

CLAY AND SHEILA ALLISON

1425 Blackchamp Road
Waxahachie, TX 75167
972-670-5265-Clay
214-535-1975-Sheila
rscallison@yahoo.com

REVIEWED

JUL 20 2021
By: GCW H

MWD
123649

11 July 2021

Office of the Chief Clerk
MC 105, TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Chief Clerk:

We are writing you in concern of the permit application for LVTP Holdings LLC for a water treatment facility. Proposed Permit Number WQ0015964001.

We request a contested case hearing concerning this permit.

This water treatment facility will allow for subdivisions to come in around our property. These subdivisions will increase traffic on our already over crowded road ways. Increase crime of which our local Sheriff's dept is already short handed. Schools can not keep up with this growth. Our children will be stuffed in crowded class rooms with the teacher student ratio out the roof. Fire departments will be overwhelmed. There are not enough day care centers for all these children that would be coming in with these homes. Leaving many latch key children unsupervised wondering the streets alone. It would increase the county's budget to maintain and police these areas. From looking at the map it looks as though our property would be less than a mile from this facility. We already have a flooding problem in our area. When it rains some of our roads are not passable. This facility would definitely decrease our property values, not to mention the fact that we have all worked so hard to obtain this property to enjoy country living. Bringing the suburbs to our country life would be devastating. If this has to happen could we at least keep a lot size to an acre.

Sincerely,

Sheila Allison
Clay Allison



NC.

NORTH TEXAS TX 750
15 JUL 2021 PM 9 L

RECEIVED

JUL 19 2021

TCEQ MAIL CENTER
JH

201410 SEP 13 2014

201410 SEP 13 2014

201410 SEP 13 2014

Office of the Chief Clerk

ME 105, TCEQ

P.O. Box 13087

73711-3087
Austin, TX 78711-3087

REVIEWED

Minute Order 332.21

July 13, 2021

Agenda Item 1.6

JUL 23 2021

By GCW

H



Office of the County Judge
TODD LITTLE

MWD
123649

CHIEF CLERKS OFFICE

2021 JUL 23 AM 9:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

The Historic Courthouse • 101 W. Main, Waxahatchie, Texas 75165 • (972) 825-5011

July 14, 2021

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality
for new Texas Pollutant Discharge Elimination System ("TPDES") Permit No.
WQ0015964001

Dear Chief Clerk Gharis:

The County of Ellis, Texas (the "County") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers and Joshua Katz, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Ms. Rogers and Mr. Katz's daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for TPDES Permit No. WQ0015964001 (the "Application"), to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The County is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The County is an Affected Person

The County is an "affected person" entitled to a contested case hearing on the issues raised in this hearing request under 30 TEX. ADMIN. CODE § 55.203 because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203. The County has authority over various functions - including but not limited to transportation, emergency services, and health and safety - that may be affected by the proposed

wastewater treatment plants and associated discharge into a tributary of Lake Bardwell, that the Application fails to properly address. Potential contamination of surface water within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

II. Comments and Requests

A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization. See TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City of Waxahachie (the "City"), tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities. The County understands that the City has the capacity to provide service to the area proposed, and the City is willing and able to provide that service.

ii. Requiring regionalization is a broader policy issue.

The State's regionalization policy goes beyond LVTP Holdings, LLC's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City of Waxahachie that provide service to citizens of the County should not plan for and invest in their regional systems. If the TCEQ refuses to seriously consider regionalization in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, Ellis County could see a dramatic increase in the number of small package plants within the County. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and

¹ See also *In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iii. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP Holdings, LLC has not demonstrated that its plan to serve the wastewater needs of the development through a smaller package plant should be granted an exception to the State's regionalization policy. As previously mentioned, the County understands that the City of Waxahachie has nearby facilities and the capacity to provide service to the proposed area. LVTP Holdings, LLC has failed to show that the connecting to the City's wastewater system is too costly, thereby making service from the City unavailable.

Request: The County requests that the TCEQ require the Applicant to evaluate the potential of regional wastewater treatment options with the City of Waxahachie consistent with rule and guidance and to withhold any permitting action unless the applicant can demonstrate that that regionalized wastewater service is not feasible. In the event that regionalized wastewater service is feasible, the County therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas' policy regarding regionalization.

B. Issuance of the Permit could negatively affect the Lake Bardwell, a sole source drinking water supply lake that serves residents of the County.

The proposed discharge point is an unnamed tributary that feeds into Waxahachie Creek, located upstream of Lake Bardwell Reservoir, which is the City of Ennis's water supply lake. The City of Ennis, and its inhabitants, reside within the County. Lake Bardwell has been designated as a sole-source drinking water supply lake. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2020 Clean Water Act Section 303(d).

Applicant proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City of Ennis's sole source drinking water supply lake. Applicant's proposed discharge may negatively affect the water quality standards for Lake Bardwell, and therefore the City of Ennis's ability to meet its citizens' drinking supply needs.

