

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

November 19, 2024

Kathy Humphreys, Jessica Anderson, & Fernando Martinez VIA EFILE TEXAS

Kathryn Bibby, Lauren Kalisek, & Natalie Marquez VIA EFILE TEXAS

William Bunch & Victoria Rose VIA EFILE TEXAS

**RE: SOAH Docket No. 582-24-11454.TCEQ; TCEQ Docket No. 20231268-MWD; *Application by the City of Kyle for a Major Amendment to TPDES Permit No. WQ0011041002***

Dear Parties:

The Administrative Law Judges (ALJs) issued a Proposal for Decision (PFD) and Proposed Order (PO) in this matter on October 11, 2024. The Executive Director (ED) of the Texas Commission on Environmental Quality and San Marcos River Foundation filed exceptions to the PFD on October 30, 2024, and November 1, 2024, respectively. The ED and the City of Kyle filed replies to exceptions on November 8, 2024, and November 12, 2024, respectively. The Office of Public Interest Counsel did not file any exceptions or response to exceptions.

Having reviewed the exceptions and replies, the ALJs make the following changes to the PFD and the PO:

1. Revising the second sentence in the second paragraph on page 5 of the PFD to: Standard requirements, which TCEQ has adopted specifically for use in such permits, are found in 30 Texas Administrative Code, chapter 305, subchapter F.

2. Revising the first sentence in the first paragraph on page 8 to: For each phase, the minimum dissolved oxygen (DO) limit per grab sample would be 5.0 milligrams per liter (mg/L), the pH limit would be 6.5–9.0 standard units, and the E. coli limit would be 126 mg/L.
3. Adding a footnote with citation to ED Ex. JR-1 (Robertson Dir.) to the following sentence on page 11: “In the context of surface water quality, DO is the amount of free molecular oxygen dissolved in water, which typically enters a water body from the atmosphere and aquatic plant photosynthesis.”
4. Replacing the sentence on page 68 “However, Segment 1810 is presumed to require a 5.0 mg/L DO mean to support a high ALU” with “However, Segment 1810 is presumed to require a daily mean DO concentration of 5.0 mg/L DO mean to support a high ALU.”
5. Revising Finding of Fact 15 to: Treatment units in the Final Phase will include six fine screens, 12 aeration basins, six lift stations, 12 final clarifiers, four tertiary filters, ten post-aeration basins, six aerobic sludge digestors, and four UV disinfection systems.
6. Revising the table heading for Flow Rate in Finding of Fact 17 to: Flow Rate (MGD) Not to Exceed.
7. Revising Finding of Fact 18 to: The City is required to utilize a UV system for disinfection purposes in all phases. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
8. Revising Finding of Fact 24 to: TCEQ’s Chief Clerk certified that the Notice of Hearing was mailed to interested persons on March 13, 2024. Notice of Hearing was published on March 13, 2024, in the *Hays Free Press*.
9. Revising Finding of Fact 31 to: The Record closed after submission of replies to closing briefs on August 7, 2024.

10. Revising Finding of Fact 34 to: The TSWQS and the Procedures to Implement the TSWQS (IPs) are the governing regulations and regulatory guidance approved by the United States Environmental Protection Agency and used by TCEQ to develop TPDES permits.
11. Revising Finding of Fact 41 to: DO is the best overall indicator of water quality and was modeled by the ED's staff to evaluate whether the proposed Draft Permit is protective of aquatic life, in accordance with applicable regulations, including the TSWQS and IPs, for Segment 1801.
12. Revising Finding of Fact 49 to: The ED's staff used best professional judgment and included a TP limit for nutrient control as supported by the IPs and nutrient screen.
13. Revising Finding of Fact 55 to: Tier 2 reviews apply to all pollution that could cause degradation of water quality where water quality exceeds levels necessary to support propagation of fish, shellfish, terrestrial life, and recreation in and on the water (fishable/swimmable quality).
14. Adding Finding of Fact 56: Guidance for determining water bodies that exceed fishable/swimmable quality are found in the IPs.
15. Adding Finding of Fact 57: Tier 2 antidegradation reviews generally apply to water bodies that have existing, designated, or presumed uses of primary and secondary contact recreation and intermediate, high, or exceptional aquatic life waters.
16. Adding Finding of Fact 60 after current Finding of Fact 57 (which will be re-numbered to Finding of Fact 59): The ED's Tier 1 and Tier 2 antidegradation reviews found that existing uses, including those of aquatic and terrestrial wildlife, will be maintained.
17. Re-numbering the Findings of Fact to account for the additions.
18. Revising Conclusion of Law 3 to: Notice was provided in accordance with Texas Water Code sections 5.115 and 26.028; Texas Government Code

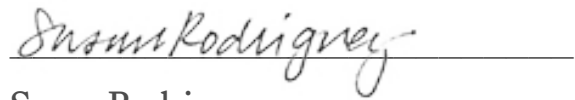
sections 2001.051-.052; and 30 Texas Administrative Code sections 39.405 and .551.

The ALJs decline to further amend the PFD or the PO. San Marcos River Foundation's exceptions reiterate arguments that were made at the hearing on the merits and in written closing briefs, which were addressed at length in the PFD. With this letter, the PFD is ready for consideration.

A handwritten signature in cursive script, reading "Katerina DeAngelo", written over a horizontal line.

Katerina DeAngelo,

Administrative Law Judge

A handwritten signature in cursive script, reading "Susan Rodriguez", written over a horizontal line.

Susan Rodriguez,

Administrative Law Judge

CC: Service List