State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 10, 2025

Peter Gregg **VIA EFILE TEXAS**

John Reed Clay **VIA EFILE TEXAS**
John Andrew Scott

Aubrey Pawelka **VIA EFILE TEXAS**

Sheldon Wayne **VIA EFILE TEXAS**

RE: SOAH Docket No. 582-24-05780; TCEQ Docket No. 2023-0862-MWD; *Application by Gilden Blair Blackburn and Timothy Edward Carter For New TPDES Permit No. WQ0016124001*

Dear Parties:

Please find attached a Proposal for Decision in this case. Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at http://www14.tceq.texas.gov/epic/eFiling/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

SOAH Docket No. 582-24-05780 Suffix: TCEQ

TCEQ Docket No. 2023-0862-MWD

BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY GILDEN BLAIR BLACKBURN AND TIMOTHY EDWARD CARTER FOR NEW TPDES PERMIT NO. WQ0016124001

PROPOSAL FOR DECISION

Gilden Blair Blackburn and Timothy Edward Carter (together, Applicants) filed an application (Application) with the Texas Commission on Environmental Quality (TCEQ or Commission) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016124001, to allow discharge of treated effluent from a proposed new wastewater-treatment facility (Facility) located in Parker County, Texas.

The Executive Director (ED) reviewed the Application and issued a draft permit (Original Draft Permit). FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC (collectively, Protestants) opposed the Application and requested a hearing. The Commission referred the

Application to the State Office of Administrative Hearings (SOAH) for a contested-case hearing on five issues.

During the contested-case proceeding, on April 25, 2024, the ED issued changes to the effluent limits in the Original Draft Permit with certain further revisions on October 15, 2024 (together with the Original Draft Permit and April 2024 changes, Final Draft Permit) and recommended its issuance. Applicants support issuance of the Final Draft Permit. Protestants opposed its issuance. The Office of Public Interest Counsel (OPIC) determined that Applicants met their burden on each contested issue. Having considered the evidence relating to these five issues in the context of the governing law, the Administrative Law Judges (ALJs) recommend that the Application be approved and the Final Draft Permit be issued without changes.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party contested notice or the Commission's jurisdiction to act on the Application, or SOAH's jurisdiction to convene a hearing and prepare a Proposal for Decision (PFD). Therefore, a detailed description of these issues will be addressed only in the findings of fact and conclusions of law in the Proposed Order attached to this PFD.

Applicants submitted the Application on March 11, 2022, and the ED declared it administratively complete on June 7, 2022.[1] The ED completed technical review

[1] Administrative Record, Tab B, at 00075.

of the Application on July 21, 2022, and prepared the Original Draft Permit, which, if approved, would establish the conditions under which the Facility must operate.[2] On October 2, 2023, and after considering requests for a hearing and reconsideration, the Commission issued an interim order (Interim Order) referring five issues to SOAH for a contested-case hearing and determining that Protestants were affected persons.[3]

On February 15, 2024, ALJ Brent McCabe convened a preliminary hearing via Zoom videoconference. At the preliminary hearing, the ALJ admitted the administrative record and supplemental administrative record, determined that SOAH had jurisdiction over the matter, and named parties. Applicants, Protestants, the ED, and OPIC were named parties.[4] On March 4, 2024, the ALJ entered a procedural schedule setting a hearing on the merits for May 20-24, 2024.

On April 19, 2024, the ED provided notice of intent to change the Original Draft Permit and moved for a continuance. On April 25, 2024, a second supplemental administrative record was filed with changes to the Original Draft Permit. Following a prehearing conference, the ALJ granted the motion for continuance and reset the hearing on the merits to August 6-9, 2024. Following additional continuances, the hearing on the merits was reset to December 2024.

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[2] Administrative Record, Tab C, at 0001-36, 41.

[3] *See Interim Order Concerning the Application by Gilden Blair Blackburn and Timothy Edward Carter for new Texas Pollutant Discharge Elimination System Permit No. WQ0016124001*, TCEQ Docket No. 2023-0862-MWD (Oct. 2, 2023) (*Interim Order*).

[4] On February 26, 2024, ALJ McCabe consolidated this action with SOAH Docket No. 582-24-05779, TCEQ Docket No. 2023-0546-MWD. On April 4, 2025, the protestants in SOAH Docket No. 582-24-05779 moved to withdraw their party status. On April 12, 2024, the cases were severed with this case proceeding in its own cause number.

On December 11, 2024, ALJs Brent McCabe and Andrew Lutostanski convened the evidentiary hearing at SOAH. Attorney Peter Gregg appeared for Applicants. Attorney Andrew Scott appeared for Protestants. Attorney Aubrey Pawelka appeared for the ED, and Sheldon Wayne appeared for OPIC. A record was made by Certified Shorthand Reporter Della Duett. The record closed with the filing of post-hearing briefs on January 21, 2025.

II. BACKGROUND AND APPLICABLE LAW

A. DESCRIPTION OF THE PROPOSED FACILITY AND DISCHARGE ROUTE

Applicants seek authorization to discharge treated domestic wastewater at an annual average flow not to exceed 75,000 gallons per day.[5] Under the Final Draft Permit, the treated effluent would be discharged via a man-made ditch, then to a roadside ditch, then to an unnamed tributary, then to Price Lake, then to an unnamed tributary, then to an unnamed pond, then to an unnamed tributary, then to Grindstone Creek, then to the Brazos River below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin.[6] Segment No. 1206 is not currently on the State's inventory of impaired and threatened waters, and its designated uses are primary contact recreation, public water supply, and high aquatic life use.[7]

[5] Administrative Record, Tab F, at 0003.

[6] Administrative Record, Tab F, at 0008.

[7] Administrative Record, Tab F, at 0004.

