facility.

46. Connecting to the GBRA facility would cost approximately $2,761,345.00 to $4,511,245.00 more than constructing a new plant.

47. Costs weigh in favor of granting Applicant's application.

48. The ED reviewed the cost analysis in accordance with its SOPs and IPs.

Nuisance Odors

49. The Draft Permit contains sufficient provisions to prevent nuisance odors.

Transcription Costs

50. No evidence about transcription costs was presented.

51. Applicant was the only party that submitted argument about transcription costs.

II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.

2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code section 2003.047.

3. Notice was provided in accordance with Texas Water Code sections 5.114 and 26.028; Texas Government Code sections 2001.051 and 2001.052; and 30 Texas Administrative Code sections 39.405 and 39.551.

4. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).

5. Applicant's filing of the Administrative Record established a prima facie case that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17.

6. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

7. Protestants did not rebut the prima facie demonstration by demonstrating that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement that relates to a matter referred by TCEQ. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.17(c).

8. The Draft Permit is protective of water quality and the existing uses of the receiving waters in accordance with applicable TSWQS.

9. TCEQ's analysis was performed in accordance with TCEQ standard operating procedures and IPs.

10. The Plan's standards are not regulatory, and the TCEQ is not required to follow them in issuing permits.

11. The Application demonstrates compliance with TCEQ's regionalization policy. Tex. Water Code §§ 26.003, 26.081(a)-(b), (d); 26.0282.

12. The Draft Permit contains sufficient provisions to prevent nuisance odors. 30 Tex. Admin. Code §§ 217.38, 309.13(e).

13. The Application is substantially complete and accurate.

14. The Draft Permit complies with TCEQ's antidegradation policy. 30 Texas Admin. Code §§ 307.5, 307.6(b)(4).

15. The Application should be granted, and the Draft Permit issued.

16. No transcript costs may be assessed against the ED or OPIC because TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).

17. In the absence of discussion or evidence about the factors set out in 30 Texas Administrative Code section 80.23(d)(1), no assessment of transcription costs should be made and each party should bear its own transcription costs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Civitas's Application for Texas Pollutant Discharge Elimination System Permit No. WQ0016154001 is granted as set forth in the Draft Permit.

2. The parties are to bear their own transcription costs.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

4. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.

5. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Jon Niermann, Chairman, For the Commission