



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 28, 2022

TO: Persons on the attached mailing list.

RE: The Vantage Austin LLC
TPDES Permit No. WQ0016132001

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 is a copy of the Executive Director's Response to Public Comment. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central Office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Weir City Hall, 2205 South Main Street, Weir, 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

MAILING LIST
for
The Vantage Austin LLC
TPDES Permit No. WQ0016132001

FOR THE APPLICANT:

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INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

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via electronic mail:

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Texas Commission on Environmental
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Office of Chief Clerk MC-105
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TPDES PERMIT NO. WQ0016132001

APPLICATION BY THE
VANTAGE AUSTIN LLC FOR
TPDES PERMIT NO. WQ0016132001

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BEFORE THE
TEXAS COMMISSION ON
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 The Vantage Austin LLC (**Applicant**) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016132001, 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 Mark Shipman, Marvin Mueller, and John Carlton, on behalf of Jonah Water Special Utility District (**Jonah**), a political subdivision of the State of Texas, operating under Texas Water Code (TWC) Chapter 65, and is the holder of Certificates of Convenience and Necessity (CCN) for water and sewer, numbers 10970 and 21053, in Williamson County, Texas.¹

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. WQ0016132001 to authorize a discharge of treated domestic wastewater (**effluent**) at a daily average flow limit in Interim Phase I of 150,000 or 0.15 million gallons per day (MGD), at a daily average flow limit in Interim Phase II of 0.30 MGD, and at a daily average flow limit in the Final Phase of 0.45 MGD (**proposed discharge**) from the Applicant's Wastewater Treatment Facility (WWTF), the Williamson County Municipal Utility District No. 44 WWTF (**Wilco facility**). Sludge generated at the Wilco facility will be authorized to be disposed of at any TCEQ-authorized land application site, co-disposal landfill, WWTF, or facility that further processes sludge.

Description of Facility/Discharge Route

If this permit is ultimately issued, the Wilco facility will be located approximately 1.0 mile north of the intersection of County Road 140 and County Road 194, in Williamson County, Texas 78626, and will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units across all phases of the proposed permit include a fine screen, anoxic basins, aerobic basins, MBR basins, and chlorine contact basins, with one of each basin in Interim Phase I, two of each basin in Interim Phase II, and three of each basin in the Final Phase. The discharge route for the proposed

¹ In its comments, Jonah states that it provides water and sewer service for approximately 9,000 customers and 30,000 people in its service area.

discharge is to East Fork Ranger Branch, then to Ranger Branch, then to Berry Creek, then to the San Gabriel River/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin (**proposed discharge route**).

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 (East Fork Ranger Branch), 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 unclassified receiving water uses, the designated uses, and the dissolved oxygen criterion for the receiving waters of the proposed discharge route, according to Appendix A of 30 TAC §307.10 (TSWQS), is limited aquatic life use and 3.0 mg/L Dissolved Oxygen (**DO**) for East Fork Ranger Branch; and limited aquatic life use and 3.0 mg/L DO for Ranger Branch; high aquatic life use and 5.0 mg/L DO for Berry Creek. The dissolved oxygen criterion and designated uses for Segment No. 1248, according to Appendix A, are high aquatic life use, primary contact recreation, public water supply, and aquifer protection. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer. The Wilco facility will be located just outside of these zones, so aquifer protection does not apply. Through his Technical Review, the ED provides the proper effluent limitations (**limits**) to protect these uses.

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 Section (**Modeling Team**). With the goal of the Technical Review to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ’s IPs.

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 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. 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.

Correspondingly, 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 Berry Creek, which was 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 East Fork Ranger Branch, an unclassified waterbody, had a limited aquatic life use, with 3.0 mg/L DO.

Because the Applicant proposed a Total Phosphorus (TP) limit of 0.5 mg/L in its application, a nutrient screening was performed by the Standards Team that confirmed that a TP limit is needed; and therefore, the antidegradation review recommends the same limit based on East Fork Ranger Branch and Ranger Branch being intermittent with perennial pools, which would make both water bodies effluent dominated.²

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 using a combination of a "calibrated" and "uncalibrated QUAL-TX" models. The proposed permit's water quality-related effluent limits, established by the Modeling Team's QUAL-TX 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 model results, the following effluent limits are predicted to be adequate for all three flow phases to ensure that dissolved oxygen levels will be maintained above the criteria established by the Standards Team for East Fork Ranger Branch (3.0 mg/L), Ranger Branch (3.0 mg/L), Berry Creek (5.0 mg/L), and the San Gabriel River (5.0 mg/L):

Interim I phase	(0.15 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO
Interim II phase	(0.30 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO
Final Phase	(0.45 MGD): 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 5.0 mg/L DO

The effluent limits above and the TP limit proposed by the Applicant are consistent with the requirements of the Edwards Aquifer Rules (30 TAC Chapter 213, Subchapter A), which require effluent limits of 5.0 mg/L TSS and 1.0 mg/L total phosphorus, at a minimum.