The Facility will be located approximately 1,265 feet southeast from the intersection of Brock Spur Road and Quanah Hill Road.[8] The Facility would serve the proposed Brock Spur development, consisting of five restaurants, one grocery store, and approximately 75-80 duplexes.[9] The Facility would be a prepackaged activated sludge process plant operated in the extended aeration mode.[10] Treatment units in the interim phase will include a bar screen, an aeration basin, a final clarifier, a sludge holding chamber, a sludge digester, and a chlorine contact chamber.[11] Treatment units in the final phase will include an additional treatment train identical to the interim phase.[12] Effluent will flow through one equalization basin before entering either treatment train.[13] The Facility has not been constructed.[14] The Final Draft Permit authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.[15]

[8] Administrative Record, Tab F, at 0008.

[9] Administrative Record, Tab D, at 0089.

[10] Administrative Record, Tab F, at 0003.

[11] Administrative Record, Tab F, at 0003.

[12] Administrative Record, Tab F, at 0003.

[13] Administrative Record, Tab F, at 0003.

[14] Administrative Record, Tab F, at 0003.

[15] Administrative Record, Tab F, at 0003.

B. THE DRAFT PERMIT

The Original Draft Permit provides for two phases: an interim phase and a final phase.[16] For the interim phase, the Original Draft Permit authorizes discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 37,500 gallon per day, or 0.0375 million gallons per day (MGD) with the following effluent limitations, based on a 30-day average:[17]

- Five-day biochemical oxygen demand (BOD5) – 20 mg/L;
- Total suspended solids (TSS) – 20 mg/L;
- *E. coli* – 126 colony forming units (CFU) or most probable number (MPN) per 100 ml; and
- Dissolved oxygen (DO) – minimum of 2.0 mg/L.[18]

For the final phase, the daily average flow of treated domestic wastewater would rise to 75,000 gallons per day, or 0.075 MGD, and the Original Draft Permit imposes the following effluent limitations, based on a 30-day average:[19]

- Five-day carbonaceous biochemical oxygen demand (CBOD5) – 10 mg/L;
- TSS – 15 mg/L;
- Ammonia nitrogen (NH3-N) – 3 mg/L;
- *E. coli* – 126 CFU or MPN per 100 ml; and

[16] Administrative Record, Tab C, at 0002-03.

[17] Administrative Record, Tab C, at 0002.

[18] Administrative Record, Tab C, at 0002.

[19] Administrative Record, Tab C, at 0003.

- DO – minimum of 4.0 mg/L.[20]

Additionally, the effluent at all phases must contain a total chlorine residual of at least 1.0 mg/L and shall not exceed a total chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow).[21]

The Final Draft Permit incorporates changes to the effluent limits in both the interim and final phases as well as the October 2024 revision to clarify that the Facility is a class C facility requiring a class C operator.[22] Changes in the effluent limits during the interim phase include:

- CBOD5[23] – 10 mg/L;
- TSS – 15 mg/L;
- NH3-N – 3 mg/L;
- *E. coli* – 126 CFU or MPN per 100 ml; and
- DO – minimum of 4.0 mg/L.[24]

The final phase effluent limits are amended to include the following:

- CBOD5 – 10 mg/L;
- TSS – 15 mg/L;
- NH3-N – 2 mg/L;

[20] Administrative Record, Tab C, at 0003.

[21] Administrative Record, Tab C, at 0002-03.

[22] Administrative Record, Tab F, at 0009-10, Tab G, at 0035.

[23] The Final Draft Permit changes this limit in the Interim Phase from BOD5 to CBOD5.

[24] Administrative Record, Tab F, at 0009.

- *E. coli* – 126 CFU or MPN per 100 ml; and
- DO – minimum of 4.0 mg/L.[25]

In the technical review, the ED performed an antidegradation review and determined that:

> 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 Price Lake or Grindstone Creek, which have been identified as having high aquatic life use. Existing uses will be maintained and protected.[26]

The ED also determined that the permit is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species, proposed species, or their threatened habitat.[27]

C. REFERRED ISSUES

In its Interim Order, the Commission referred the following five issues:

A. Whether the draft permit is adequately protective of water quality, including the protection of surface water, groundwater, aquatic life, livestock, and wildlife, in accordance with applicable regulations including the Texas Surface Water Quality Standards;

B. Whether the draft permit is protective of the health of the requesters, their families, and other individuals who reside in the immediate vicinity of the proposed Facility and discharge route;

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[25] Administrative Record, Tab F, at 0010.

[26] Administrative Record, Tab F, at 0004.

[27] Administrative Record, Tab F, at 0004.

C. Whether the draft permit adequately protects against nuisance odors in accordance with 30 Texas Administrative Code § 309.13(e);

D. Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under Texas Water Code § 26.0282; and

E. Whether the antidegradation review complies with applicable regulations and the draft permit includes adequate nutrient limits.[28]

D. WASTEWATER DISCHARGE PERMIT REQUIREMENTS

Chapter 26 of the Texas Water Code requires a person who seeks to discharge wastewater into Texas water to file an application with TCEQ. 30 Texas Administrative Code, chapter 305, subchapter C contains TCEQ's application filing requirements. Once an application is filed, TCEQ reviews the application in accordance with 30 Texas Administrative Code chapter 281. Based on a technical review, TCEQ prepares a draft permit that is consistent with U.S. Environmental Protection Agency (EPA) and TCEQ rules and a technical summary that discusses the application facts and significant factual, legal, methodological, and policy questions considered while preparing the draft permit.

A domestic wastewater treatment facility in Texas is subject to wastewater discharge permit requirements. Standard permit requirements, which TCEQ has adapted specifically for use in wastewater discharge permits, are found in 30 Texas Administrative Code, chapter 305, subchapter F. All wastewater discharge permits are also subject to regulations found in 30 Texas Administrative Code, chapter 319,

[28] *Interim Order*, at 3.

which requires the permittee to monitor its effluent and report the results as required in the permit.

Finally, TCEQ has adopted water quality standards applicable to wastewater discharges in accordance with section 303 of the Clean Water Act and section 26.023 of the Texas Water Code. These standards, known as the Texas Surface Water Quality Standards (TSWQS), are found in 30 Texas Administrative Code, chapter 307. The TSWQS identify appropriate uses for the state's surface waters (e.g., aquatic life, recreation, and public water supply), and establish narrative and numerical water quality standards to protect those uses. TCEQ has standard procedures for implementing the TSWQS, referred to as the Implementation Procedures (IPs), which are approved by the EPA.[29] The TSWQS and IPs are used in reviewing permit applications.

