

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 28, 2022

TO: All interested persons.
RE: HK Real Estate Development LLC
TPDES Permit No. WQ0016150001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Floresville City Hall, 1120 D Street, Floresville, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director’s decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087


Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
HK Real Estate Development LLC
TPDES Permit No. WQ0016150001

The Executive Director has made the Response to Public Comment (RTC) for the application by HK Real Estate Development LLC for TPDES Permit No. WQ0016150001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016150001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Floresville City Hall, 1120 D Street, Floresville, Texas.

MAILING LIST
for
HK Real Estate Development LLC
TPDES Permit No. WQ0016150001

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Emmanuel Ayala
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John L. McClung
John L. McClung Attorney at Law
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FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

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FOR THE CHIEF CLERK
via electronic mail:

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Texas Commission on Environmental
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Office of Chief Clerk MC-105
P.O. Box 13087
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COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

Protegiendo a Texas reduciendo y previniendo la contaminación

Diciembre 28, 2022

TO: Todas las personas interesadas.
RE: HK Real Estate Development LLC
TPDES Permiso No. WQ0016150001

Decisión del Director Ejecutivo.

El director ejecutivo ha tomado la decisión de que la solicitud de permiso mencionada anteriormente cumple con los requisitos de la ley aplicable. **Esta decisión no autoriza la construcción u operación de ninguna instalación propuesta.** Esta decisión será considerada por los comisionados en una reunión pública programada regularmente antes de que se tome cualquier medida sobre esta solicitud, a menos que todas las solicitudes de audiencia o reconsideración de casos impugnados hayan sido retiradas antes de esa reunión.

Se adjuntan a esta carta las instrucciones para ver en Internet la Respuesta del Director Ejecutivo a los Comentarios Públicos (RTC). Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov. Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios públicos, están disponibles para su revisión en la Oficina Central de TCEQ. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en el Ayuntamiento de Floresville, 1120 D Street, Floresville, Texas.

Si no está de acuerdo con la decisión del director ejecutivo y cree que es una "persona afectada" como se define a continuación, puede solicitar una audiencia de caso impugnado. Además, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Los procedimientos para la evaluación de la comisión de las solicitudes de audiencia/solicitudes de reconsideración se encuentran en 30 Código Administrativo de Texas, Capítulo 55, Subcapítulo F. A continuación, se presenta una breve descripción de los procedimientos para estas dos solicitudes.

Cómo solicitar una audiencia de caso impugnado.

Es importante que su solicitud incluya toda la información que respalde su derecho a una audiencia de caso impugnado. Su solicitud de audiencia debe demostrar que cumple con los requisitos legales aplicables para que se le conceda su solicitud de audiencia. La consideración de la comisión de su solicitud se basará en la información que usted proporcione.

La solicitud debe incluir lo siguiente:

- (1) Su nombre, dirección, número de teléfono durante el día y, si es posible, un número de fax.
- (2) El nombre del solicitante, el número de permiso y otros números enumerados anteriormente para que su solicitud pueda procesarse adecuadamente.
- (3) Una declaración que exprese claramente que está solicitando una audiencia de caso impugnado. Por ejemplo, la siguiente declaración sería suficiente: "Solicito una audiencia de caso impugnado".
- (4) Si la solicitud es realizada por un grupo o asociación, la solicitud debe identificar:
 - (A) una persona por nombre, dirección, número de teléfono durante el día y, si es posible, el número de fax, de la persona que será responsable de recibir todas las comunicaciones y documentos para el grupo.;
 - (B) los comentarios sobre la solicitud presentada por el grupo que constituyen la base de la solicitud de audiencia; y
 - (C) por nombre y dirección física, uno o más miembros del grupo que de otro modo tendrían derecho a solicitar una audiencia por derecho propio. Los intereses que el grupo busca proteger deben estar relacionados con el propósito de la organización. Ni la reclamación alegada ni la reparación solicitada deben requerir la participación de los miembros individuales en el caso.

