

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*

April 11, 2023

TO: All interested persons.

RE: FM 665 Land Company, Ltd.  
TPDES Permit No. WQ0016133001

### **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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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](mailto: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 Owen R. Hopkins Public Library, Corpus Christi, 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.

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • [tceq.texas.gov](http://tceq.texas.gov)

- (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](http://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,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis  
Chief Clerk

LG/erg

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**  
**for**  
**FM 665 Land Company, Ltd.**  
**TPDES Permit No. WQ0016133001**

The Executive Director has made the Response to Public Comment (RTC) for the application by FM 665 Land Company, Ltd., for TPDES Permit No. WQ0016133001 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 (WQ0016133001) 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](mailto: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 the Owen R. Hopkins Public Library, Corpus Christi, Texas.

MAILING LIST  
for  
FM 665 Land Company, Ltd.  
TPDES Permit No. WQ0016133001

FOR THE APPLICANT:

Jeff Mickler  
FM 665 Land Company, Ltd.  
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Friendswood, Texas 77546

Jerry G. Ince, P.E., Senior Project Engineer  
Ward, Getz, and Associates  
2500 Tanglewilde Street, Suite 1870  
Houston, Texas 77063

INTERESTED PERSONS:

Christopher L. Phelan  
3806 Kingston Drive  
Corpus Christi, Texas 78415

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
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Michael Parr, Staff Attorney  
Texas Commission on Environmental  
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Environmental Law Division MC-173  
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Deba Dutta, Technical Staff  
Texas Commission on Environmental  
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Water Quality Division MC-148  
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FOR PUBLIC INTEREST COUNSEL  
via electronic mail:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel MC-103  
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Austin, Texas 78711-3087

FOR THE CHIEF CLERK  
via electronic mail:

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



## COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

*Protegiendo a Texas reduciendo y previniendo la contaminación*

abril 11, 2023

TO: Todas las personas interesadas.

RE: FM 665 Land Company, Ltd.  
TPDES Permiso No. WQ0016133001

### **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](mailto: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 la Biblioteca Pública Owen R. Hopkins, Corpus Christi, 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](http://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**  
**FM 665 Land Company, Ltd.**  
**TPDES Permiso No. WQ0016133001**

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de FM 665 Land Company, Ltd. del permiso de TPDES No. WQ0016133001. 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 (WQ0016133001) 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](mailto: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 la Biblioteca Pública Owen R. Hopkins, Corpus Christi, Texas.

LISTA DE CORREO  
para  
FM 665 Land Company, Ltd.  
TPDES Permiso No. WQ0016133001

PARA EL SOLICITANTE:

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FM 665 Land Company, Ltd.  
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Jerry G. Ince, P.E., Senior Project Engineer  
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2500 Tanglewilde Street, Suite 1870  
Houston, Texas 77063

PERSONAS INTERESADAS:

Christopher L. Phelan  
3806 Kingston Drive  
Corpus Christi, Texas 78415

PARA EL DIRECTOR EJECUTIVO  
por correo electrónico:

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
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Michael Parr, Staff Attorney  
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Deba Dutta, Technical Staff  
Texas Commission on Environmental  
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Waste Permits Division  
MSW Permits Section MC-124  
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Austin, Texas 78711-3087

PARA ABOGADOS DE INTERÉS PÚBLICO  
por correo electrónico:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
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. WQ0016133001

APPLICATION BY  
FM 665 LAND COMPANY, LTD.  
FOR TPDES PERMIT NO.  
WQ0016133001

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BEFORE  
THE TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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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 FM 665 Land Company, Ltd. (**Applicant**), for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016133001 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 (OCC) received a timely comment letter from Christopher Phelan. This response addresses all timely public comments received, whether withdrawn or not. More information about this permit application or the wastewater permitting process is available by calling the TCEQ Public Education Program at 1-800-687-4040. TCEQ general information is also available at the website: <http://www.tceq.texas.gov/>.

**BACKGROUND**

The Applicant applied to the TCEQ for new TPDES Permit No. WQ0016133001 (**proposed permit**), authorizing a discharge of treated domestic wastewater (**effluent**) at a daily average flow limit of 75,000 gallons per day (**GPD**) or 0.075 million gallons per day (**MGD**) during the Interim phase, and a daily average flow limit of 150,000 GPD 0.150 MGD in the Final Phase (**proposed discharge**).