The TSWQS require that proposed wastewater discharges undergo an antidegradation review.[30] Antidegradation review is divided into two tiers. Tier 1 requires that "[e]xisting uses and water quality sufficient to protect those existing uses must be maintained."[31] Tier 2 is more stringent and generally prohibits the lowering of water quality by more than a de minimis amount for waters that exceed

[29] 30 Tex. Admin. Code § 307.2(e); *see* ED Ex. ED-VK-3.

[30] 30 Tex. Admin. Code § 307.5(b).

[31] 30 Tex. Admin. Code § 307.5(b)(1).

fishable/swimmable quality, unless it can be shown that lowering is necessary for important economic or social development.[32]

The TSWQS provide that "[DO] concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses."[33] In addition, the TSWQS require that "[n]utrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use."[34]

E. WATER QUALITY MODELING

In this case, TCEQ staff performed water quality modeling to evaluate the effect of the effluent on the discharge waters prior to the issuance of the Original Draft Permit.[35] The TCEQ water quality assessment team performs the water quality modeling pursuant to a set of Standard Operating Procedures (SOPs) as well as the IPs.[36]

DO concentrations are important to maintain because they are the primary indicator of general biologic health of a water body and aquatic life within it.[37] For

[32] 30 Tex. Admin. Code § 307.5(b)(2). An exception (permitting lowering of water quality based on a showing that it is needed for important economic or social development purposes) is inapplicable here.

[33] 30 Tex. Admin. Code § 307.4(h)(1).

[34] 30 Tex. Admin. Code § 307.4(e).

[35] *See* Administrative Record, Tab D, at 0042, Tab F, at 0002.

[36] ED Ex. JM-1 (Michalk Dir.) at 7; *see* ED Exs. JM-5 to -7.

[37] ED Ex. JM-1 (Michalk Dir.) at 8. DO "is the amount of free molecular oxygen dissolved in water, which typically enters a water body from the atmosphere and aquatic plant photosynthesis." ED Ex. JM-1 (Michalk Dir.) at 8.

each body of water affected by the discharge, it is determined that a minimum DO level is required to maintain water quality.[38] For Price Lake, the minimum DO concentration is 5.0 mg/L.[39] Meanwhile, the man-made ditch, roadside ditch, and unnamed tributary required a DO level of at least 2.0 mg/L.[40] The original modeling was conducted using an uncalibrated QUAL-TX model.[41]

In April 2024, TCEQ's water quality assessment team issued a technical memorandum superseding its previous memorandum with updated modeling results.[42] In this model, the water quality assessment team used (1) a QUAL-TX model for the unnamed tributary and a reach into the backwaters of Price Lake, and (2) continually-stirred tank reactor (CTSR) modeling for the remainder of Price Lake.[43] The ED concluded that the modeling demonstrated that the effluent limits in the Final Draft Permit would likely maintain the minimum levels of DO and is protective of water quality.[44]

The QUAL-TX model is a "one-dimensional, steady-state water quality model based on first-order kinetics."[45] When surface flow and quality data for the receiving

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[38] *See* ED Ex. JM-1 (Michalk Dir.) at 8; Administrative Record, Tab F, at 0002.

[39] *See* ED Ex. JM-1 (Michalk Dir.) at 8, 10; Administrative Record, Tab F, at 0002.

[40] *See* Administrative Record, Tab F, at 0002.

[41] *See* Administrative Record, Tab F, at 0002.

[42] Administrative Record, Tab D, at 0042; *see also* ED Ex. JM-1 (Michalk Dir.) at 12-13 (describing the changes from the original modeling).

[43] ED Ex. JM-1 (Michalk Dir.) at 12-13.

[44] *See* Administrative Record, Tab F, at 0002.

[45] Protestants Ex. 3 (Wiland Dir.) at 6.

water is not available, TCEQ uses an uncalibrated QUAL-TX model.[46] The QUAL-TX model segments the stream of water into a series of elements based on a selected stream width and length.[47] Pursuant to the TCEQ's SOPs, default hydraulic coefficients—a series of variables used to model the advective properties of the waters—are used when site-specific data are unavailable.[48] Incorporated into these coefficients is a default stream width.[49] The default element length is 0.1 km.[50]

The CTSR model is a spreadsheet model generally used by the TCEQ for modeling lakes or coves in lakes.[51] The CTSR model uses cells consisting of surface areas and depths instead of the length and widths element of QUAL-TX.[52] The CTSR model does not allow for dispersion between individual elements unlike the QUAL-TX model and does not allow for dispersion between sequenced models.[53] QUAL-TX also allows for the incorporation of a side bay to be treated as a tributary, which CTSR modeling does not allow.[54]

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[46] Protestants Ex. 3 (Wiland Dir.) at 6-7.

[47] ED Ex. JM-1 (Michalk Dir.) at 22-23.

[48] ED Ex. JM-15 (Michalk Supp.) at 7; *see* ED Ex. JM-5 at 0339-40.

[49] ED Ex. JM-15 (Michalk Supp.) at 7-8; Protestants Ex. 3 (Wiland Dir.) at 7; *see* ED Ex. JM-5 at 0339-40.

[50] ED Ex. JM-1 (Michalk Dir.) at 19; *see* ED Ex. JM-5 at 0339-40.

[51] Protestants Ex. 3 (Wiland Dir.) at 9.

[52] ED Ex. JM-1 (Michalk Dir.) at 22. Protestants' expert contends that the QUAL-TX and CTSR models are related with the QUAL-TX basically consisting of a series of CTSRs with different assumptions. Protestants Ex. 3 (Wiland Dir.) at 9-10.

[53] Protestants Ex. 3 (Wiland Dir.) at 11.