Además, su solicitud debe demostrar que usted es una "**persona afectada**". Una persona afectada es aquella que tiene un interés justiciable personal relacionado con un derecho, deber, privilegio, poder o interés económico legal afectado por la solicitud. Su solicitud debe describir cómo y por qué se vería afectado negativamente por la instalación o actividad propuesta de una manera que no sea común al público en general. Por ejemplo, en la medida en que su solicitud se base en estas preocupaciones, debe describir el impacto probable en su salud, seguridad o usos de su propiedad que puedan verse afectados negativamente por la instalación o las actividades propuestas. Para demostrar que tiene un interés personal justiciable, debe indicar, tan específicamente como pueda, su ubicación y la distancia entre su ubicación y la instalación o actividades propuestas.

Su solicitud debe plantear cuestiones de hecho controvertidas que sean relevantes y materiales para la decisión de la comisión sobre esta solicitud que fueron planteadas **por usted** durante el período de comentarios públicos. La solicitud no puede basarse únicamente en cuestiones planteadas en los comentarios que haya retirado.

Para facilitar la determinación por parte de la comisión del número y alcance de los asuntos que se remitirán a la audiencia, usted debe: 1) especificar cualquiera de las respuestas del director ejecutivo a **sus** comentarios que usted disputa; 2) la base fáctica de la disputa; y 3) enumerar cualquier cuestión de derecho en disputa.

Cómo solicitar la reconsideración de la decisión del Director Ejecutivo.

A diferencia de una solicitud de audiencia de caso impugnado, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Una solicitud de reconsideración debe contener su nombre, dirección, número de teléfono durante el día y, si es posible, su número de fax. La solicitud debe indicar que está solicitando la reconsideración de la decisión del director ejecutivo, y debe explicar por qué cree que la decisión debe ser reconsiderada.

Fecha límite para la presentación de solicitudes.

La oficina del Secretario Oficial debe **recibir** una solicitud de audiencia de caso impugnado o reconsideración de la decisión del director ejecutivo a más tardar **30 días calendario** después de la fecha de esta carta. Puede enviar su solicitud electrónicamente a www.tceq.texas.gov/agency/decisions/cc/comments.html o por correo a la siguiente dirección:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Procesamiento de solicitudes.

Las solicitudes oportunas para una audiencia de caso impugnado o para la reconsideración de la decisión del director ejecutivo se remitirán al Programa de Resolución Alternativa de Disputas de TCEQ y se incluirán en la agenda de una de las reuniones programadas regularmente de la comisión. Las instrucciones adicionales que explican estos procedimientos se enviarán a la lista de correo adjunta cuando se haya programado esta reunión.

Cómo obtener información adicional.

Si tiene alguna pregunta o necesita información adicional sobre los procedimientos descritos en esta carta, llame al Programa de Educación Pública, al número gratuito, 1-800-687-4040.

Atentamente,



Laurie Gharis
Secretaria Oficial

LG/erg

Recinto

**RESPUESTA DEL DIRECTOR EJECUTIVO A LOS COMENTARIOS DEL
PÚBLICO**

**para
HK Real Estate Development LLC
TPDES Permiso No. WQ0016150001**

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de HK Real Estate Development LLC del permiso de TPDES No. WQ0016150001. Puede ver e imprimir el documento visitando la Base de Datos Integrada de los Comisionados de TCEQ en el siguiente enlace:

<https://www.tceq.texas.gov/goto/cid>

Para ver el RTC en el enlace anterior, ingrese el número de identificación TCEQ para esta solicitud (WQ0016150001) y haga clic en el botón "Buscar". Los resultados de la búsqueda mostrarán un enlace al RTC.

Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov.

Información adicional

Para obtener más información sobre el proceso de participación pública, puede comunicarse con la Oficina del Asesor de Interés Público al (512) 239-6363 o llamar al Programa de Educación Pública, al número gratuito, (800) 687-4040.

Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios, están disponibles para su revisión en la Oficina Central de TCEQ en Austin, Texas. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en el Ayuntamiento de Floresville, 1120 D Street, Floresville, Texas.