Request: The County requests that TCEQ provide a full assessment demonstrating that the proposed discharge does not further cause or contribute to the sulfate impairment (and water impairment) in Lake Bardwell. Until such an assessment is completed, the Lakeview MUD WWTP cannot be permitted to discharge to Lake Bardwell. While the County understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

C. Issuance of the Permit could negatively affect the water quality in Lake Bardwell.

The designated uses of Lake Bardwell include use as a public water supply, a source of primary contact recreation, and high aquatic life use. Lake Bardwell is the source of the City of Ennis's drinking

water supply. Aside from the County's water quality standard concerns for its public water supply, detailed above, the County is concerned that the Application and the proposed permit do not comply with the state's water quality standards and that the discharge limits are not sufficiently stringent to protect the water quality in the receiving stream and Lake Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent - including pharmaceuticals, hormones, antibiotics, viruses, health care products, and many more - that are refractory during wastewater treatments, tend to persist in an aquatic environment, and could end up in the drinking water supply of County residents. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

Request: The County requests that TCEQ provide a full assessment demonstrating that the proposed discharge does not further cause or contribute to negative water quality in Lake Bardwell. While the County understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing. Thank you for the opportunity to comment on this proposed permitting action.

Sincerely,



Todd Little
Ellis County Judge

Cc:

Emily W. Rogers
Joshua D. Katz
Attorneys for County of Ellis

Brian Finch
Applicant/Manager
LVTP Holdings, LLC

David Bailey
Senior Director of Utilities
City of Waxahachie

Marty Nelson
City Manager
City of Ennis

Michael Scott
City Manager
City of Waxahachie

Judge Todd Little
Ellis County Judge
101 W. Main St.
Waxahachie TX 75165

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

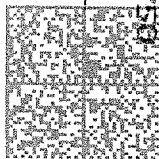
2021 JUL 23 AM 9:55

CHIEF CLERKS OFFICE

RECEIVED
JUL 23 2021
TCEQ MAIL CENTER
JR

Jessie Pharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
ME-105
P.O. Box 13087
Austin, TX 78711-3087
78711-3087

NORTH TEXAS TX 75165
21 JUL 2021 PM 1 L



U.S. POSTAGE PITNEY BOWES
ZIP 75165 \$000.51
02 4W
0000358990 JUL 20 2021

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Monday, June 21, 2021 2:27 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: Public Comments - Proposed TPDES Permit No. WQ0015964001 (2)1.pdf

eComment – H

MWD
123649

Attachment - H

From: tludwig@waxahachie.com <tludwig@waxahachie.com>
Sent: Friday, June 18, 2021 8:46 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

FROM

NAME: MR Tommy Ludwig

E-MAIL: tludwig@waxahachie.com

COMPANY: City of Waxahachie

ADDRESS: 401 S ROGERS ST
WAXAHACHIE TX 75165-3651

PHONE: 4693094021

FAX:

COMMENTS: Please see the uploaded PDF Letter - Public Comments in response to Proposed TPDES Permit No. WQ0015964001 - Requesting a Contested Case Hearing.

June 17, 2021



Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Public Comments in response to Proposed TPDES Permit No. WQ0015964001

Dear Chief Clerk:

The City of Waxahachie (City) appreciates the opportunity to comment to the Texas Commission on Environmental Quality (TCEQ) on the Proposed Texas Pollutant Discharge System Elimination (TPDES) Permit No. WQ0015964001 prepared for LVTP Holdings, LLC for the Lakeview MUD WWTP. These comments and a request for a contested case hearing are being submitted by the City in response to the TCEQ issued *Notice of Receipt of Application and Intent to Obtain Water Quality Permit* (Notice) for Proposed TPDES Permit No. WQ0015964001 (Lakeview MUD WWTP) on May 5, 2021.

The City requests a Contested Case Hearing. As an affected entity, the City requests a contested case hearing in accordance with 30 TAC 55.201 and as provided for in the Notice. In addition to the request for a contest case hearing, the City provides comments to the Proposed TPDES Permit for the concerns identified at this time.

The City of Waxahachie has an interest in the outcome of this Proposed TPDES Permit because the City owns and operates a wastewater treatment facility (TPDES Permit No. WQ0010379001) that discharges to Waxahachie Creek thence to Bardwell Lake, which are also receiving waterbodies for the proposed facility. The City of Waxahachie WWTP discharges to Waxahachie Creek downstream of where the proposed Lakeview MUD WWTP discharge to Long Branch enters Waxahachie Creek. The City of Waxahachie WWTP is located less than ten miles from the proposed Lakeview MUD WWTP.

Comment 1: Lake Bardwell's listing on the 303(d) list prohibits issuance of a TPDES Permit that causes or contributes to the impairment

Prior to completing a TMDL or otherwise addressing the 303(d) listing, new sulfate loads that cause or contribute to the impairment in Lake Bardwell cannot be permitted because they do not comply with 40 CFR § 122.4(i) of the Clean Water Act (CWA). The CWA requires that a new permit cannot be issued if the discharge will cause or contribute to a water quality standard violation, in this case the proposed permittee cannot demonstrate that a load allocation is available and that the discharge will not contribute to a violation of the sulfate water quality standard for Lake Bardwell.