[54] Protestants Ex. 3 (Wiland Dir.) at 11.

F. BURDEN OF PROOF

As the moving party, Applicants bear the burden of proof by a preponderance of the evidence.[55] The Application was filed after September 1, 2015, and the Commission referred it to SOAH under Texas Water Code section 5.556, which governs referral of environmental permitting cases to SOAH.[56] Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3), which provides:

> (i-1) In a contested case regarding a permit application referred under Section 5.556 . . . [of the] Water Code, the filing with [SOAH] of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:
>
> (1) the draft permit meets all state and federal legal and technical requirements; and
>
> (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.
>
> (i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:
>
> (1) relates to . . . an issue included in a list submitted under Subsection (e) in connection with a matter referred under Section 5.556, Water Code; and

[55] 30 Tex. Admin. Code § 80.17(a); 1 Tex. Admin. Code § 155.427.

[56] Tex. Water Code §§ 5.551(a), .556.

(2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.

(i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.[57]

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. The burden of proof remains with Applicants to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the Final Draft Permit, would protect human health and safety, the environment, and physical property.[58]

III. EVIDENCE

In this case, the Administrative Record, including the Application, the Final Draft Permit and the other materials listed in Texas Government Code section 2003.047(i-1), was offered and admitted into the record for all purposes.[59] With its admission, a prima facie demonstration has been established that: (1) the draft permit meets all state and federal legal and technical requirements; and (2) a

[57] Tex. Gov't Code § 2003.047(i-1)-(i-3).

[58] 30 Tex. Admin. Code § 80.17(a), (c).

[59] Administrative Record, Tabs A-G.

permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.[60]

At the hearing, Protestants offered the testimony of Jeff Busby and Bruce Wiland, P.E., along with 20 additional exhibits, which were all admitted.[61] Applicants offered the testimony of Janet Sims and two additional exhibits, which were all admitted.[62] The ED offered the testimony of Venkata Kancharla and James Michalk, along with 24 additional exhibits, all of which were admitted.[63] OPIC did not offer any testimony or exhibits.

The substance of the relevant evidence presented will be discussed below in the context of the referred issues.

[60] Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(a), (c).

[61] Protestants Exs. 1-22. Exhibits 1 and 3 contain the prefiled direct testimony of Mr. Busby and Mr. Wiland, respectively.

[62] App. Exs. 1-3. Applicants' Exhibit 1 contains the prefiled direct testimony of Ms. Sims.

[63] ED-VK-1 to -3, ED-JM-1 to -23. Exhibits ED-VK-1 and ED-JM-1 contain the prefiled direct testimony of Mr. Kancharla and Mr. Michalk, respectively.

IV. DISCUSSION

Protestants' challenge to the Final Draft Permit focuses on Issue A by asserting that the Final Draft Permit fails to be protective of water quality because the ED's water quality modeling is inaccurate, resulting in nonprotective effluent limits.[64]

A. PROTECTIVE OF WATER QUALITY

Protestants take issue with TCEQ's revised water modeling. Relying on their expert, Mr. Wiland,[65] Protestants argue that the modeling performed by Mr. Michalk with TCEQ's water quality assessment team was flawed and improperly used default hydraulic coefficients, which incorporate a default stream width that does not reflect the actual width of the upper reaches of the stream.[66] According to Protestants, if actual stream conditions were used, the modeling would demonstrate that the DO concentration in Price Lake backwater will be violated.[67] In addition, Mr. Wiland performed his own modeling, using the QUAL-TX model and making other changes that he believed appropriate, and concluded the effluent limits in the Final Draft

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[64] Protestants' Closing Br. at 4-6. In its reply, Protestants also asserted that the Final Draft Permit should not be entitled to the presumption in this case because of the changes to the draft permit and modeling, which they claim is still inaccurate. Protestants' Resp. to Closing Br. at 1-2. However, both section 2003.047(i-1) and TCEQ's rules maintain that it applies, and there is no indication that changes to the permit extinguish the presumption. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(c)(1).

[65] Mr. Wiland is a professional engineer with expertise in environmental engineering including water quality modeling. He was a programmer for the original QUAL-TX model while employed at TCEQ and later converted the QUAL-TX model to the Windows operating system. Protestants Ex. 3 (Wiland Dir.) at 1-2, 6.

[66] Protestants' Closing Br. at 4-5.

[67] Protestants' Closing Br. at 5.

Permit were insufficient to prevent the DO levels from sagging below the necessary 5.0 mg/L level at Price Lake.[68]

Applicants and the ED respond that the Commission's water quality modeling correctly applied the TCEQ's IPs and SOPs, and, as a result, it appropriately demonstrates that the Final Draft Permit complies with applicable federal and state regulations and is protective of water quality.[69] The ED contends that Mr. Wiland's modeling was the result of Mr. Wiland inappropriately adjusting one input value, which he knew would be pessimistic in predicting DO sag, but failing to consider the effect on other coefficients.[70] OPIC agrees that Applicants met their burden to demonstrate that the Final Draft Permit is protective of water quality.[71]

1. Hydraulic Coefficients: Default or Site-Specific

The Final Draft Permit is prepared based on modeling using standard assumptions. Because of the absence of site-specific data, the stream widths in TCEQ's QUAL-TX model used default hydraulic coefficients.[72] According to

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[68] Protestants Ex. 3 (Wiland Dir.) at 11; *see* Protestants Exs. 14-21. Mr. Wiland testifies that his modeling indicates that the following effluent limits would need to be further reduced in order for the permit to be protective of water quality: (1) NH3-N from 3.0 mg/L to 2.0 mg/L in the interim phase and (2) CBOD5 from 10 mg/L to BOD5 at 5 mg/L in the final phase. It is not clear what difference there is between BOD5 and CBOD5 in terms of effluent. Protestants Ex. 3 (Wiland Dir.) at 17-18.

[69] Applicants' Closing Arg. at 3-5; ED's Closing Arg. at 3-4.

[70] ED's Rep. to Closing Arg. at 1-2.

[71] OPIC's Closing Arg. at 21.