LISTA DE CORREO
para
HK Real Estate Development LLC
TPDES Permiso No. WQ0016150001

PARA EL SOLICITANTE:

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Austin, Texas 78731

Paul Kuo, Manager
HK Real Estate Development LLC
24607 Fairway Springs
San Antonio, Texas 78260

PERSONAS INTERESADAS:

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Branscomb Law
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San Antonio, Texas 78249

Emmanuel Ayala
4012 US Highway 181 North
Floresville, Texas 78114

John L. McClung
John L. McClung Attorney at Law
3310 Oakwell Court, Apartment 15101
San Antonio, Texas 78218

PARA EL DIRECTOR EJECUTIVO
por correo electrónico:

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Michael Parr, Staff Attorney
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MSW Permits Section MC-124
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PARA ABOGADOS DE INTERÉS
PÚBLICO
por correo electrónico:

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Texas Commission on Environmental
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Public Interest Counsel MC-103
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Austin, Texas 78711-3087

PARA EL SECRETARIO OFICIAL
por correo electrónico:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0016150001

APPLICATION	§	BEFORE
BY HK REAL ESTATE	§	THE TEXAS
DEVELOPMENT, LLC FOR	§	COMMISSION ON
TPDES PERMIT NO. WQ0016150001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the application by HK Real Estate Development, LLC (**Applicant**) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016150001, and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk received timely comments from Emmanuel Ayala, John McClung, on behalf of James and Betty Freasier (the Freasiers), and Mary Adair, on Behalf of Freasier LLC. This response addresses all timely public comments received, whether withdrawn or not. For more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800 -687-4040. General information about the TCEQ can be found on the TCEQ web site at <http://www.tceq.texas.gov>.

BACKGROUND

The Applicant applied for new TPDES permit No. WQ0016150001 to authorize the discharge of treated domestic wastewater (**effluent**) at a daily average flow limit of 60,000, or 0.06 million gallons per day (MGD) during Interim phase I, at a daily average flow limit of 0.12 MGD during Interim Phase II, and a daily average flow limit of 0.18 MGD in the Final Phase (**proposed discharge**).

Description of Facility/Discharge Route

The Applicant's Wastewater Treatment Facility (WWTF), the Richter Ranch WWTF (**proposed facility**) which will serve the Richter Ranch subdivision, is located approximately 2,800 feet southeast of the intersection of County Road 320 and State Highway 181 North, in Wilson County, Texas 78114, and is an activated sludge process plant operated in conventional mode. Treatment units across all phases of the proposed permit include mechanical auger screens, anoxic aerobic tanks, aeration tanks, Membrane Bioreactor (MBR) basins, aerobic digesters, and chlorine contact chambers. Interim Phase I includes one of each treatment unit, with Interim Phase II and the Final Phase including two of each treatment unit and three of each treatment unit, respectively. The discharge route for the proposed discharge is to Sandpit Creek, then to the Upper San Antonio River in Segment No. 1911 of the San Antonio River Basin.

Sludge generated at the proposed facility is authorized to be disposed of at a TCEQ-authorized land application site, co-disposal landfill, or wastewater treatment facility, or a facility that further processes sludge.

Technical Review

The TCEQ has primary authority over water quality in Texas and also federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies (“water in the state”). The Texas Water Code (TWC) § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the TWC and TCEQ rules. Specifically, the ED’s Technical Review evaluates impacts from the proposed discharge on the receiving waters, starting at the discharge point (Sandpit Creek), according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS) and the TCEQ’s *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010 (IPs)*.

The Technical Review process for surface water quality is conducted by staff in the ED’s Water Quality Division (**WQD staff**) on the Standards Implementation Team (**Standards Team**), and WQD staff in the Water Quality Assessment Team (**Modeling Team**). WQD staff reviewed the application in accordance with the TSWQS and TCEQ’s IPs with the goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving surface waters.

The first component of the ED’s Technical Review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the route of the proposed discharge. Along with other available information, reviewing the receiving waters for the proposed discharge allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge’s possible impact and assign the corresponding Minimum DO criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ’s IPs.

The designated uses and the dissolved oxygen criterion for the receiving waters of the route for the proposed discharge, according to Appendix A of 30 TAC § 307.10 (TSWQS), is primary contact recreation, high aquatic life use, and 5.0 mg/L DO for the Upper San Antonio River in Segment No. 1911. Through his Technical Review, the ED provides the proper effluent limitations (**limits**) to protect these uses.

For applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge, and per 30 TAC § 307.5 (TSWQS) and the TCEQ’s IPs, an antidegradation review of the receiving waters was performed. The Tier 1 review determined that existing water quality uses will not be impaired by the proposed discharge, with the numerical and narrative criteria to protect existing uses being maintained. The Tier 2 review preliminarily determined that significant degradation of water quality is not expected in the Upper San Antonio River, which has been identified as having high aquatic life use, because existing uses will be maintained and protected. Because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) (TSWQS) and determined that Sandpit Creek, an unclassified waterbody, had a limited aquatic life use, with 3.0 mg/L DO.