The City requests that TCEQ provide the assessment demonstrating that the proposed discharge does not further cause or contribute to the sulfate impairment in Lake Bardwell. Until such an assessment is completed, the Lakeview MUD WWTP cannot be permitted to discharge to Lake Bardwell. While the City understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

Comment 2: Antidegradation requires that a new discharge to Lake Bardwell not contribute to the violation of water quality standards

Antidegradation reviews for impaired water bodies must ensure that uses are not impaired due to increased loading of the listed constituent. TCEQ's rules, 30 TAC 307.5, and implementation procedures, *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010; RG-194), require that a discharge to a listed waterbody not allow an increase in the loading of a listed constituent (i.e., sulfate in Lake Bardwell) that will cause or contribute to the violation of water quality standards. The City requests TCEQ provide the City with evidence that the proposed discharge complies with applicable antidegradation rules. The TCEQ must consider tools, such as TCEQ's "Screening Procedures and Permit Limits for Total Dissolved Solids," integrated watershed-scale modeling, and continued monitoring (refer also to Comment #1 and #4) prior to taking further action toward permitting the facility. While the City understands that this facility is not yet in operation, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

Comment 3: Consider 30 TAC 307.1 to emphasize the importance of regionalization of wastewater treatment systems

TCEQ policy is to encourage and promote the regionalization of wastewater collection and treatment systems when other systems are reasonably close to a planned system and the regionalization is reliable and affordable. TCEQ includes this policy in 30 TAC 307.1 and guidance/policy documentation, *The Feasibility of Regionalizing Water and Wastewater Utilities* (January 2003; RG-357).

The City requests that the TCEQ require the applicant to evaluate the potential of regional wastewater treatment options with the City consistent with rule and guidance and to withhold any permitting action unless the applicant can demonstrate that that regionalized wastewater service is not feasible.

Comment 4: Require provisions related to sulfate in an issued TPDES Permit

If the TCEQ can demonstrate that the Lakeview MUD WWTP does not contribute to the Lake Bardwell sulfate impairment (Comments #1 and #2) and regionalization is not feasible (Comment #3), the City requests that a TPDES permit be drafted with permit provisions that are protective of Lake Bardwell:

- Total Dissolved Solids (TDS) and sulfate permit limits must be included in Lakeview MUD WWTP's TPDES Permit. These limits in the permit are important to protect Lake Bardwell from further impairment.
- The permit must have a provision that allows TCEQ to amend the permit if TCEQ's continued monitoring of Lake Bardwell warrants the need to modify the effluent limits, with an explicit provision that TDS and/or sulfate limits may become more stringent.
- If the applicant's sulfate or TDS concentrations demonstrate treatment is needed, the Lakeview MUD WWTP must be required to adequately treat effluent.

Thank you for the opportunity to comment on this proposed permitting action. If you have any questions on the City's comments or request for a contested case hearing, please contact David Bailey at (dbailey@waxahachie.com or 469-309-4321 or the address below).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Scott", written over the printed name.

Mr. Michael Scott
City Manager
City of Waxahachie
P.O. Box 757
Waxahachie, TX 75168

Cc: David Bailey, Senior Director of Utilities, City of Waxahachie
Brian Finch, Manager, LVTP Holdings, LLC

Misty Botello

From: PUBCOMMENT-OCC
Sent: Friday, September 8, 2023 9:04 AM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: City of Waxahachie Comments on LVTP Holdings TPDES Permit No. WQ0015964001.pdf

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Thursday, September 7, 2023 2:40 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

NAME: Emily Rogers

EMAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter.



September 7, 2023

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015964001

Dear Chief Clerk Gharis:

The City of Waxahachie, Texas (the "City") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to either Emily Rogers, Joshua Katz, or Stefanie Albright, attorneys for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("LVTP" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015964001 (the "Application"), seeking to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The Executive Director of the TCEQ issued a response to comments on August 15, 2023 and a decision on August 21, 2023, but did not adequately address the City's comments. The City of Waxahachie is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The City is an Affected Person

The City is an "affected person" entitled to a contested case hearing on issues raised in this hearing request pursuant to 30 TEX. ADMIN. CODE § 55.203 because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. The Applicant's proposed wastewater plant and associated discharge will be located entirely within the extraterritorial jurisdiction ("ETJ") of the City. Local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. *See, e.g.*, TEX. LOC. GOV'T CODE §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the proposed discharge

and are not adequately addressed by the Application. Additionally, the proposed discharge will flow into two SCS lakes, which are used by local residences for recreation, and then into Waxahachie Creek, which flows through the City. This discharge could negatively affect the water quality of these lakes and Waxahachie Creek. The City has an interest in protecting the water quality of these water bodies in order to protect the public, health, and safety of its citizens.

Further, the City has nearby water and sewer facilities and infrastructure that would be impacted by the Application. As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalize with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* TEXAS WATER CODE § 26.081(a). The City therefore has an interest in ensuring that the creation and operation of the proposed wastewater treatment plant and associated discharge is protective of the public health and safety within its ETJ. Thus, the City has authority under state law over the issues contemplated by this Application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

II. Comments

A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization of wastewater systems. *See* TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are better able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City, tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

¹ *See also In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

ii. Overview of the City's wastewater systems and LVTP's proposed plant.