[72] ED Ex. JM-1 (Michalk Dir.) at 13-14; App. Ex. 1 (Sims Dir.) at 8; Tr. at 52; *see* ED Ex. JM-5 at 0339-40.

Applicants, using these default hydraulic coefficients simply means that the stream widths used are "representative of the average Texas stream."[73]

Protestants rely on two pieces of evidence to show that TCEQ's modeling does not reflect actual stream conditions. First, there are photographs of the stream showing that in some parts it is not as wide as the twenty-foot value used in the QUAL-TX model.[74] Second, Protestants' witness Mr. Wiland testified that he visited the stream and saw that in some places it is narrower than twenty feet.[75] Although he did not measure the stream, he estimated that the widths used in the TCEQ model are at least twice as wide as some parts of the actual stream.[76]

Protestants did not provide any measurements of the receiving waters or stream flow data that could be used to revise the QUAL-TX model.[77] Pictures and an anecdotal estimate from one day are not enough to establish the stream's characteristics throughout the year across different conditions: site-specific data must be sufficiently rigorous and representative of local stream conditions.[78] Therefore, the site data presented in this case were insufficient to warrant their use

[73] App. Ex. 1 (Sims. Dir.) at 8.

[74] Protestants Ex. 6; Tr. at 60.

[75] Protestants Ex. 3 (Wiland Dir.) at 12.

[76] Protestants Ex. 3 (Wiland Dir.) at 12.

[77] Tr. at 58. At the hearing, Protestants intimated that they possessed site-specific data; however, it was not admitted in the hearing. Therefore, it may not be relied upon in this proceeding.

[78] ED Ex. JM-15 (Michalk Supp.) at 7; App. Ex. 1 (Sims Dir.) at 6 ("A single set of photographs without locations identified and no accompanying measurements of any kind, including channel dimensions and stream flows at a sufficient number of sites in the reach, is not sufficient to characterize the hydraulics of the stream.").

or reliance upon, and the Commission's water quality modeling appropriately applied TCEQ's SOPs by using default hydraulic coefficients absent site-specific data.

2. Mr. Wiland's Model and Other Issues

In Mr. Wiland's testimony, he identified other issues he had with TCEQ's water modeling including (1) use of CTSR modeling for Price Lake was inappropriate as it presumes that the side bay is fully mixed; (2) the length segments of the QUAL-TX elements are too long in comparison to the stream width; and (3) the Commission's QUAL-TX modeling is affected by a known programming bug in the version of the QUAL-TX model, which the Commission's modeling did not account for.[79] As for the element lengths, Mr. Wiland argues that the default length of 0.1 km is inappropriate in this case because it potentially hides DO sag by averaging across the element.[80] According to Mr. Wiland, by using shorter element lengths, the modeling is less an approximation; instead, its results are closer to the direct solution contemplated by the first-order differential equations on which the modeling is based.[81]

In the ED's additional evidence, Mr. Michalk responds to each point. For the programming bug, Mr. Michalk acknowledged issues, ran updated modeling that

[79] Protestants Ex. 3 (Wiland Dir.) at 11-12. Mr. Wiland also testified that he believed the model incorrectly identified the total length of unnamed tributary and Price Lake backwater by 80 meters. Protestants Ex. 3 (Wiland Dir.) at 12. However, there is nothing to suggest what, if any, impact that the difference in length would have on the predict DO concentrations. *See* ED Ex. JM-15 (Michalk Supp.) at 11 (concluding that, to the extent that it has an impact, his modeling would be the more conservative as the shorter length would reach the backwaters of Price Lake faster.)

[80] Protestants Ex. 3 (Wiland Dir.) at 13-15.

[81] Protestants Ex. 3 (Wiland Dir.) at 13-15.

implemented the correction suggested by Mr. Wiland, and found that it had a slight effect on expected DO concentration and effluent levels.[82] However, the slight increase did not affect the conclusion that the limits in the Final Draft Permit maintain required DO concentration and are protective of water quality.[83] Mr. Michalk also defended his use of the CTSR model for Price Lake as appropriate under the TCEQ SOPs, which recommend its use for "significant ponds, lakes, reservoirs, and portions of larger open water bodies, like bays."[84] He also responded that CTSR modeling in this instance is more conservative as it does not include the dispersion between reaches or the sequential modeling.[85] As for element lengths, Mr. Michalk identifies that 0.1 km is the default length recommended by TCEQ, which promotes consistency across TCEQ modelers and the potential effect on permittees.[86] He also noted that his model actually uses shorter element lengths—of 0.0425 km—in critical areas of the Price Lake backwaters, which he did in response to previous concerns raised by Mr. Wiland.[87] Given that these are the areas where the predicted DO concentrations are lowest, Mr. Michalk believes that his model accurately captures areas of potential DO sag.[88]

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[82] ED Ex. JM-15 (Michalk Supp.) at 12-14.

[83] ED Ex. JM-15 (Michalk Supp.) at 14.

[84] ED Ex. JM-15 (Michalk Supp.) at 10, 14-15; *see* ED Ex. JM-7 at 0362.

[85] ED Ex. JM-15 (Michalk Supp.) at 10.

[86] ED Ex. JM-15 (Michalk Supp.) at 15-16; *see* ED Ex. JM-5 at 0339-40.

[87] ED Ex. JM-15 (Michalk Supp.) at 15; *see also* ED Ex. JM-1 (Michalk Dir.) at 22.

[88] ED Ex. JM-15 (Michalk Supp.) at 15. Mr. Michalk also noted that, as for the unnamed tributary and upper areas, the element lengths have little difference with regards to meeting the 2.0 mg/L DO level for those bodies. ED Ex. JM-15 (Michalk Supp.) at 15.