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.

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.

Additionally, in all phases of the proposed permit, the effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/after a detention time of at least 20 minutes (based on peak flow) and must be monitored five time per week by grab sample at each chlorine contact chamber. An

² The first three miles of the receiving streams are shallow with clear water and Berry Creek has a bedrock bottom in some areas, and there is a sparse riparian corridor.

equivalent method of disinfection may be substituted only with prior approval of the ED.

Segment No. 1248 is not currently listed on the State's inventory of impaired and threatened waters (2020 Clean Water Act Section 303(d) list).

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 March 25, 2022, and declared it administratively complete on April 28, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (**NORI**) in Williamson County, Texas in English in the *Williamson County Sun* on May 8, 2022, and in Spanish in *El Mundo* on May 12, 2022. The ED completed the technical review of the application on July 8, 2022, and prepared the proposed permit, which if approved, establishes the conditions under which the Wilco facility must operate. Because the NORI included an incorrect description of the proposed discharge route, the Applicant published a Combined Notice of Application and Preliminary Decision (**NAPD**) and NORI in Williamson County, Texas in English in the *Williamson County Sun* on August 28, 2022, and in Spanish in *El Mundo* on September 15, 2022. The public comment period ended on October 14, 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, and human health. However, if you would like to file a complaint about the Wilco facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 11) in Austin, Tx at (512) 339-2929 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 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 Wilco 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 Wilco 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 at the Weir City Hall located at 2205 South Main Street, Weir, Texas 78674, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are now available for viewing and copying at the same location since publication of the Combined NORI-NAPD.

COMMENTS AND RESPONSES

COMMENT 1:

Marvin Mueller, Mark Shipman, and Jonah commented, expressing concerns related to the negative impacts from the Wilco facility on human health, water quality in the surface water bodies of the proposed discharge route. Jonah commented that it has concerns about increases in algal growth and blooms.

RESPONSE 1:

The health concerns of area residents, as well as those of the public, are considered in reviewing 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 rules 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.³

³ Texas Water Code § 26.003 and 30 TAC § 307.1.

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. Likewise, consistent with TCEQ’s IPs (June 2010), a nutrient screening was performed for the proposed discharge. The result of the screening indicated that site-specific conditions in the receiving waters may be conducive to algal growth. Therefore, a nutrient limit of 0.5 mg/L of total phosphorus was added to the permit to reduce nutrient loading.

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 Wilco 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.⁴ The effluent from the Wilco 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.⁵

The TCEQ does not anticipate that there will be any industrial wastewater, insecticides, and banned chemicals not allowed to be disposed of and routed to a water treatment plant; therefore, hazardous liquids and chemicals are not expected to be discharged into the collection system and enter the treatment system of the proposed facility. Additionally, Minor municipal facilities with conventional domestic sewage do not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing wastewater.

Therefore, human health and water quality will be protected as long as the Applicant operates the Wilco facility in compliance with TCEQ’s rules and the terms and conditions of the proposed permit.

COMMENT 2:

Marvin Mueller, Mark Shipman, and Jonah commented, expressing concerns related to the negative impacts from the Wilco facility on water quality in groundwater wells.

⁴ U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

⁵ The Vantage Austin, LLC Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(G)(2)

RESPONSE 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.⁶

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."⁷ 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 Wilco 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.

However, the Ground Water Rule does not address private wells because they are not under the jurisdiction of the Safe Drinking Water Act and thus are not subject to TCEQ regulation. TCEQ does recommend that well owners periodically test their water for microbial and chemical contaminants and properly maintain their well. It is the responsibility of the private well owner to take steps to have his or her water quality tested at least annually for possible constituents of concern, or more often if the well is thought to have a surface water connection.

COMMENT 3:

Marvin Mueller, Mark Shipman, and Jonah commented, expressing concerns related to the negative impacts from the Wilco facility on air quality.