The City has professionally operated its wastewater treatment plants for over 60 years, with current capacity of 4 MGD, planned expansion to 5 MGD, and the capacity for significantly more capacity expansion as needed. The City has existing wastewater collection facilities with approximately 2.5 miles of the development the Applicant intends to serve with its proposed wastewater treatment plant. The subdivision the developer plans to build, at full buildout, will have 5,500 residential and commercial lots. Constructing and operating one or more wastewater treatment plants to serve only the Lakeview development is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the City's citizens. The City, however, has a larger, centralized, professionally operated and managed wastewater facilities and plant nearby, with available capacity to serve the development, and the City has extensive operational experience. Further, the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Lakeview Subdivision.

iii. Requiring regionalization is a broader policy issue.

To the City, the State's regionalization policy goes beyond LVTP's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City cannot safely plan for and invest in their regional systems. If the TCEQ does not implement the State's regionalization policy in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, the City could see many small package plants appear within its ETJ and in the vicinity of City's regional plant. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iv. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP has not demonstrated that the plan to serve the wastewater needs of the development should be granted an exception to the State's regionalization policy. As previously mentioned, the City has nearby facilities and the capacity to provide service to the proposed area. LVTP has failed to show that the connecting to the City is too costly, thereby making service from the City unavailable. Rather, LVTP incorrectly states that there are no domestic permitted wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility. *See Domestic Wastewater Permit Application, Technical Reports, page 21.* To the contrary, the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development, and has provided its preliminary engineering and cost estimates for the City to provide wastewater service to Applicant.

The City therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas' policy regarding regionalization.

B. Issuance of the Permit could impair existing uses of the SCS lakes on Long Branch, Waxahachie Creek, and Bardwell Reservoir, and may not be protective of surface water quality.

The proposed discharge point is to an unnamed tributary of Long Branch that supplies water to two SCS lakes on Long Branch. Long Branch is a tributary of Waxahachie Creek, which supplies water to Bardwell Reservoir, one of the City's water supply reservoirs. The City is concerned that the proposed discharge limits will not protect the existing uses and the surface water quality of those water bodies.

The City is concerned that the application and the proposed permit do not comply with the state's water quality standards, that the discharge limits are not sufficiently stringent to protect the water quality and existing uses in the receiving stream and Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including, but not limited to, on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, steroids viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the City's drinking water supply. Small package wastewater plants of the kind proposed by the Applicant typically do not remove such contaminants.

Moreover, Bardwell Reservoir has been designated as a sole-source drinking water supply lake and is a drinking water supply reservoir for the City. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2022 Clean Water Act Section 303(d). The Application reflects that LVTP's proposed facility will discharge more of that pollutant of concern into Segment 0815. *See* Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist. LVTP proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City's drinking water supply lake. LVTP's proposed discharge may negatively affect the water quality standards for Bardwell Reservoir, and therefore the City's ability to meet its citizens' drinking supply needs. The City therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Lake Bardwell.

C. The Applicant is not an experienced facility and system operator.

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 MGD, planned expansion of the City's wastewater treatment plant to 5 MDG in the near future and capacity for significantly more capacity expansion as needed. Further, the City has the capacity to provide service to the area proposed as the

September 7, 2023

Page 5

Lakeview Subdivision and is willing to provide that service. This, in conjunction with the City's regionalization arguments above, demonstrates that the TCEQ should deny the permit for LVTP to individually a wastewater plant serving only the Lakeview Subdivision in favor of a larger, more experienced provider serving the Lakeview Subdivision.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing on the Application in order to address the concerns raised herein.

Sincerely,

A handwritten signature in cursive script that reads "Emily W. Rogers".

Emily W. Rogers

Joshua D. Katz

Stefanie P. Albright

Attorneys for City of Waxahachie

EWR/rfb

Misty Botello

From: PUBCOMMENT-OCC
Sent: Friday, September 8, 2023 9:05 AM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: Ellis County Comments on LVTP Holdings TPDES Permit No. WQ0015964001.pdf

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Thursday, September 7, 2023 2:38 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

NAME: Emily Rogers

EMAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter.



September 7, 2023

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015964001

Dear Chief Clerk Gharis:

Ellis County, Texas (the "County") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers, Joshua Katz, and Stefanie Albright at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("LVTP" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015964001 (the "Application"), to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The Executive Director of the TCEQ issued a response to comments on August 15, 2023 and a decision on August 21, 2023, but did not adequately address the County's comments. The County is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The County is an Affected Person

The County is an "affected person" entitled to a contested case hearing on the issues raised in this hearing request under 30 TEX. ADMIN. CODE § 55.203 because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203. The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the proposed wastewater treatment plants and associated discharge into a tributary of Waxahachie Creek and Lake Bardwell, that the Application fails to properly address. Potential contamination of surface water within the region may impact the County's ability to effectively

provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure.