As with all determinations, reviews, or analyses related to the Technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

The second component of the ED’s Technical Review involved WQD staff on the Modeling Team performing water quality modeling runs, or a Dissolved Oxygen (**DO**)

analysis, using a default QUAL-TX model in combination with an updated version of the calibrated QUAL-TX model documented in the *Waste Load Evaluation for the San Antonio River System in the San Antonio River Basin (1989)*.

The proposed permit's effluent limits, established by WQD staff's modeling results, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH₃-N), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on the modeling results, the proposed limits below are predicted to be adequate to maintain dissolved oxygen levels above the criteria stipulated by the Standards Implementation Team for Sandpit Creek (3.0 mg/L DO) and for the Upper San Antonio River (Segment No. 1911) (5.0 mg/L DO).

Interim I phase	(0.06 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO
Interim II phase	(0.12 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO
Final Phase	(0.18 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO

Coefficients and kinetics used in the model are a combination of site-specific, standardized default, and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

Therefore, the entire set of effluent limitations for all three phases of the proposed permit, based on a 30-day average, are 5.0 mg/l CBOD₅, 5.0 mg/l TSS, 2.0 mg/l NH₃-N, 63 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 5.0 mg/l minimum DO. The effluent must contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. An equivalent method of disinfection may be substituted only with prior approval of the ED.

In all phases of the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per week by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Segment No. 1911 is currently listed on the state's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listings are for impaired fish community from just upstream of the confluence with Sixmile Creek to the upper end of the segment (Assessment Units [AUs] 1911_08 & 1911_09). Segment No. 1911 is also listed for impaired macrobenthic community from just upstream of the confluence with Sixmile Creek to just upstream of the confluence with San Pedro Creek (AU 1911_08). This facility will be discharging to AU 1911_04 which is located downstream from the impaired AUs 1911_08 & 1911_09 and will therefore not contribute to the impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 34D has been approved for this segment. On August 8, 2007, the TCEQ adopted TMDLs for Bacteria in the San Antonio Area, Project No. 34D. The EPA approved the TMDL on April 21, 2009. This document describes a project developed to address water quality impairments related to bacteria for three streams located in and around the City of San Antonio: Salado Creek, Segment No. 1910; Walzem Creek, Segment No. 1910A; and the Upper San Antonio River, Segment No. 1911. There are several municipal point sources in the watershed. The TMDL

calculation relies on a 63 cfu/100 ml for the waste water treatment facility waste load allocation (WLA). Effluent limits for these facilities should be set at 63 cfu/100 ml.

The proposed permit's pretreatment requirements are based on TPDES regulations contained in 30 TAC Chapter 305, which references 40 Code of Federal Regulations (CFR) Part 403, "General Pretreatment Regulations for Existing and New Sources of Pollution" [rev. *Federal Register*/ Vol. 70/ No. 198/ Friday, October 14, 2005/ *Rules and Regulations*, pages 60134-60798]. The permit includes specific requirements that establish responsibilities of local government, industry, and the public to implement the standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate the sewage sludge. This permit has appropriate pretreatment language for a facility of this size and complexity.

The discharge from the proposed permit is not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

Procedural Background

The TCEQ received the application on April 20, 2022, and declared it administratively complete on June 27, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (**NORI**) in Wilson County, Texas in English in the *Wilson County News* on July 06, 2022, and in Spanish in *El Mundo* on July 07, 2022. The ED completed the technical review of the application on August 25, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (**NAPD**) in Wilson County, Texas in English in the *Wilson County News* on September 21, 2022, in English in the *Sequin Gazette* on September 18, 2022, and in Spanish in *El Mundo* on September 15, 2022. The public comment period ended on October 21, 2022. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, animal life, vegetation and human health. However, if you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described below at the seventh bullet point under, "Access to Rules, Laws, and

Records.” If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

Access to Rules, Laws and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:** <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select “use our online form”) or by sending an email to the following address: complaint@TCEQ.texas.gov

Commission records for the proposed facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the Floresville City Hall located at 1120 D Street, Floresville, Texas 78114, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are available for viewing and copying at the same location since publication of the NAPD.