Sludge generated from the Applicant's FM 665 Wastewater Treatment Facility (**proposed facility**) will be hauled by a registered transporter and disposed of at a TCEQ-authorized land application site, Mount Houston Road Municipal Utility District, Permit No. WQ0011154001, in Harris County, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. The proposed permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

**Description of Facility/Discharge Route**

The proposed facility will serve the FM 665 residential development area, will be an activated sludge process plant operated in the extended aeration mode, and will be located approximately 2,600 feet northwest of the intersection of Farm-to-Market Road (FM) 665 and FM 763, in Nueces County, Texas 78415. Treatment units in the Interim phase will include a bar screen, an aeration basin, a clarifier, a sludge digester, and a chlorine contact chamber. Treatment units in the Final phase will include a bar screen, two aeration basins, a clarifier, two sludge digesters, and a chlorine contact chamber. The route of the discharge of effluent will be to a constructed ditch, then a roadside

ditch, to an unnamed tributary of Oso Creek, and then to Oso Bay in Segment Number 2485 (Segment 2485) of the Bays and Estuaries.

Segment 2485 is currently listed on the State's Inventory of Impaired and Threatened Waters, the "2020 CWA § 303(d) list," for depressed Dissolved Oxygen (DO) in the middle bay ((State Park Road 22 to Holly Road) (Assessment Unit (AU) 2485\_02)) and has two, approved total maximum daily load (TMDL) Projects associated with it. Project No. 67A: *One Total Maximum Daily Load for Bacteria in Oso Bay (2007)*, and Project 67B: *One Total Maximum Daily Load for Indicator Bacteria in Oso Creek (2019)*.

Oso Bay (Oyster Waters use) is listed on the 2020 CWA § 303(d) list for bacteria in oyster waters (AU 2485OW\_01), as well as Oso Creek (Segment 2485A) for a bacteria impairment from the confluence of Oso Bay in southern Corpus Christi to a point 4.8 km (3 mi) upstream of State Highway 44, west of Corpus Christi (AU 2485A\_01).

On October 25, 2019, after adoption by the TCEQ on July 31, 2019, the United States Environmental Protection Agency (EPA) approved TMDL-67B, which describes a plan to address elevated levels of bacteria that exceed the criteria established in the TCEQ's IPs to evaluate contact recreation uses. TMDL-67B focuses on elevated levels of bacteria in Segment 2485A (Oso Creek), an unclassified segment, but uses a watershed approach in its plan, meaning all unclassified segments associated with Segment 2485A (2485B, 2485C, and 2485D) are subject to TMDL-67B.

On June 8, 2008, after adoption by the TCEQ on August 22, 2007, the EPA approved TMDL-67A, which describes a plan to address water quality impairments from bacteria concentrations in Segment 2485 (Oso Bay) that exceed the criteria established in the TCEQ's IPs to evaluate contact recreation uses. TMDL-67A states that the permitted wastewater discharges to Oso Bay are not considered causes of the impairment, and load reductions are not required for those facilities. Therefore, currently the TMDL does not call for any specific or additional bacteria related permit conditions for discharges to Oso Bay. However, bacteria limits and monitoring requirements will be included based on other requirements or regulations.

The proposed discharge is not expected to contribute to the bacteria impairments, or negatively affect DO levels in the impaired areas of Segment 2485 because modeling results indicate DO-demanding constituents are at background levels before reaching the impaired areas of Segment 2485.

### **Technical Review**

The TCEQ has primary authority over water quality in Texas with federally delegated regulatory authority for the TPDES program, which controls discharges of pollutants into Texas' surface waterbodies, otherwise defined by the Texas Water Code (TWC) as "water in the state." Section 26.027 of the TWC, authorizes the TCEQ to issue permits for discharges into water in the state. The ED evaluates TPDES applications based on the information provided in the application and submitted by the Applicant, and then recommends issuance or denial based the application's compliance with the TWC and TCEQ rules.

More specifically and per the Texas Surface Water Quality Standards (TSWQS) found in 30 TAC Chapter 307 and the TCEQ's *Implementation Procedures for the Texas*

*Surface Water Quality Standards-June 2010 (IPs)*, the ED's Technical Review evaluates the proposed discharge's impacts on receiving waters in the state.

The Technical Review process for surface water quality is conducted collectively by staff in the ED's Water Quality Division (**WQD staff**) on the Standards Implementation Team (**Standards Team**) and WQD staff on the Water Quality Assessment Team (**WQA Team**). Both Teams 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 involves WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters in the state within the route of the proposed discharge. Other available information and a receiving water assessment allowed the Standards Team to preliminarily determine the aquatic life uses in the proposed discharge's possible area of possible impact and assign the corresponding Minimum Dissolved Oxygen Criterion (**DO limit**) as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ's IPs.