The ALJs find Mr. Michalk's testimony persuasive. The evidence establishes that TCEQ's modeling for the upper reaches was performed pursuant to the SOPs. As for the critical areas of the Price Lake backwater and the remainder of Price Lake, Mr. Michalk updated TCEQ's model and appropriately reduced the element length or CTSR cells to identify any potential DO sags and address Protestants' concerns. Furthermore, because Mr. Wiland's model incorporates all his proposed changes (including the narrowing of the stream width), there is little evidence establishing what, if any, effect any given change had on the predicted DO concentrations. For certain changes like the programming bug or the overall stream length, the effect appears to be negligible. For the claim that CTSR and inclusion of the side bay were inappropriate, the effect on this decision is not established. Therefore, the ALJs find that TCEQ's revised water quality modeling was appropriate and demonstrates that the Final Draft Permit is protective of water quality in this regard.

3. Conclusion

Protestants presented some evidence to show that the Commission's modeling was inaccurate and that the Final Draft Permit failed to be protective of water quality. However, to the extent that Protestants' evidence was sufficient to rebut the presumption, the preponderance of the evidence demonstrates that the TCEQ modeling was appropriately performed and complied with its SOPs. As for the elements of Issue A contested by Protestants, the Final Draft Permit is protective of water quality, and in all other regards relating to water quality, the prima facie presumption was not rebutted.

B. PROTECTIVE OF PROTESTANTS' HEALTH

The prima facie demonstration presumes that the Final Draft Permit would be protective of human health and safety, the environment, and physical property.[89] The evidence presented was insufficient to rebut this presumption. While Mr. Busby testified generally over concerns the quality of the discharge and the proximity of the Facility and discharge route to his properties,[90] the testimony did not address any specific concerns regarding his health or any further evidence justifying any such concern. Thus, for this issue, the prima facie demonstration on this issue is unrebutted; therefore, the ALJs find the Final Draft Permit is adequately protective of Protestants' health.[91]

C. PROTECTIVE AGAINST NUISANCE ODORS

Like Issue B above, Protestants presented only generalized concerns over the quality of the proposed discharge and the proximity of the Facility to Protestants' properties but failed to provide further evidence justifying the general concerns. The evidence presented was insufficient to rebut the presumption that the Final Draft Permit is protective of health and safety and is compliant with state and federal requirements.[92] Therefore, the ALJs find the Final Draft Permit adequately protects

[89] Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(a), (c).

[90] Protestants Ex. 1 (Busby Dir.) at 2-3.

[91] *See also* ED Ex. VK-1 (Kancharla Dir.) at 0009.

[92] Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(a), (c).

against nuisance odors in accordance with 30 Texas Administrative Code section 309.13(e).[93]

D. REGIONALIZATION

The prima facie demonstration presumes that the Final Draft Permit meets all state legal and technical requirements.[94] No evidence was presented to rebut this presumption, and no argument was made regarding this referred issue. As noted above, the prima facie demonstration on this issue is unrebutted; therefore, the ALJs find the Commission need not deny or alter the terms and conditions of the draft permit based on consideration of need under Texas Water Code section 26.0282.[95]

E. COMPLIANT ANTIDEGRADATION REVIEW AND ADEQUATE NUTRIENT LIMITS

The prima facie demonstration presumes that the Final Draft Permit meets all state legal and technical requirements.[96] Outside complaints about the water quality modeling, which were rejected above, Protestants do not challenge this issue. Therefore, the prima facie demonstration on this issue is unrebutted, and the ALJs conclude that Applicants met their burden on this issue.[97]

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[93] *See also* ED Ex. VK-1 (Kancharla Dir.) at 0009-10.

[94] Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(a), (c).

[95] *See also* ED Ex. VK-1 (Kancharla Dir.) at 0010.

[96] Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(a), (c).

[97] *See also* ED Ex. VK-1 (Kancharla Dir.) at 0010-11.

V. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding, except the ED or OPIC.[98] When doing so, the Commission must consider the following factors:

> (A) The party who requested the transcript;
>
> (B) The financial ability of the party to pay the costs;
>
> (C) The extent to which the party participated in the hearing;
>
> (D) The relative benefits of the various parties of having a transcript; . . . and
>
> (G) Any other factor which is relevant to a just and reasonable assessment of costs.[99]

Here, no party has presented evidence on the amount of costs incurred, nor any argument on how those costs should be assessed. All parties participated in the hearing and benefitted equally from having a copy of transcript. Neither OPIC nor the ED may be assessed transcript costs.[100] Therefore, the ALJs recommend that Applicants and Protestants each bear their own transcript costs.

VI. CONCLUSION

Based on the analysis above, the ALJs conclude that Applicants met their burden of proving that the Application complies with all applicable legal and

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[98] 30 Tex. Admin. Code § 80.23(d)(2).

[99] 30 Tex. Admin. Code § 80.23(d)(1). Subsections (E) and (F) address factors not applicable in this case.

[100] 30 Tex. Admin. Code § 80.23(d)(2).

technical requirements. Applicants have sufficiently demonstrated that the Final Draft Permit complies with TCEQ's regionalization policy and will be protective of water quality. Accordingly, the ALJs recommend that the Commission adopt the attached Proposed Order containing Findings of Fact and Conclusions of Law and issue the Final Draft Permit to Applicants without changes.

Signed March 10, 2025

Brent McCabe
Presiding Administrative Law Judge

Andrew Lutostanski
Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION OF GILDEN BLAIR BLACKBURN AND TIMOTHY EDWARD CARTER FOR NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016124001; TCEQ DOCKET NO. 2023-0862-MWD SOAH DOCKET NO. 582-24-05780

On , the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Gilden Blair Blackburn and Timothy Edward Carter (Applicants) For New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016124001 in Parker County, Texas. A Proposal for Decision (PFD) was issued by Administrative Law Judges (ALJs) Brent McCabe and Andrew Lutostanski at the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the application on December 11, 2024, via Zoom videoconference.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Application

1. Applicants filed their application (Application) for a new TPDES permit with the TCEQ on March 11, 2022.

2. The Application requested authorization to discharge treated domestic wastewater from a proposed new wastewater treatment facility (Facility) located approximately 1,265 feet southeast from the intersection of Brock Spur Road and Quanah Hill Road in Parker County, Texas.

