

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 18, 2025

TCEQ Executive Director

VIA EFILE TEXAS

HK Real Estate Development, LLC

VIA EFILE TEXAS

Freasier, LLC

VIA EFILE TEXAS

Office of Public Interest Counsel

VIA EFILE TEXAS

RE: SOAH Docket No. 582-23-21878
TCEQ Docket No. 2023-0385-MWD
Application by HK Real Estate Development, LLC for TPDES
Permit No. WQ0016150001

Dear Parties:

The Administrative Law Judges (ALJs) issued a Supplemental Proposal for Decision on Remand (PFD) and Proposed Order (PO) in this matter on February 3, 2025. The Executive Director (ED) of the Texas Commission on Environmental Quality, HK Real Estate Development, LLC (Applicant), and Freasier, LLC (Protestant) filed exceptions to the PFD on February 24, 2025. The ED, Applicant, and Protestant filed replies to exceptions on March 5, 2025. The Office of Public Interest Counsel did not file any exceptions or response to exceptions.

Having reviewed the exceptions and replies, the ALJs make the following changes to the PFD and the PO:

1. Revising the last sentence in the first paragraph on page 106 of the PFD to: Thus, Applicant has not shown by a preponderance of the evidence that the Draft Permit is also protective of Protestant's use and enjoyment of the Property, in accordance with the TSWQS.
2. Revising Finding of Fact No. 20 to: The ED preliminarily determined that a total phosphorus limit was not warranted.
3. Revising Finding of Fact No. 51 to: Applicant was represented by attorneys Helen S. Gilbert, Randall B. Wilburn, and Kerrie Jo Qualtrough; Protestant was represented by attorneys Natasha J. Martin and Bobby M. Salehi; the ED was represented by attorneys Fernando Salazar Martinez, Bradford S. Eckhart, and Michael T. Parr, II; and OPIC was represented by attorney Eli Martinez.
4. Revising Finding of Fact No. 58 to: Sandpit Creek has a wide channel starting near the Facility and going through four 9'x9' box culverts under State Highway 181 and entering the impoundment.


The ALJs decline to revise Finding of Fact Nos. 90 and 91 as proposed by the ED because the proposed revisions do not accurately represent the record evidence regarding these issues. The ALJs also decline to remove Findings of Fact Nos. 107-109 as proposed by Protestant because this PFD supplements the Proposal for Decision on Summary Disposition issued on January 12, 2024, and includes all issues referred in this proceeding, original and on remand. Finally, Applicant's exceptions reiterate arguments that were made at the hearing on the merits and in written closing briefs, which were addressed at length in the PFD. Although not specifically discussed in the PFD, because the ALJs found that Sandpit Creek does not connect to the San Antonio River, Applicant's arguments regarding whether the proposed discharge route in the Application was a minor and

Exceptions Letter

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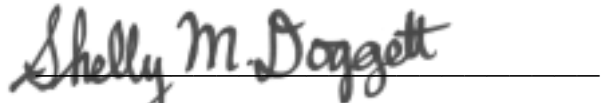
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correctable error and the change in the proposed discharge route was a permissible minor amendment are moot. With this letter, the PFD is ready for consideration.

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Katerina DeAngelo,

Administrative Law Judge

Handwritten signature of Shelly M. Doggett in cursive script, positioned above a horizontal line.

Shelly M. Doggett,

Administrative Law Judge

CC: Service List

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