COMMENTS AND RESPONSES

COMMENT 1:

Emmanuel Ayala, the Freasiers, and Freasier LLC, all of whom own property within proximity to the proposed facility and proposed discharge route, all commented in opposition to the proposed permit, the proposed facility, and the proposed facility’s location, while expressing concerns about wastewater possibly encroaching on their respective properties that may cause negative impacts and also negatively affect their use and enjoyment of their property.

RESPONSE 1:

The ED acknowledges the comments in opposition to the proposed permit, proposed discharge route, the proposed facility, and the proposed facility’s location.

The issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights, and nothing in the proposed permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property. In addition, the scope of TCEQ’s regulatory jurisdiction does not limit the

ability of nearby landowners to seek relief from a court in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property.

The Applicant has a duty to comply with all conditions of the proposed permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

If the proposed facility, proposed discharge, or the Applicant create any nuisance conditions, the TCEQ may be contacted by the methods described above, in the last paragraph on page 5 to investigate if potential permit violations occurred.

However, TCEQ's permitting authority does not include the ability to mandate a different location for the facility if the location in the application complies with 30 TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to "Unsuitable Site Characteristics" for a discharge facility. The Applicant is the entity that proposes the location of the facility, the discharge point, and the route for the proposed discharge, rather than the ED.

Instead, the ED may only evaluate a location for the proposed facility according to the Location Standards in the TCEQ regulations and the effect(s) of the discharge on the uses of the receiving streams starting at the discharge point.

If an Applicant were to revise its application with a different location and discharge route for the proposed facility, the ED would reevaluate the new location and discharge route to make sure that the permit contains proper limits and conditions for the revised discharge route and location, which may require notice to additional landowners because of the new facility location and discharge route.

COMMENT 2:

Emmanuel Ayala, the Freasiers, and Freasier LLC, all commented, expressing concerns about their health, the health of their families, the health of livestock and the water quality in Sandpit creek.

RESPONSE 2:

The health concerns of area residents, as well as those of the public, are considered in reviewing amendment applications for domestic wastewater discharge permits. The TCEQ takes the concerns and comments expressed by the public, relating to human health, water quality, and protecting the State's rivers and lakes, into consideration in deciding whether to issue a wastewater discharge permit.

Chapter 26 of the TWC and TCEQ's water quality are written for the protection of public health, aquatic life, and the environment. Accordingly, the stated policy of both the Water Code and the TSWQS is:

to maintain the quality of water in the state consistent with the public 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 area-wide 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.¹

The proposed permit also requires the Applicant to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health.

WQD staff evaluated the application as an authorization to discharge treated wastewater into water in the State. Thus, the quality of the discharge and method of achieving that quality must follow the Federal Clean Water Act, TWC, and the TSWQS.

The TSWQS is a primary mechanism for the TCEQ to protect human health, surface and groundwater quality, aquatic life, the environment, and specifically, the designated uses of the receiving waters. The TSWQS require that discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals, not degrade receiving waters, and not result in situations that impair existing, attainable, or designated uses. Likewise, the TPDES program mandates that discharges of treated effluent into water in the state from facilities regulated by TPDES permits meet the requirements of the TSWQS.

As specified in the methodologies from the TCEQ IPs, TPDES permits issued by the TCEQ must maintain water in the state to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. Relatedly, municipal facilities typically do not have industrial contributors, and therefore, do not have toxins in their effluent. In addition, permits must prevent adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The design of the proposed permit ensures these water quality standards will be supported.

WQD Staff drafted the proposed permit with provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of human health, aquatic life, livestock, domestic animals, and the environment. Likewise, the proposed permit’s effluent limits will protect the uses and quality of the waterbodies in the route of the proposed discharge for the benefit of the aquatic life and terrestrial wildlife that depend on it. WQD Staff determined that the proposed permit complies with the TSWQS, ensuring that the effluent discharged is protective of human health.

This is because the methodology outlined in the TCEQ IPs is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health.

WQD Staff drafted the proposed permit to preclude significant degradation of water quality in the waterbodies in the route of the proposed discharge by including effluent limits and monitoring requirements designed to ensure protection of the waterbodies according to the TCEQ rules and procedures.

To achieve the goal of supporting a level of water quality sufficient to protect existing uses of waterbodies, the proposed permit contains several water quality-specific parameters or requirements that limit the potential impact of the discharge on the receiving waters of the discharge route.