RESPONSE 3:

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

⁶ Texas Water Code § 26.001(5).

⁷ Texas Water Code § 26.401(b)

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. The Applicant indicated in its application that the treatment process of the proposed facility would use the Membrane Bioreactor process, 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:

Marvin Mueller, Mark Shipman, and Jonah commented, expressing various concerns about the public notice process for the application. Mr. Mueller commented that he never got any notice in the mail about the application, while Jonah commented that the public notice was deficient because it did not include details related to regionalization, and that the application and proposed permit were not at the public viewing location listed in the public notices of the application. Mr. Shipman questions whether there should have been a public meeting on 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.¹² The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.¹³

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.¹⁴ 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

⁸ 30 TAC § 39.418(a).

⁹ 30 TAC § 39.405(f).

¹⁰ 30 TAC § 39.405(g).

¹¹ 30 TAC § 39.419(a).

¹² 30 TAC § 39.419(b).

¹³ 30 TAC § 39.413.

¹⁴ 30 TAC § 39.551(c)(3).

during the comment period, regardless of whether the comments were withdrawn.¹⁵

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 March 25, 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 May 8, 2022, in the *Williamson County Sun*, and in Spanish in *El Mundo* on May 12, 2022. The application was determined technically complete on July 8, 2022, and because the NORI included an incorrect description of the proposed discharge route, the Applicant published a Combined NAPD and NORI in Williamson County, Texas in English in the *Williamson County Sun* on August 28, 2022, and in Spanish in *El Mundo* on September 15, 2022. The public comment period ended on October 14, 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 Weir City Hall located at 2205 South Main Street, Weir, Texas 78674, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the Combined NORI-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.¹⁶

COMMENT 5:

Mark Shipman and Marvin Mueller commented, expressing concerns about foul odors from the Wilco facility.

RESPONSE 5:

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

¹⁵ 30 TAC § 55.156.

¹⁶ 30 TAC § 55.154(c).

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 dissolved oxygen limit, restrict the amount of oxygen-demanding constituents and are set at levels to significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters. 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 Wilco facility intends to comply with the requirement to abate and control nuisance odors by locating the treatment units at least 150 feet from the nearest property line and by legal restrictions prohibiting residences within the buffer zone. 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 Wilco facility if the Applicant operates the Wilco 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 reported to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Regional Office (Region 11) in Austin, TX at (512) 339-2929. Complaints may be filed electronically by using the methods described in the third 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 Wilco facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENT 6:

Jonah commented that the Wilco facility violates the state's regionalization policy. Marvin Mueller commented, asking why the Applicant doesn't use the City of Georgetown's Berry Creek Wastewater Treatment Facility.

RESPONSE 6:

The TWC § 26.0282 provides that 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 areawide or regional disposal systems by Commission Order. According to TWC § 26.081, TCEQ must "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 prevent pollution and maintain and enhance the quality of the water in the state."

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. The Applicant is

required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can use. The wastewater treatment plant must have sufficient existing capacity to accept the additional wastewater.

On March 25, 2022, the TCEQ received correspondence from the Applicant that Wilco facility will not be located within any other wastewater CCN. Further, that the City of Georgetown does not have any interest in providing wastewater services to the Applicant. As proof of that claim, the Applicant also attached a letter dated December 8, 2021, from Mr. Wesley Wright, P.E., Systems Engineering Director, for the City of Georgetown Municipal Complex, that stated “Wastewater service is a benefit provided by Georgetown [almost] exclusively to in-city Georgetown residents. The City of Georgetown has no interest in providing wastewater service to properties in the City of Weir’s Extra Territorial Jurisdiction or city limits.”

COMMENT 7:

Mark Shipman and Marvin Mueller commented, expressing concern about the Wilco facility’s negative impacts to their property values and their quality of life.

RESPONSE 7:

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 Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into the state’s waters and to protect the water quality of the state’s rivers, lakes, and coastal waters. As discussed above, the proposed permit protects water quality according to the TCEQ rules and the Texas Water Code. However, the ED, through his Water Quality Division, has no jurisdiction to address fluctuations in property values. The ED’s jurisdiction is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state’s waterbodies.

However, 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, vegetation, or 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 11) in Austin, TX at (512) 339-2929, or by calling the statewide toll-free number at 1-888-777-3186. 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 21, 2022, the Executive Director's Response to Public Comment for Permit No. WQ0016132001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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