

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 13, 2022

TO: All interested persons.

RE: City of Ennis
TPDES Permit No. WQ0010443002

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 the City of Ennis Public Works Complex, 500 West Lake Bardwell Drive, Ennis, 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
City of Ennis
TPDES Permit No. WQ0010443002

The Executive Director has made the Response to Public Comment (RTC) for the application by City of Ennis for TPDES Permit No. WQ0010443002 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 (WQ0010443002) 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, 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 the City of Ennis Public Works Complex, 500 West Lake Bardwell Drive, Ennis, Texas.

MAILING LIST
for
City of Ennis
TPDES Permit No. WQ0010443002

FOR THE APPLICANT:

Edward Green, P.E., Director of Public Works
City of Ennis
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Ennis, Texas 75119

Jeremy Buechter, P.E., Office Manager
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INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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TPDES PERMIT NO. WQ0010443002

APPLICATION BY	§	BEFORE THE
CITY OF ENNIS	§	TEXAS COMMISSION
FOR TPDES PERMIT NO.	§	ON
WQ0010443002	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by City of Ennis for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010443002, and on the Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. This Response addresses all timely filed public comments received, whether or not withdrawn. The Office of the Chief Clerk received timely comments from, Bill Dyess, Cynthia Hellstern, Ron J. Leighton, Kenneth Shevlak, Sue Shevlak, and Vicki Watson. If you need 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 at our website at <http://www.tceq.texas.gov>.

BACKGROUND

Description of Facility

The City of Ennis applied for a major amendment to authorize adding new Outfall 002 to the draft permit. The draft permit authorizes an annual average flow not to exceed 3,100,000 gallons per day in the interim phase 4,000,000 gallons per day in the final phase.

The facility is located at 401 West Plant Road, Ennis, in Ellis County, Texas 75119. The existing wastewater treatment facility serves the City of Ennis, surrounding areas, and the City of Garret and the City of Alma.

The Oak Grove Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include two mechanical bar screens with washer compactor, one influent wet well, four primary clarifiers, four aeration basins, three secondary clarifiers, a sludge thickener, an aerobic sludge digester, sludge dewatering, sludge drying beds, two chlorine contact chambers, and one dechlorination chamber. The facility is currently operating in the Interim phase.

The effluent limitations in the Interim phase of the draft permit via Outfall 001 and Outfall 002, based on a 30-day average, are 7 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH₃-N), 126 colony-forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 6.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and shall be monitored daily by grab sample. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual and shall monitor total chlorine residual daily by grab sample after the dechlorination process. Monitoring and reporting requirements for Total Dissolved Solids (TDS) and Chloride apply to discharges made via Outfall 001.

The effluent limitations in the Final phase of the draft permit, based on a 30-day average, are 5 mg/l five-day CBOD₅, 12 mg/l TSS, 2 mg/l NH₃-N, 126 CFU or MPN of *E. coli* per 100 ml, and 6.0 mg/l minimum DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and shall be monitored daily by grab sample. The permittee shall

dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual and shall monitor total chlorine residual daily by grab sample after the dechlorination process. Monitoring and reporting requirements for TDS and Cl apply to discharges made via Outfall 001. The draft permit also includes Whole Effluent Toxicity (WET) requirements. The WET requirements helps ensure the discharge is protective of aquatic life.

Ennis has an existing pretreatment program. The draft permit includes a requirement that the permittee redevelop the existing technically based local limits (TBLLs) and modify additional components of the pretreatment program as applicable. The permittee shall submit to the TCEQ Pretreatment Team (MC148) of the Water Quality Division, within twelve (12) months of commencement of discharge from Outfall 002. The permittee shall demonstrate and certify that the revised TBLLs will attain the Texas Surface Water Quality Standards (30 TAC Chapter 307) in water in the state, prevent pass through of pollutants and inhibition of or interference with the treatment facility, prevent worker health and safety problems, and prevent sludge contamination.

The treated effluent is discharged to via Outfall 001 to Cummins Creek, thence to Chambers Creek Above Richland-Chamber Reservoir in Segment 0814 of the Trinity River Basin; and via proposed Outfall 002 and pipe to an unnamed tributary, thence to Bardwell Reservoir in Segment No. 0815 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for Cummins Creek and minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 0815 are primary contact recreation, public water supply, and high aquatic life use.