¹ Texas Water Code § 26.003 and 30 TAC § 307.1.

The potential impact of the proposed discharge on instream dissolved oxygen (DO) levels is evaluated under hot and dry, low-flow summertime conditions, which are typically the most restrictive conditions in regard to DO levels. Critical low-flow, as defined in the TSWQS (30 TAC § 307.3(a)(16)), is a “low-flow condition that consists of the seven-day, two-year flow (7Q2),” which is the lowest seven-day average discharge with a recurrence interval of two years. The criteria of the 30 TAC Chapter 307 (the TSWQS) are applicable even during critical low-flow, therefore critical low-flow is considered when evaluating the appropriate effluent limits for the proposed discharge.

The proposed permit requires the Applicant to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health.”

According to the TCEQ rules, the plans and specifications of the plant design must comply with 30 TAC Chapter 217, relating to “Design Criteria for Domestic Wastewater Systems.” The Applicant is required at all times to ensure that the proposed facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Consequently, health impacts from pests should not occur. Nearby residents’ quality of life is protected by the fact that the Applicant is only authorized to discharge according to the limitations, monitoring requirements, and other conditions listed in the proposed permit.

Additional protection of human health comes from the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires disinfection of domestic wastewater into water in the state in a manner conducive to the protection of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval from the ED. Whichever form is used, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Therefore, in accordance with the TCEQ rules (30 TAC § 309.3(g)(1)), the proposed permit requires the treated effluent to be disinfected prior to discharge in a manner conducive to protect both the public health and aquatic life.

For this facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms. Chlorine is one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.² The effluent from the proposed facility, disinfected with chlorine, must contain a chlorine residual of at least 1.0 mg/L. The permit limit for maximum total chlorine residual is 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow), which must be monitored five times per week by grab sample.³

Additionally, 30 TAC § 217.37 requires a disinfection system to include a backup power system capable of providing sufficient power to operate continuously during all power outages. The draft permit also includes bacteria limits and monitoring requirements to verify proper disinfection. The treated effluent shall meet a daily average bacteria limit of 63 colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* per 100 ml. The effluent shall be sampled for bacteria One/month.

² U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

³ HK Real Estate Development LLC, Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(g)(2)

The ED's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state, which includes both navigable and non-navigable water bodies. The Texas Water Code defines "water" or "water in the state" to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.⁴

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater is not degraded. This goal of non-degradation does not mean zero-contaminant discharge."⁵ Chapter 26 of the Texas Water Code further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies must be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard (TWC § 26.401(c)(2)).

WQD staff determined that the proposed permit fully complies with the TSWQS, ensuring that the proposed discharge is protective of human health, water quality, aquatic life, and the environment. Further, the WQD has made the determination that if the surface water quality is protected, groundwater quality in the vicinity will not be impacted by the discharge. Thus, the limits of the proposed permit intended to maintain the existing uses and preclude degradation of the surface waters, protect against degradation of groundwater.

Further, 30 TAC § 309.13(c) states that a treatment unit at the proposed facility may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. For public water sources, the provisions of § 309.13(c) bolster the safeguards from TCEQ's Groundwater Rule (GWR) that protect drinking water quality against disease-causing microorganisms.

The effluent limits and conditions in the proposed permit were derived from a rigorous technical review to ensure compliance with the TSWQS. Similarly the proposed permit was developed to protect human health, animal life, vegetation, and aquatic and terrestrial life according to the TSWQS, provided the Applicant operates and maintains the proposed facility according to TCEQ rules and the requirements in the proposed permit.

COMMENT 3:

Emmanuel Ayala, the Freasiers, and Freasier LLC, all commented, expressing concern about foul odors from the proposed facility and negative impacts to air quality.

RESPONSE 3:

Instances of foul odors from a discharge of treated wastewater can exist when there are insufficient levels of dissolved oxygen (DO) present in the effluent, and therefore, all wastewater treatment facilities (WWTF) have the potential to generate odors. To prevent odors from occurring, the number of oxygen-demanding constituents must be controlled. The proposed effluent limitations, specifically the minimum DO limit, restrict the amount of oxygen-demanding constituents and are set at levels to

⁴ Texas Water Code § 26.001(5).

⁵ Texas Water Code § 26.401(b)

significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters.