3. The Facility will be a prepackaged activated sludge process plant operated in the extended aeration mode.

4. The proposed discharge route is via a man-made ditch, then to an unnamed tributary, then to Price Lake, then to an unnamed tributary, then to an unnamed pond, then to an unnamed tributary, then to Grindstone Creek, then to the Brazos River below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin.

5. The Application requests authorization to treat and discharge treated domestic wastewater from the proposed facility at a daily average flow not to exceed 37,500 gallons per day (GPD) in the interim phase and 75,000 GPD in the final phase.

6. The Executive Director (ED) of the TCEQ declared the Application administratively complete on June 7, 2022.

Draft Permit

7. The ED completed the technical review of the Application, prepared a draft permit (Original Draft Permit), and made it available for public review and comment.

8. During the contested-case proceeding, on April 25, 2024, the ED issued changes to the effluent limits in the Original Draft Permit with certain further

revisions on October 15, 2024 (together with the Original Draft Permit and April 2024 changes, Final Draft Permit).

9. The effluent limits changes were the result of updated water quality modeling from the Commission's Water Quality Assessment team.

10. The Final Draft Permit provides for two phases, an interim phase and a final phase.

11. During the interim phase, which extends through completion of the expansion to the 0.075 million gallons per day (MGD) facility, the daily average flow of effluent shall not exceed 0.0375 MGD, and average discharge during any two-hour period may not exceed 104 gallons per minute.

12. The Final Draft Permit contains the following effluent limits for the interim phase:

- Five-day carbonaceous biochemical oxygen demand (CBOD5) – 10 milligrams per liter (mg/L);
- Total suspended solids (TSS) – 15 mg/L;
- Ammonia nitrogen (NH3-N) – 3 mg/L; and
- *E. coli* – 126 colony forming units (CFU) or most probable number (MPN) per 100 ml.

13. For the final phase, the daily average flow of effluent shall not exceed 0.075 MGD, and average discharge during any two-hour period may not exceed 208 gallons per minute.

14. The Final Draft Permit contains the following effluent limits for the final phase:

- CBOD5 – 10 mg/L;
- TSS – 15 mg/L;
- NH3-N – 2 mg/L; and
- *E. coli* – 126 CFU or MPN per 100 ml.

15. In both the interim and final phases, the effluent shall contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes.

16. For both phases, the pH must be in the range of 6.0 to 9.0 standard units.

17. For both phases, the effluent shall contain a minimum dissolved oxygen (DO) of 4.0 mg/L and shall be monitored once per week by grab sample.

18. A Tier 1 antidegradation review determined that existing water quality uses will not be impaired by this permit action, and numerical and narrative criteria to protect existing uses will be maintained.

19. A Tier 2 review determined that no significant degradation of water quality is expected in Price Lake or Grindstone Creek, and existing uses will be maintained and protected.

Notice and Jurisdiction

20. The Notice of Receipt of the Application and Intent to Obtain a Water Quality Permit (NORI) was published in English on June 14, 2022, in the *Weatherford Democrat*, and in Spanish on June 14, 2022, in the *La Prensa Comunidad*.

21. A Notice of Application and Preliminary Decision (NAPD) was published in English on September 13, 2022, in the *Weatherford Democrat*, and in Spanish on September 13, 2022, in the *La Prensa Comunidad*.

22. Applicants maintained an administratively complete Application in the Weatherford City Hall, in Parker County, for public viewing.

23. FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC (collectively, Protestants) submitted public comment and requests for hearing on January 13, 2023. Protestants filed request for reconsideration and request for hearing on May 10, 2023.

24. The comment period for the Application closed on January 13, 2023.

25. The ED issued her Response to Hearing Requests on September 9, 2023.

26. On January 9, 2024, the notice of the preliminary hearing was published in English in the *Weatherford Democrat*. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

SOAH Proceedings

27. On October 2, 2023, and after considering requests for a hearing and reconsideration, the Commission issued an interim order (Interim Order) referring five issues to SOAH for a contested-case hearing and determining that Protestants were affected persons.

28. The Interim Order referred the following issues:

    A. Whether the draft permit is adequately protective of water quality, including the protection of surface water, groundwater, aquatic life, livestock, and wildlife, in accordance with applicable regulations including the Texas Surface Water Quality Standards;

    B. Whether the draft permit is protective of the health of the requesters, their families, and other individuals who reside in the immediate vicinity of the proposed Facility and discharge route;

    C. Whether the draft permit adequately protects against nuisance odors in accordance with 30 TAC § 309.13(e);

    D. Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282; and

    E. Whether the antidegradation review complies with applicable regulations and the draft permit includes adequate nutrient limits.

29. On February 15, 2024, ALJ Brent McCabe convened a preliminary hearing via Zoom videoconference. Applicants, Protestants, the ED, and the Office of Public Interest Counsel (OPIC) were named parties.

30. At the preliminary hearing, ALJ McCabe admitted the administrative record and supplemental administrative record, and determined that SOAH had jurisdiction over the matter. Throughout the contested-case proceeding, the

first, second, and third supplemental administrative records were admitted into the record of the proceeding.

31. On December 11, 2024, following multiple continuances, ALJs Brent McCabe and Andrew Lutostanski convened the hearing on the merits in the SOAH hybrid hearing room and via Zoom videoconference. Attorney Peter Gregg appeared for Applicants. Attorney Andrew Scott appeared for Protestants. Attorney Aubrey Pawelka appeared for the ED, and Attorney Sheldon Wayne appeared for OPIC.

32. The hearing was transcribed by Certified Shorthand Reporter Della Duett. By order, the record closed with the filing of post-hearing briefs on January 21, 2025.

Issue A: Whether the draft permit is adequately protective of water quality, including the protection of surface water, groundwater, aquatic life, livestock, and wildlife, in accordance with applicable regulations including the Texas Surface Water Quality Standards

33. In April 2024, TCEQ's water quality assessment team performed revised modeling on the discharge route at least in part in response to concerns raised by Protestants.