In accordance with 30 TAC § 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the

receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Bardwell Reservoir, which has been identified as high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Segment No. 0814 is currently listed in the State's inventory of impaired and threatened waters (the 2020 Clean Water Act Section 303(d) list). The listing is specifically for bacteria in water (recreation use) from just above the confluence with Cummins Creek upstream to just above the confluence with Waxahachie Creek (Assessment Unit [AU] 0814_02). Segment No. 0815 is also currently listed for sulfate in water from Bardwell Dam in Ellis County up to the normal pool elevation of 421 feet (AU 0815_01).

This facility is designed to provide adequate disinfection and, when operated properly, discharges made via Outfall 001 should not add to the bacterial impairment of Segment No 0814. Screening for TDS, chloride and sulfate was performed by the Executive Director and no requirements for effluent limits or monitoring and reporting requirements are needed in the draft permit for sulfate for Outfall 002. Therefore discharges from this facility via Outfall 002 should not add to the sulfate impairment of Segment No 0815.

The discharge from this permit action is not expected to have an effect on 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's) biological opinion on the State of Texas authorization

of the 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. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Procedural Background

TCEQ received the application for a major amendment with renewal on July 29, 2021, and declared it administratively complete on November 24, 2021. The City of Ennis published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on December 5, 2021, in *The Ennis News* newspaper and in Spanish on December 14, 2021, in *La Prensa Comunidad* newspaper. The application was determined technically complete on May 16, 2022. The City of Ennis published the Notice of Application and Preliminary Decision (NAPD) in English on July 17, 2022, in *The Ennis News* and in Spanish on July 26, 2022, in *La Prensa Comunidad*. The comment period for this application closed on August 25, 2022.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55. This application is subject to those changes in the law.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- for the Secretary of State website: <http://www.sos.state.tx.us>;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <http://www.statutes.legis.state.tx.us/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov;
- and
- for Federal environmental laws: <http://www.epa.gov/laws-regulations>.

Commission records for this application and draft permit 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), until final action is taken. The draft permit, the Statement of Basis/Technical Summary, and the ED’s Preliminary Decision, are available for viewing and copying at City of Ennis Public Works Complex, 500 West Lake Bardwell Drive, Ennis, Texas.

COMMENTS AND RESPONSES

Comment 1:

Cynthia Hellstern, Kenneth Shevlak, Sue Shevlak, stated general objections to the draft permit.

Response 1:

The Executive Director acknowledges the comment.

Comment 2:

Bill Dyess, Cynthia Hellstern, Kenneth Shevlak, Sue Shevlak and Vicki Watson commented that they are concerned the effect of the reduced waterflow through Cummins Creek as a result of the City of Ennis diverting treated effluent to Lake

Bardwell via new Outfall 002. Kenneth Shevlak and Sue Shevlak commented that they have 128 acres along Cummins Creek and they depend on the creek.

Vicky Watson and Bill Dyess also stated that the addition of Outfall 002 will cause Cummins Creek to dry up.

Response 2:

The purpose of the draft permit is to provide limits and requirements for the discharge from the wastewater treatment facility. The TCEQ does not have the authority to mandate the percentage of effluent discharged by a particular outfall. Discharges at each outfall are regulated the permit, which can be affected by the loadings for pollutants like ammonia-nitrogen, 5-day biochemical oxygen demand, and nutrients.

The draft permit was developed in accordance with the Texas Surface Water Quality Standards to be protective of water quality, provided that the Ennis operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements. The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards* (IPs; June 2010) is designed to ensure compliance with the TSWQS (30 TAC Chapter 307).

The potential impact of the proposed discharge on instream dissolved oxygen levels is evaluated under hot and dry, low-flow summertime conditions, which are typically the most restrictive conditions in regard to dissolved oxygen levels. Critical low-flow, as defined in 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 Texas Surface Water Quality Standards (30 TAC Chapter 307) are applicable even during critical low-flow, therefore

critical low-flow is considered when evaluating the appropriate effluent limits for the proposed discharge.

The effluent limitations in the draft permit will maintain and protect the existing instream uses and comply with the Texas Surface Water Quality Standards and 30 TAC §§ 307.1 - 307.10. The draft permit includes effluent limitations and monitoring requirements to ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality, even during periods of low flow, according to TCEQ rules and policies.