Maintaining an adequate DO concentration in the early stages of wastewater treatment helps to minimize sulfide generation, which is the most common cause of odor. The treatment process proposed by the Applicant supplies oxygen from the air into the wastewater for biodegradation of the organic contaminants in the wastewater through aeration. Oxygen also turns the sulfide compounds into odorless sulfates. Additionally, nuisance-odor controls have been incorporated into the proposed permit.

To control and abate odors, the TCEQ rules require domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides options for applicants to satisfy the nuisance odor abatement and control requirements. The options are: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant; or 3) providing nuisance odor control.

According to the application, the proposed facility intends to comply with the requirement to abate and control nuisance odors by ownership of the buffer zone area. These requirements and legal restrictions are incorporated in the proposed permit. Therefore, nuisance odors are not expected to occur because of the permitted activities at the facility if the Applicant operates the proposed facility in compliance with TCEQ's rules and the terms and conditions of the proposed permit.

The proposed permit does not limit a landowner's ability to seek private action against the Applicant, and if anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096. Complaints may be filed electronically by using the methods described on page five (5), at the seventh bullet point in the fourth subsection of Background Information, "Access to Rules, Laws, and Records." If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

Related to air quality, the TCEQ is the agency responsible for enforcing air pollution laws. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health and the environment will be protected. According to the TCEQ rules in 30 TAC § 106.532, wastewater facilities have undergone this review, and their air emissions are permitted by rule provided the facility performs only the functions listed in the rule. Wastewater treatment facilities do not contribute significant amounts of air contaminants to the atmosphere, and thus, do not negatively impact human health and the environment. Similarly, the Applicant indicated in its application that the treatment process of the proposed facility would use the oxygen from the air, which does not make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code's Texas Clean Air Act § 382.057 and § 382.05196, and is therefore permitted by rule.

COMMENT 4:

The Freasiers and Freasier LLC, commented, expressing concern about the public notice process for the application.

RESPONSE 4:

Notice provisions for Applicants and the TCEQ are found in 30 TAC Chapter 39 (Public Notice). When the ED determines that an application is administratively complete, the Chief Clerk mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.⁶ Not later than 30 days after the ED determines that the application is administratively complete, the Applicant must publish the NORI in the newspaper that has the largest circulation within the county or municipality in which the facility is located.⁷ The Applicant must also make a copy of the administratively complete application available for public viewing in the county in which the facility is located.⁸ Finally, the Applicant, using county deed records, must identify all landowners adjacent to the proposed facility and discharge and submit the list to the TCEQ Chief Clerk's office so it can mail timely copies of the public notices for the application to the adjacent landowners.

After completing the technical review of an application, the ED files the preliminary determination and the proposed permit with the Chief Clerk.⁹ The Chief Clerk must mail the preliminary decision, along with the Notice of Application and Preliminary Decision (NAPD), to the Applicant, who must then publish the NAPD in the same newspaper as the NORI.¹⁰ The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.¹¹

The NAPD must set a deadline for filing public comments with the Chief Clerk that is no earlier than 30 days after its publication in a newspaper.¹² As the public comment period has ended, the ED must file this Response to Public Comments, addressing all timely, relevant, and material, or significant public comments submitted during the comment period, regardless of whether the comments were withdrawn.¹³

The notices are not intended to provide a full description of the application, but rather to provide instructions on where to obtain additional information, such as more comprehensive description of the information in the application. Documents associated with the application are made public at the locations below to allow the public to review them and determine if they have additional comments or questions. There is no requirement in the TCEQ rules that the public notices of an application must contain information about the regionalization analysis.

In this case, the TCEQ received the application for a new permit on **April 20, 2022**, and the TCEQ Application Review and Processing Team performed an administrative review of the application which includes verifying that the landowners map and landowners list was prepared according to TCEQ policies and regulations. The Applicant provided the required landowners list and map to TCEQ, and the NORI and NAPD were mailed out to each person and address on the list. The Applicant published the NORI in English on July 06, 2022, in the *Wilson County News*, and in Spanish in *El Mundo* on July 7, 2022. The application was determined technically complete on August 25, 2022, and the Applicant published the NAPD in English in the *Wilson County News* on

⁶ 30 TAC § 39.418(a).

⁷ 30 TAC § 39.405(f).

⁸ 30 TAC § 39.405(g).

⁹ 30 TAC § 39.419(a).