The designated uses and DO limits for the receiving waters within the route of the proposed discharge, according to Appendix A of 30 TAC § 307.10 (TSWQS), is primary contact recreation, exceptional aquatic life use, and oyster waters, and 4.0 mg/L DO for Oso Bay (Segment No. 2485). Through his Technical Review, the ED provides the proper effluent limits to protect these uses.

For all applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge and the receiving waters according to 30 TAC § 307.5 of the TSWQS and TCEQ's Ips. Correspondingly, the Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action because numerical and narrative criteria to protect existing uses will be maintained. The Tier 2 review preliminarily determined that no significant degradation of water quality is expected in the unnamed tributary, which has been identified as having high aquatic life use. Existing uses of the waterbodies of the discharge route 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) of the TSWQS. The Standards Team determined that the unclassified receiving water uses and DO criterion are minimal aquatic life use and 2.0 mg/L DO for the constructed and roadside ditches, high aquatic life use and a 5.0 mg/L DO criterion.

Conventional effluent limits such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (**CBOD<sub>5</sub>**), Total Suspended Solids (**TSS**), and Ammonia Nitrogen (**NH<sub>3</sub>-N**), are based on stream standards and waste load allocations for water quality-limited streams promulgated by the TSWQS and the State of Texas Water Quality Management Plan.

The second component of the ED's Technical Review involves WQD staff on the Modeling Team performing water quality modeling runs, or Dissolved Oxygen (**DO**) analyses, using a mathematical model; in this case, an uncalibrated QUAL-TX model.

The proposed permit's effluent limits, established by the Modeling Team's results, will maintain and protect the existing instream uses. Specifically, the proposed limits below are predicted to be adequate to maintain DO levels above the criteria

stipulated by the Standards Team for the constructed ditch (2.0 mg/L), the roadside ditch (2.0 mg/L), and the unnamed tributary (5.0 mg/L).

**Interim phase:** (0.075 MGD): 10 mg/L CBOD<sub>5</sub>, 3.0 mg/L NH<sub>3</sub>-N, and 4.0 mg/L DO  
**Final Phase:** (0.15 MGD): 5.0 mg/L CBOD<sub>5</sub>, 2.0 mg/L NH<sub>3</sub>-N, and 4.0 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.

The entire set of effluent limits in the Interim phase proposed permit's Interim phase, based on a 30-day average, are 10 mg/l CBOD<sub>5</sub>, 15 mg/l TSS, 3 mg/l NH<sub>3</sub>-N, 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum DO. The entire set of effluent limits in the proposed permit's Final phase, based on a 30-day average, are 5.0 mg/l CBOD<sub>5</sub>, 7.0 mg/l TSS, 2.0 mg/l NH<sub>3</sub>-N, 120 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum DO. The effluent must contain a total chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow for both phases. 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.

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 this permit action 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 for the TPDES program (September 14, 1998; October 21, 1998, *update*). To make this determination for TPDES permits, TCEQ and USEPA only consider 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. USEPA review with respect to the presence of endangered or threatened species is not required by the proposed permit.

Through the Technical Review, the ED provides the proper limits to maintain and protect the existing instream uses. However, 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.

### **Procedural Background**

The TCEQ received the application on March 28, 2022, and declared it administratively complete on June 15, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Corpus Christi Caller Times* on June 23, 2022; and in Spanish in *Corpus Christi Cronica* on June 24, 2022. The ED completed the technical review of the application on August 31, 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 English in the *Corpus Christi Caller Times* on December 30, 2022, and in Spanish in *Corpus Christi Cronica* on December 29, 2022. The public comment period ended on February 6, 2023. 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, 84<sup>th</sup> Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

### **Access to Rules, Laws, and Records**

- All administrative rules: Secretary of State Website: [www.sos.state.tx.us](http://www.sos.state.tx.us)
- TCEQ rules: Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/) (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
- TCEQ website: [www.tceq.texas.gov](http://www.tceq.texas.gov) (for downloadable rules in Word 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](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](mailto:complaint@TCEQ.texas.gov)

Commission records for the Facility are available for viewing and copying at TCEQ’s main office in Austin, located at 12100 Park 35 Circle, Building E, Room 103 (Central Records, for existing or past permits), or Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, executive director’s preliminary decision, and proposed permit are available for viewing and copying at the at Owen R. Hopkins Public Library, Corpus Christi, Texas, 78410.