If reduction or cessation of flows interferes with an existing water right, please contact either the TCEQ Region 4 Office (817-588-5800), or the TCEQ Water Rights Division (512-239-4600) to report the interference with a water right.

Comment 3:

Bill Dyess, Kenneth Shevlak, Sue Shevlak, and Vicki Watson commented that they are concerned with how the additional Outfall will affect local fish, other aquatic life, and terrestrial wildlife.

Response 3:

The draft permit should not negatively impact local fish, other aquatic life or terrestrial wildlife. The draft permit was developed in accordance with 30 TAC § 307.5 and the TCEQ *Procedures for the Implementation of the Texas Surface Water Quality Standards* (IPs; June 2010). The Texas Surface Water Quality Standards (TSWQS) provide that surface waters cannot be toxic to aquatic or terrestrial organisms. While the TSWQS and the Implementation Procedures do not specifically designate criteria for the protection of cattle or livestock, they do designate criteria for the protection of aquatic life that should preclude negative impacts to the health and performance of cattle or wildlife.

The TSWQS provides that discharges may not degrade the receiving waters and may not result in situations that impair existing, attainable or designated uses, and that surface waters not be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. In this case, the unclassified receiving water use is limited aquatic life use for Cummins Creek and minimal aquatic life use for the unnamed tributary, and the designated uses for Segment No. 0815 are primary contact recreation, public water supply, and high aquatic life use. The Executive Director determined that these uses should be protected from discharges made from the facility if the facility is operated and maintained as required by the proposed permit and regulations. Additionally, the treated effluent will be disinfected prior to discharge to protect human health.

The TCEQ submitted the draft permit to the U.S. Environmental Protection Agency (EPA) Region 6 for review. The EPA reviewed the draft permit did not have any objections to the issuance of the draft permit. Additionally, the Texas Parks and Wildlife Department, the state agency that oversees and protects wildlife and their habitat, received notice of the City of Ennis' permit application and did not submit comments on the draft permit.

Comment 4:

Cynthia Hellstern commented that allowing effluent water to bypass Cummins Creek will negatively affect the value of her property. Similarly, Bill Dyess commented that Cummins Creek acts as a property boundary for landowners and those with cattle would lose this natural barrier. Bill Dyess noted that without the natural barrier fences will be needed.

Response 4:

The TCEQ does not have the authority to address property value, or the need for fences as part of the wastewater permitting process. The draft permit does not limit the ability of an individual to seek legal remedies against the City of Ennis regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 5:

Cynthia Hellstern, Kenneth Shevlak, Sue Shevlak and commented that the reduction in waterflow would adversely affect their use and enjoyment of their properties.

Response 5:

The TCEQ does not have jurisdiction to review the effect, if any, the reduction in waterflow might have on the use and enjoyment of property when reviewing a domestic wastewater discharge permit application. 30 TAC § 305.122(d) provides that the issuance of the permit does not authorize any injuries to persons or property, an invasion of other property rights, or any infringement of state or local statutes or regulations. Additionally, 30 TAC § 305.122(d) and 30 TAC § 305.125(16) provide that the issuance of a permit does not convey any property right or exclusive privilege. The draft permit incorporates those rules in the draft permit.

Moreover, the draft permit does not limit the ability of an individual to seek legal remedies against Ennis regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Individuals are encouraged to report any concerns about nuisance issues or suspected

noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Region 4 Office (817-588-5800), or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it may be subject to investigation and possible enforcement action.

Comment 6:

Cynthia Hellstern commented that she is concerned that discharging wastewater into the water supply for the City of Ennis will adversely affect the health and safety of the residents.

Response 6:

The Executive Director has determined that the draft permit for the facility meets the requirements of the TSWQS, which are established to protect human health, terrestrial, and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. The permit limits and requirements take into account the uses of the segment which includes public water supply.

The designated uses for Segment No. 0815 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 TAC § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Bardwell Reservoir, which has been identified as high aquatic life use. Existing uses will be maintained and protected.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENTS

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 6, the “Executive Director’s Response to Public Comment” for Permit No. WQ0010443002 was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk.



Kathy Humphreys
Staff Attorney
Environmental Law Division
State Bar No. 24006911