¹⁰ 30 TAC § 39.419(b).

¹¹ 30 TAC § 39.413.

¹² 30 TAC § 39.551(c)(3).

¹³ 30 TAC § 55.156.

September 21, 2022, in English in the *Sequin Gazette* on September 18, 2022, and in Spanish in *El Mundo* on September 15, 2022, and in Spanish in *El Mundo* on September 15, 2022.

The Copies of the NORI and NAPD were mailed out to each person on the landowners list. Additionally, a copy of the permit application (including location maps) and the NAPD notice with a URL link to the TCEQ on-line location map (showing the location of the facility) are available for viewing and copying at the TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk). The Applicant states that the permit application has been available for viewing and copying at the Floresville City Hall located at 1120 D Street, Floresville, Texas 78114, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

The ED may hold a public meeting at any time in the county where the facility is located if there is evidence of substantial public interest or if a legislator representing the general area where the facility will be located requests a meeting.

COMMENT 5:

Emmanuel Ayala, the Freasiers, and Freasier LLC, all commented, expressing concerns about potential flooding in Sandpit Creek worsening due to the greater volume of discharge from the proposed facility, and the possible damage to their properties.

RESPONSE 5:

The ED encourages the participation of all individuals in the environmental permitting process. However, there are certain concerns of individuals that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute.

While the Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code (TWC) authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes and coastal waters, and the proposed permit establishes terms and conditions that are intended to provide water quality pollution control, which focuses on controlling the discharge of pollutants into water in the state, the ED through his Water Quality Division (WQD) has no jurisdiction to address flooding or erosion issues in the wastewater permitting process, which is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's waterbodies.

While the TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit, to the extent that a concern over flooding also involves water quality, the Applicant is always required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit, including during flooding conditions. Likewise, the proposed permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. According to the application, the proposed facility will be located

above the 100-year flood plain. For additional protection, the proposed permit includes Other Requirement No. 4, which requires the Applicant to provide protection for the facility against a 100-year flood event.

Similarly, the TSWQS require that discharges not cause surface waters to be toxic to animal life. WQD Staff drafted the proposed permit with provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of human health, aquatic life, animal life, and the environment. Likewise, the proposed permit's effluent limits will protect the uses and quality of the waterbodies in the route of the proposed discharge for the benefit of the animals that interact with those waterbodies.

For flooding concerns, members of the public may contact the Wilson County Floodplain Administrator's office, run out of the Wilson County Office Emergency Management at phone number (830) 393-8351 8:00 a.m. - 5:00 p.m., Monday through Friday, or by sending an email to emc@wilsoncountytexas.gov. The TCEQ Resource Protection Team can be contacted for aid in identifying and contacting the appropriate county officials or offices, by calling (512) 239-4600, or by email at: wcp@tceq.texas.gov. Additionally, the Federal Emergency Management Agency has programs designed to mitigate damage caused by flooding, that can be found at the following website: <https://www.fema.gov/floodplain-management>.

Finally, the issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. In addition, the scope of TCEQ's regulatory jurisdiction does not, nor does the proposed permit, limit the ability of nearby landowners to seek relief from a court or use common law remedies in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, or property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred by calling the toll-free number, 1-888-777-3186, or the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096. Complaints may be filed electronically by using the methods described on page five (5), at the seventh bullet point in the fourth subsection of Background Information, "Access to Rules, Laws, and Records."

COMMENT 6:

Emmanuel Ayala commented, expressing concerns about property devaluation.

RESPONSE 6:

The ED acknowledges the significance of these concerns, however, while the ED encourages the participation of all citizens in the environmental permitting process, there are certain concerns of citizens that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute. The ED, through his Water Quality Division, has no jurisdiction to address property values.

The TCEQ does not have the authority to address these types of issues as part of the wastewater permitting process. While the Texas Legislature has given the TCEQ the responsibility to protect water quality, the water quality permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters

The issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. Alternatively, nothing in the proposed permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation or property.

Nor does the proposed permit limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records).

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor, Interim Executive Director

Charmaine Backens
Deputy Director, Environmental Law Division
and Acting Director, Office of Legal Services



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 22, 2022, the Executive Director's Response to Public Comment for Permit No. WQ0016150001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

A handwritten signature in black ink that reads "Michael T. Parr II". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936