

**SOAH DOCKET NO. 582-23-11653
TCEQ DOCKET NO. 2022-1732-MWD**

**APPLICATION BY § BEFORE THE STATE OFFICE
CIVITAS AT BUDA, LLC FOR § OF
TPDES PERMIT NO. WQ0016154001 § ADMINISTRATIVE HEARING
§**

**STANLEY AND KELLY KOLODZEY
REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

December 21, 2023

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**STANLEY AND KELLY KOLODZEY’S REPLY TO
EXCEPTIONS TO PROPOSAL FOR DECISION**

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

Protestant Stanley and Kelly Kolodzey (“Kolodzeys” or “Protestants Kolodzeys”) submit this Reply to Exceptions to the Proposal for Decision (“PFD”) relating to the application by Civitas at Buda, LLC (“Civitas” or “Applicant”) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016154001.

I. REPLY TO EXCEPTIONS BY THE EXECUTIVE DIRECTOR

While Protestants Kolodzeys agree with the ED’s changes to the Findings of Fact 11, 15, and 19 related to procedural history, the Kolodzeys have demonstrated that Civitas has *not* met its burden of proof for Issues A and C.

The Executive Director’s position that the draft permit meets all statutory and regulatory requirements is contrary to the applicable law in this matter. Civitas has not met its burden to demonstrate compliance with the applicable Texas Water Quality Standards. Under a Tier 1 analysis for protection of existing uses, Civitas has not demonstrated that measures are in place to *ensure* that Plum Creek will achieve compliance with water quality standards. Plum Creek is already in violation of the state water quality standard for bacteria,¹ and thus the standards will

¹ 2022 Texas Integrated Report - Index of Water Quality Impairments at 30, www.tceq.texas.gov/downloads/water-quality/assessment/integrated-report-2022/2022-imp-index.pdf.

only be achieved by *lowering* bacteria levels in the creek. Civitas has failed to demonstrate how bacteria levels will be *lowered* despite the *addition* of bacteria from Civitas' discharge. Furthermore, TCEQ failed to conduct a Tier 2 assessment,² despite the high aquatic life designation of SCS Reservoir 16 and that TCEQ's QUAL-TX and CSTR modeling (i.e., "reservoir" modeling) predicts nitrate and phosphorus concentrations in the stream and reservoir water body that exceed the relevant Tier 2 screening levels.³ Furthermore, Kolodzeys and Guadalupe Blanco River Authority ("GBRA") demonstrated that the ED's modeling is inaccurate and insufficient,⁴ which resulted in an under-prediction of ammonia nitrogen and an elevated prediction level of dissolved oxygen in the reservoir downstream.⁵

Likewise, the Executive Director errs in finding that Civitas has met its burden under Issue C: "Whether the draft permit is consistent with the state's regionalization policy pursuant to Texas Water Code § 26.0282." The circumstances of this permit application make particularly clear that no need exists for the construction of an entirely new facility. It is undisputed that GBRA infrastructure is located within a three-mile radius of the applicant's proposed facility and GBRA is willing and able to accept the proposed discharge.⁶ Furthermore, Civitas' cost analysis did not justify a finding that Civitas demonstrated a need for the facility because the cost analysis did not include any detail or explanation of the total estimated cost for the proposed Civitas facility.⁷

² Tr. at 138:24-139:1 (testimony of ED aquatic biologist Jenna Leug); *see also* Ex. GBRA 1 (Testimony of Tim Osting) at 18:7-10.

³ Ex. GBRA 1 (Testimony of Tim Osting) at 18:78-13.

⁴ Ex. GBRA 1 (Testimony of Tim Osting) at 13:11-13; *see also* discussion at Protestants Stanley and Kelly Kolodzey's Written Closing Arguments at Sec. II(A)(1), pp. 3.

⁵ Tr. at 18:5-13 (Cross Examination of Tim Osting).

⁶ Permit Application, Domestic Technical Report 1.1, Section 1, Question A, internal pp. 22 (hereinafter Permit Application) (Applicant answering "yes" to the question "Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?"); Tr. at 147:9-24 (Cross Examination of ED Permit Coordinator Deba Dutta).

⁷ Tr. at 154:21-155:5 (Cross of Deba Dutta).

Finally, Civitas failed to provide relevant proof that it attempted to contact three other nearby facilities, despite the ED's request that Civitas do so.⁸

Civitas, therefore, did not adequately respond to the genuine fact issues raised by the Protestants and has not upheld its burden of proof under these issues.

II. REPLY TO EXCEPTIONS BY GBRA

Protestants Kolodzeys support and adopt the exceptions presented by Protestant GBRA. The Kolodzeys would add to GBRA's analysis of the Plum Creek Watershed Protection Plan ("PCWPP") that Civitas provides no alternative to the Plan to meet Texas water quality standards for bacteria. The Plan is the only set of measures identified in the record that will *ensure* that Plum Creek will be brought into compliance despite its current impaired status.

Furthermore, under GBRA's water quality analysis, Protestants Kolodzeys would highlight the extensive professional engineering experience of GBRA's expert, Tim Osting, as compared to the qualifications of Janet Sims. The PFD states that "[s]ome of the modeling inputs were based upon professional judgment" and that "the greater weight of the credible evidence demonstrates that the modeling was correctly performed."⁹ However, Janet Sims, who is not an engineer, was unable to answer questions during the hearing on the merits regarding the discharge flow paths.¹⁰ Janet Sims' testimony and lack of experience when compared to the experience of Tim Osting supports Protestants' argument that TCEQ's modeling was inadequate.

⁸ Tr. at 152:3-16 (Cross of Deba Dutta).

⁹ PFD at 23.

¹⁰ Tr. at 101:9-12.

III. CONCLUSION

For the foregoing reasons, Protestants Kolodzeys urge the Commissioners to deny the draft permit or otherwise modify the terms of the permit to comply with the PCWPP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I certify that on December 21, 2023, a true and correct copy of the foregoing document was served upon the following parties via email.

/s/ Eric Allmon
Eric Allmon

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