34. The original water quality modeling was performed using an uncalibrated QUAL-TX model.

35. The revised modeling used an uncalibrated QUAL-TX model for the upper reaches of the discharge route through the advective backwater of Price Lake. A continually-stirred tank reactor (CTSR) model was used for the remainder of Price Lake.

36. The QUAL-TX model used a default stream width coefficient of 10 meters or 0.01 kilometers.

37. Use of the default stream width coefficient is consistent with the TCEQ water quality assessment team's Standard Operating Procedures (SOPs) when no site-specific data is available.

38. No site-specific data was available for the man-made ditch, roadside ditch, unnamed tributary, or Price Lake backwater in the upper reaches of the discharge route.

39. The revised modeling appropriately used the 0.01 km default stream width coefficient for these portions of the discharge route.

40. Pursuant to the SOPs, a CTSR model is appropriate for significant ponds, lakes, reservoirs, and portions of larger open water bodies, like bays.

41. Price Lake and its side bay are a larger open water body.

42. The revised modeling appropriately used a CTSR model for the area of Price Lake outside of the advective backwater.

43. The revised QUAL-TX modeling used a default element length of 0.1 km for the man-made ditch, roadside ditch, and unnamed tributary.

44. The use of default element length was appropriate under the SOPs.

45. Shortening the element length for the man-made ditch or unnamed tributary in the revised modeling would not likely predict DO concentration sags below the necessary minimum of 2.0 mg/L for the man-made ditch, roadside ditch, and unnamed tributary.

46. In the revised modeling, a shortened element length of 0.042 km was used for the advective portions of the Price Lake backwater.

47. This shortening of the element length in this area was appropriate because the Price Lake backwater is a critical area where predicted DO concentrations are closest to the minimum threshold for DO concentration in Price Lake, which is 5.0 mg/L.

48. Shortening the element length was appropriate because it increased the sensitivity to DO concentration sags in this critical area.

49. The shortening of this element length in part led to the revision of the draft permit and resulting effluent limits of the Final Draft Permit.

50. The QUAL-TX computer model used for the revised modeling may have had a programming bug that affected the results of the modeling. However, the effect was negligible and did not require further revision of the draft permit.

51. The TCEQ's revised modeling was appropriately performed and demonstrates that the limits in the Final Draft Permit will be protective of water quality.

Issue B: Whether the draft permit is protective of the health of the requesters, their families, and other individuals who reside in the immediate vicinity of the proposed Facility and discharge route

52. No party presented evidence rebutting the prima facie demonstration that the Final Draft Permit is protective of the heath of the Protestants, their families, or individuals residing in the immediate vicinity of the Facility or discharge route.

53. The Final Draft Permit is protective of these individuals' health.

Issue C: Whether the draft permit adequately protects against nuisance odors in accordance with 30 TAC§ 309.13(e)

54. No party presented evidence rebutting the prima facie demonstration that the Final Draft Permit adequately protects against nuisance orders.

55. The Final Draft Permit adequately protects against nuisance odors.

Issue D: Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282

56. No party presented evidence rebutting the prima facie demonstration that the Application complies with TCEQ's policy on regionalization.

57. Regionalization was properly considered when the Application was reviewed and the Final Draft Permit was prepared.

58. The policy of regionalization does not provide a basis for denying the Application or altering the terms and conditions of the Final Draft Permit.

Issue E: Whether the antidegradation review complies with applicable regulations and the draft permit includes adequate nutrient limits.

59. No party presented evidence rebutting the prima facie demonstration that the antidegradation review complies with applicable regulations and the Final Draft Permit includes adequate nutrients limits.

60. The antidegradation review complies with applicable regulations.

61. The Final Draft Permit includes adequate nutrient limits.

Transcript Costs

62. Reporting and transcription of the hearing on the merits was warranted.

63. All parties fully participated in the hearing by presenting witnesses and cross-examining witnesses.

64. All parties benefitted from preparation of a transcript.

65. There was no evidence that any party subject to allocation of costs is financially unable to pay a share of the costs.

66. Transcript costs cannot be assessed against the ED or OPIC because they are statutory parties who are precluded from appealing the decision of the Commission.

67. Applicants and Protestants should bear their own transcript costs.

II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.

2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code § 2003.047.

3. Notice was provided in accordance with Texas Water Code §§ 5.114, 26.028; Texas Government Code §§ 2001.051-.052; and 30 Texas Administrative Code §§ 39.405 and .551.

4. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).

5. Applicants' filing of the Administrative Record established a prima facie case that: (1) the Final Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Final Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .117(c)(1), .127(h).

6. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to the matter directly referred; and (2) demonstrates that one or more provisions in the Final Draft Permit violates a specifically applicable state or federal requirement. *See* Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).

7. If a party rebuts the prima facie demonstration, the Applicants and the ED may present additional evidence to support the Final Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).

8. Applicants retain the burden of proof on the issues that the Final Draft Permit is protective of human health and safety, the environment, and physical property, and complies with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

9. Texas Water Code § 26.0282 requires the TCEQ to consider regionalization and allows the TCEQ to deny a permit or alter its terms "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."

10. No party rebutted the prima facie demonstration. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.117(c).

11. The Final Draft Permit is adequately protective of water quality, including the protection of surface water, groundwater, and animals in accordance with applicable regulations.

12. The Final Draft Permit is protective of human health and safety, the environment, and physical property, relating to the discharge of emerging contaminants in the effluent.

13. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).

14. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

15. Considering the factors in 30 Texas Administrative Code § 80.23(d)(1), a reasonable assessment of hearing transcript costs is for each party to bear its own costs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Applicants' application for a new Texas Pollutant Discharge Elimination System Permit No. WQ0016124001 is granted as set forth in the Final Draft Permit.

2. Applicants and Protestants shall bear their own transcription costs.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.

4. The TCEQ's Chief Clerk shall forward a copy of this Order and attached Final Draft Permit to all parties and, subject to the filing of motions for rehearing, issue the attached Final Draft Permit.

5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

6. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Brooke T. Paup, Chairman for the Commission