Additionally, the County is an affected person for the purposes of the Application because it has statutory authority over and an interest in the issues relevant to the Application. The proposed wastewater discharge and treatment plant will be located within Ellis County. As a "local government," as that term is defined by Texas Water Code § 26.001, the County has specific statutory authority to inspect the public water in its area to assess whether the quality of the water meets water quality standards, and to determine whether wastewater dischargers are discharging in compliance with the requirements of a TCEQ-issued permit. Texas Water Code § 26.171. The County also has authority to enter property to make inspections and investigations of conditions relating to water quality and the right to bring a civil suit against any person that violates or threatens to violate Chapter 26 of the Texas Water Code, or any permit issued thereunder. Texas Water Code §§ 7.351 and 26.173. As an inspector, investigator, and potential enforcer of a TCEQ-issued permit, the County is affected by the issuance of this permit and has a personal interest in ensuring that any permit issued by the TCEQ in this matter meets the state law requirements, is protective of water quality, and is enforceable. This interest in Applicant's proposed discharge within the County is therefore unique to the County and is not common to the general public. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

II. Comments

A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization. *See* TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City of Waxahachie (the "City"), tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

¹ See also *In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

ii. Overview of LVTP's proposed plant.

LVTP, a subdivision developer plans to build a wastewater plant that will, at full buildout, serve 5,500 residential and commercial lots in the Lakeview Subdivision. Constructing and operating one or more wastewater treatment plants to serve only the Lakeview development is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the County's citizens. This is particularly true when, as the County understands, the City has a larger, centralized, professionally operated wastewater facilities and plant nearby, with available capacity to serve the development, and with which the City has extensive operational experience. Further, the County understands that the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Lakeview Subdivision.

iii. Requiring regionalization is a broader policy issue.

The State's regionalization policy goes beyond LVTP's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City of Waxahachie that provide service to citizens of the County should not plan for and invest in their regional systems. If the TCEQ refuses to seriously consider regionalization in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, Ellis County could see a dramatic increase in the number of small package plants within the County. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iv. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP has not demonstrated that its plan to serve the wastewater needs of the development should be granted an exception to the State's regionalization policy. As previously mentioned, the County understands that the City of Waxahachie has nearby facilities and the capacity to provide service to the proposed area. LVTP has failed to show that the connecting to the City's wastewater system is too costly, thereby making service from the City unavailable. Rather, LVTP incorrectly states that there are no domestic permitted wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility. *See Domestic Wastewater Permit Application, Technical Reports, page 21.* To the contrary, the County understands that the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development.

The County therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas policy regarding regionalization.

B. Issuance of the Permit could impair existing uses of the SCS lakes on Long Branch, Waxahachie Creek, and Bardwell Reservoir, and may not be protective of surface water quality.

The proposed discharge point is to an unnamed tributary of Long Branch that supplies water to two SCS lakes on Long Branch. Long Branch is a tributary of Waxahachie Creek, which supplies water to Bardwell Reservoir, one of the City's water supply reservoirs. The County is concerned that the proposed discharge limits will not protect the existing uses and the surface water quality of those water bodies.

The County is concerned that the application and the proposed permit do not comply with the state's water quality standards, that the discharge limits are not sufficiently stringent to protect the water quality and existing uses in the receiving stream and Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including, but not limited to, on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, steroids viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the City's drinking water supply. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

Moreover, Bardwell Reservoir has been designated as a sole-source drinking water supply lake and is a drinking water supply reservoir for the City. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Bardwell Reservoir, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2022 Clean Water Act Section 303(d). The Application reflects that LVTP's proposed facility will discharge more of that pollutant of concern into Segment 0815. *See* Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist. LVTP proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City's drinking water supply lake. LVTP's proposed discharge may negatively affect the water quality standards for Bardwell Reservoir, and therefore the City's ability to meet its and the County's citizens' drinking supply needs. The County therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Bardwell Reservoir.

C. The Applicant is not an experienced facility and system operator.

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City of Waxahachie has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 MGD, planned expansion of its wastewater treatment plant to 5 MGD in the near future, and capacity for significantly more capacity expansion as needed. The County trusts the City to provide safe wastewater treatment services for the County's residents. Further, the County understands that the City has the capacity to provide service to the area proposed as the Lakeview Subdivision and is willing to provide that

September 7, 2023

Page 5

service. This, in conjunction with the County's regionalization arguments above, demonstrates that the TCEQ should deny the permit for LVTP to individually operate a small package plant in favor of a larger, more experienced provider serving the Lakeview Development.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,

A handwritten signature in cursive script that reads "Emily W. Rogers".

Emily W. Rogers

Joshua D. Katz

Attorneys for Ellis County

EWR/rfb

Debbie Zachary

From: PUBCOMMENT-OCC
Sent: Tuesday, August 16, 2022 1:31 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: County of Ellis Comments on LVTP TPDES Permit No. WQ0015964001.pdf

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Monday, August 15, 2022 4:41 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

FROM

NAME: Emily Rogers

EMAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter.



August 15, 2022

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015964001

Dear Chief Clerk Gharis:

The Ellis County, Texas (the "County") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers, Joshua Katz, and Stefanie Albright at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("LVTP" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015964001 (the "Application"), to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The County is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The County is an Affected Person

The County is an "affected person" entitled to a contested case hearing on the issues raised in this hearing request under 30 TEX. ADMIN. CODE § 55.203 because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203. The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the proposed wastewater treatment plants and associated discharge into a tributary of Waxahachie Creek and Lake Bardwell, that the Application fails to properly address. Potential contamination of surface water within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure.