Alternative language notice in Spanish is available at:

<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

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 14) in Corpus Christi, TX at (361) 881-6900 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 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 Facility is out of compliance with TCEQ rules, enforcement actions may arise.

## COMMENTS and RESPONSES

### COMMENT 1

Christopher Phelan commented that he lives in Zip code 78415 and would like to know why this permit is nowhere near him, as it's all the way across town, and it's not even near his home nor this project in his zip code. Mr. Phelan also commented that he would like to know what's going on with this project, and where he can find the permit.

### RESPONSE 1

This project or application is for a wastewater discharge permit that would authorize a discharge of treated domestic wastewater at a daily average flow limit of 75,000 gallon per day (GPD) or 0.075 million gallons per day (MGD) during Interim phase, and a daily average flow limit of 150,000 GPD 0.150 MGD in the Final Phase to a constructed ditch, then to a roadside ditch, then to an unnamed tributary, then to Oso Creek, and then to Oso Bay in Segment No. 2485 of the Bays and Estuaries. The link below is to an electronic map of the proposed facility's general location and is provided as a public courtesy and is not part of the application or notice. For the exact location, please refer to the application that has been available for viewing and copying at the at Owen R. Hopkins Public Library, Corpus Christi, Texas, since publication of the NORI.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.171666%2C30.8&level=12>

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](http://www.tceq.texas.gov/goto/cid).

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

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. The TSWQS is a primary mechanism for the TCEQ to protect surface water quality, groundwater quality, human health, aquatic life, the environment, and designated uses of the receiving waters. Development of the proposed permit was in accordance with the TSWQS (30 TAC Chapter 307) and the TCEQ IPs to be protective of water quality, provided that the Applicant operates and maintains the Facility according to TCEQ rules and the proposed permit's requirements.

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.

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.

As specified by the methodologies outlined in 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. 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.

To achieve the goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process, WQD Staff review all applications in accordance with the TSWQS and the TCEQ IPs. The proposed permit contains several water quality-specific parameters that limit the potential impact of the proposed discharge on the receiving waters, such as the limits that were developed by the WQA Team to maintain and protect the existing uses of the receiving waters (primary contact recreation, public water supply, high aquatic life use, and aquifer protection, which were identified by WQD Staff on the Standards Team.

Regarding information for the public about this project or application, the TCEQ's Notice rules, found at 30 TAC Chapter 39 (Public Notice) apply to applications, such as this one.

When the ED determines that an application is administratively complete, the OCC mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.<sup>1</sup>

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.<sup>2</sup>

Additionally, the Applicant, using county deed records, must identify all landowners adjacent to the Facility and discharge and submit the list to the OCC office so it can mail timely copies of the public notices for the application to the adjacent landowners.

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.<sup>3</sup>

Additionally, after completing the technical review of an application, the ED files the preliminary determination and the proposed permit with the OCC.<sup>4</sup> The OCC must then 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.<sup>5</sup> The OCC must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.<sup>6</sup>

The NAPD must set a deadline for filing public comments with the OCC that is no earlier than 30 days after its publication in a newspaper.<sup>7</sup> As the public comment period for this application 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.<sup>8</sup>

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.

In this case, the TCEQ received the application for a new permit on March 28, 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 on June 23, 2022, in English in the *Corpus Christi Caller Times* and in Spanish on June 24, 2022, in *Corpus Christi Cronica*. The application was

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<sup>1</sup> 30 TAC § 39.418(a).

<sup>2</sup> 30 TAC § 39.405(f).

<sup>3</sup> 30 TAC § 39.405(g).

<sup>4</sup> 30 TAC § 39.419(a).

<sup>5</sup> 30 TAC § 39.419(b).

<sup>6</sup> 30 TAC § 39.413.

<sup>7</sup> 30 TAC § 39.551(c)(3).

<sup>8</sup> 30 TAC § 55.156.

determined technically complete on August 31, 2022, and the Applicant published the NAPD in English in the *Corpus Christi Caller Times* on December 30, 2022, and in Spanish on December 29, 2022, in *Corpus Christi Cronica*.

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.

Regarding the location of the proposed facility, TCEQ's permitting authority does not include the ability to mandate a different location for a 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 of 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 a treatment 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.

#### **CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT**

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

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor, Interim Executive Director

Charmaine Backens, Acting Director,  
Office of Legal Services

Guy Henry, Acting 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 April 5, 2023, the Executive Director's Response to Public Comment for Permit No. WQ0016133001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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