Additionally, the County is an affected person for the purposes of the Application because it has statutory authority over and an interest in the issues relevant to the Application. The proposed wastewater discharge and treatment plant will be located within Ellis County. As a “local government,” as that term is defined by Texas Water Code § 26.001, the County has specific statutory authority to inspect the public water in its area to assess whether the quality of the water meets water quality standards, and to determine whether wastewater dischargers are discharging in compliance with the requirements of a TCEQ-issued permit. Texas Water Code § 26.171. The County also has authority to enter property to make inspections and investigations of conditions relating to water quality and the right to bring a civil suit against any person that violates or threatens to violate Chapter 26 of the Texas Water Code, or any permit issued thereunder. Texas Water Code §§ 7.351 and 26.173. As an inspector, investigator, and potential enforcer of a TCEQ-issued permit, the County is affected by the issuance of this permit and has a personal interest in ensuring that any permit issued by the TCEQ in this matter meets the state law requirements, is protective of water quality, and is enforceable. This interest in Applicant’s proposed discharge within the County is therefore unique to the County and is not common to the general public. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

II. Comments

A. Granting this Application would be contrary to the State of Texas’ policy regarding regionalization. See TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City of Waxahachie (the “City”), tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

¹ See also *In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

ii. Overview of LVTP's proposed plant.

LVTP, a subdivision developer plans to build a wastewater plant that will, at full buildout, serve 5,500 residential and commercial lots in the Lakeview Subdivision. Constructing and operating one or more wastewater treatment plants to serve only the Lakeview development is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the County's citizens. This is particularly true when, as the County understands, the City has a larger, centralized, professionally operated wastewater facilities and plant nearby, with available capacity to serve the development, and with which the City has extensive operational experience. Further, the County understands that the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Lakeview Subdivision.

iii. Requiring regionalization is a broader policy issue.

The State's regionalization policy goes beyond LVTP's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City of Waxahachie that provide service to citizens of the County should not plan for and invest in their regional systems. If the TCEQ refuses to seriously consider regionalization in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, Ellis County could see a dramatic increase in the number of small package plants within the County. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iv. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP has not demonstrated that its plan to serve the wastewater needs of the development should be granted an exception to the State's regionalization policy. As previously mentioned, the County understands that the City of Waxahachie has nearby facilities and the capacity to provide service to the proposed area. LVTP has failed to show that the connecting to the City's wastewater system is too costly, thereby making service from the City unavailable. Rather, LVTP incorrectly states that there are no domestic permitted wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility. *See Domestic Wastewater Permit Application, Technical Reports, page 21.* To the contrary, the County understands that the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development.

The County therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas policy regarding regionalization.

B. Issuance of the Permit could impair existing uses of the SCS lakes on Long Branch, Waxahachie Creek, and Bardwell Reservoir, and may not be protective of surface water quality.

The proposed discharge point is to an unnamed tributary of Long Branch that supplies water to two SCS lakes on Long Branch. Long Branch is a tributary of Waxahachie Creek, which supplies water to Bardwell Reservoir, one of the City's water supply reservoirs. The County is concerned that the proposed discharge limits will not protect the existing uses and the surface water quality of those water bodies.

The County is concerned that the application and the proposed permit do not comply with the state's water quality standards, that the discharge limits are not sufficiently stringent to protect the water quality and existing uses in the receiving stream and Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including, but not limited to, on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, steroids viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the City's drinking water supply. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

Moreover, Bardwell Reservoir has been designated as a sole-source drinking water supply lake and is a drinking water supply reservoir for the City. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Bardwell Reservoir, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2022 Clean Water Act Section 303(d). The Application reflects that LVTP's proposed facility will discharge more of that pollutant of concern into Segment 0815. *See* Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist. LVTP proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City's drinking water supply lake. LVTP's proposed discharge may negatively affect the water quality standards for Bardwell Reservoir, and therefore the City's ability to meet its and the County's citizens' drinking supply needs. The County therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Bardwell Reservoir.

C. The Applicant is not an experienced facility and system operator.

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City of Waxahachie has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 MGD, planned expansion of its wastewater treatment plant to 5 MGD in the near future, and capacity for significantly more capacity expansion as needed. The County trusts the City to provide safe wastewater treatment services for the County's residents. Further, the County understands that the City has the capacity to provide service to the area proposed as the Lakeview Subdivision and is willing to provide that


August 15, 2022

Page 5

service. This, in conjunction with the County's regionalization arguments above, demonstrates that the TCEQ should deny the permit for LVTP to individually operate a small package plant in favor of a larger, more experienced provider serving the Lakeview Development.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,

A handwritten signature in cursive script that reads "Emily W. Rogers".

Emily W. Rogers
Joshua D. Katz
Attorneys for Ellis County

EWR/rfb

Debbie Zachary

WQ
123649

From: PUBCOMMENT-OCC
Sent: Tuesday, August 16, 2022 1:30 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: City of Waxahachie Comments on LVTP Holdings TPDES Permit No. WQ0015964001.pdf

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Monday, August 15, 2022 4:39 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

FROM

NAME: Emily Rogers

EMAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter.



August 15, 2022

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015964001

Dear Chief Clerk Gharis:

The City of Waxahachie, Texas (the "City") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to either Emily Rogers, Joshua Katz, or Stefanie Albright, attorneys for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("LVTP" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015964001 (the "Application"), seeking to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The City of Waxahachie is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The City is an Affected Person

The City is an "affected person" entitled to a contested case hearing on issues raised in this hearing request pursuant to 30 TEX. ADMIN. CODE § 55.203 because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. The Applicant's proposed wastewater plant and associated discharge will be located entirely within the extraterritorial jurisdiction ("ETJ") of the City. Local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. *See, e.g., TEX. LOC. GOV'T CODE* §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the proposed discharge and are not adequately addressed by the Application. Additionally, the proposed discharge will flow into two SCS lakes, which are used by local residences for recreation, and then into

Waxahachie Creek, which flows through the City. This discharge could negatively affect the water quality of these lakes and Waxahachie Creek. The City has an interest in protecting the water quality of these water bodies in order to protect the public, health, and safety of its citizens.

Further, the City has nearby water and sewer facilities and infrastructure that would be impacted by the Application. As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalize with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* TEXAS WATER CODE § 26.081(a). The City therefore has an interest in ensuring that the creation and operation of the proposed wastewater treatment plant and associated discharge is protective of the public health and safety within its ETJ. Thus, the City has authority under state law over the issues contemplated by this Application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

II. Comments

A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization of wastewater systems. *See* TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are better able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City, tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

ii. Overview of the City's wastewater systems and LVTP's proposed plant.

The City has professionally operated its wastewater treatment plants for over 60 years, with current capacity of 4 MGD, planned expansion to 5 MGD, and the capacity for significantly more capacity expansion as needed. The City has an existing wastewater collection facilities with

¹ *See also In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

approximately 2.5 miles of the development the Applicant intends to serve with its proposed wastewater treatment plant. The subdivision the developer plans to build, at full buildout, will have 5,500 residential and commercial lots. Constructing and operating one or more wastewater treatment plants to serve only the Lakeview development is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the City's citizens. The City, however, has a larger, centralized, professionally operated and managed wastewater facilities and plant nearby, with available capacity to serve the development, and the City has extensive operational experience. Further, the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Lakeview Subdivision.

iii. Requiring regionalization is a broader policy issue.

To the City, the State's regionalization policy goes beyond LVTP's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City cannot safely plan for and invest in their regional systems. If the TCEQ does not implement the State's regionalization policy in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, the City could see many small package plants appear within its ETJ and in the vicinity of City's regional plant. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iv. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP has not demonstrated that the plan to serve the wastewater needs of the development should be granted an exception to the State's regionalization policy. As previously mentioned, the City has nearby facilities and the capacity to provide service to the proposed area. LVTP has failed to show that the connecting to the City is too costly, thereby making service from the City unavailable. Rather, LVTP incorrectly states that there are no domestic permitted wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility. *See Domestic Wastewater Permit Application, Technical Reports, page 21.* To the contrary, the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development, and has provided its preliminary engineering and cost estimates for the City to provide wastewater service to Applicant.

The City therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas' policy regarding regionalization.

B. Issuance of the Permit could impair existing uses of the SCS lakes on Long Branch, Waxahachie Creek, and Bardwell Reservoir, and may not be protective of surface water quality.

The proposed discharge point is to an unnamed tributary of Long Branch that supplies water to two SCS lakes on Long Branch. Long Branch is a tributary of Waxahachie Creek, which supplies water to Bardwell Reservoir, one of the City's water supply reservoirs. The City is concerned that the proposed discharge limits will not protect the existing uses and the surface water quality of those water bodies.

The City is concerned that the application and the proposed permit do not comply with the state's water quality standards, that the discharge limits are not sufficiently stringent to protect the water quality and existing uses in the receiving stream and Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including, but not limited to, on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, steroids viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the City's drinking water supply. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

Moreover, Bardwell Reservoir has been designated as a sole-source drinking water supply lake and is a drinking water supply reservoir for the City. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2022 Clean Water Act Section 303(d). The Application reflects that LVTP's proposed facility will discharge more of that pollutant of concern into Segment 0815. *See* Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist. LVTP proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City's drinking water supply lake. LVTP's proposed discharge may negatively affect the water quality standards for Bardwell Reservoir, and therefore the City's ability to meet its citizens' drinking supply needs. The City therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Lake Bardwell.

C. The Applicant is not an experienced facility and system operator.

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 MGD, planned expansion of the City's wastewater treatment plant to 5 MDG in the near future and capacity for significantly more capacity expansion as needed. Further, the City has the capacity to provide service to the area proposed as the Lakeview Subdivision and is willing to provide that service. This, in conjunction with the City's regionalization arguments above, demonstrates that the TCEQ should deny the permit for LVTP

August 15, 2022
Page 5

to individually a wastewater plant serving only the Lakeview Subdivision in favor of a larger, more experienced provider serving the Lakeview Subdivision.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing on the Application in order to address the concerns raised herein.

Sincerely,

A handwritten signature in cursive script that reads "Emily W. Rogers".

Emily W. Rogers
Joshua D. Katz
Stefanie P. Albright
Attorneys for City of Waxahachie

SPA/rfb

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Monday, July 19, 2021 11:46 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0015964001
Attachments: County of Ellis request for contested case hearing.pdf

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Friday, July 16, 2021 10:32 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0015964001

REGULATED ENTY NAME LAKEVIEW MUD WWTP

RN NUMBER: RN111192340

PERMIT NUMBER: WQ0015964001

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LVTP HOLDINGS LLC

CN NUMBER: CN605858901

FROM

NAME: Emily Rogers

E-MAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MO PAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter



Office of the County Judge
TODD LITTLE

The Historic Courthouse • 101 W. Main, Waxahachie, Texas 75165 • (972) 825-5011

July 14, 2021

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

Re: Application by LVTP Holdings, LLC to the Texas Commission on Environmental Quality
for new Texas Pollutant Discharge Elimination System ("TPDES") Permit No.
WQ0015964001

Dear Chief Clerk Gharis:

The County of Ellis, Texas (the "County") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers and Joshua Katz, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Ms. Rogers and Mr. Katz's daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

LVTP Holdings, LLC ("Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for TPDES Permit No. WQ0015964001 (the "Application"), to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The County is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

I. The County is an Affected Person

The County is an "affected person" entitled to a contested case hearing on the issues raised in this hearing request under 30 TEX. ADMIN. CODE § 55.203 because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203. The County has authority over various functions - including but not limited to transportation, emergency services, and health and safety - that may be affected by the proposed

wastewater treatment plants and associated discharge into a tributary of Lake Bardwell, that the Application fails to properly address. Potential contamination of surface water within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

II. Comments and Requests

A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization. *See* TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.

i. Purpose of the regionalization policy.

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*¹ The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City of Waxahachie (the "City"), tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities. The County understands that the City has the capacity to provide service to the area proposed, and the City is willing and able to provide that service.

ii. Requiring regionalization is a broader policy issue.

The State's regionalization policy goes beyond LVTP Holdings, LLC's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City of Waxahachie that provide service to citizens of the County should not plan for and invest in their regional systems. If the TCEQ refuses to seriously consider regionalization in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, Ellis County could see a dramatic increase in the number of small package plants within the County. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and

¹ See also *In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

iii. The Applicant has not demonstrated that it should be excepted from the State's regionalization policy.

LVTP Holdings, LLC has not demonstrated that its plan to serve the wastewater needs of the development through a smaller package plant should be granted an exception to the State's regionalization policy. As previously mentioned, the County understands that the City of Waxahachie has nearby facilities and the capacity to provide service to the proposed area. LVTP Holdings, LLC has failed to show that the connecting to the City's wastewater system is too costly, thereby making service from the City unavailable.

Request: The County requests that the TCEQ require the Applicant to evaluate the potential of regional wastewater treatment options with the City of Waxahachie consistent with rule and guidance and to withhold any permitting action unless the applicant can demonstrate that that regionalized wastewater service is not feasible. In the event that regionalized wastewater service is feasible, the County therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas' policy regarding regionalization.

B. Issuance of the Permit could negatively affect the Lake Bardwell, a sole source drinking water supply lake that serves residents of the County.

The proposed discharge point is an unnamed tributary that feeds into Waxahachie Creek, located upstream of Lake Bardwell Reservoir, which is the City of Ennis's water supply lake. The City of Ennis, and its inhabitants, reside within the County. Lake Bardwell has been designated as a sole-source drinking water supply lake. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2020 Clean Water Act Section 303(d).

Applicant proposes to discharge treated effluent of up to 1,200,000 more gallons per day into a direct tributary of the City of Ennis's sole source drinking water supply lake. Applicant's proposed discharge may negatively affect the water quality standards for Lake Bardwell, and therefore the City of Ennis's ability to meet its citizens' drinking supply needs.

Request: The County requests that TCEQ provide a full assessment demonstrating that the proposed discharge does not further cause or contribute to the sulfate impairment (and water impairment) in Lake Bardwell. Until such an assessment is completed, the Lakeview MUD WWTP cannot be permitted to discharge to Lake Bardwell. While the County understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

C. Issuance of the Permit could negatively affect the water quality in Lake Bardwell.

The designated uses of Lake Bardwell include use as a public water supply, a source of primary contact recreation, and high aquatic life use. Lake Bardwell is the source of the City of Ennis's drinking

July 14, 2021

Page 4

water supply. Aside from the County's water quality standard concerns for its public water supply, detailed above, the County is concerned that the Application and the proposed permit do not comply with the state's water quality standards and that the discharge limits are not sufficiently stringent to protect the water quality in the receiving stream and Lake Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent - including pharmaceuticals, hormones, antibiotics, viruses, health care products, and many more - that are refractory during wastewater treatments, tend to persist in an aquatic environment, and could end up in the drinking water supply of County residents. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

Request: The County requests that TCEQ provide a full assessment demonstrating that the proposed discharge does not further cause or contribute to negative water quality in Lake Bardwell. While the County understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing. Thank you for the opportunity to comment on this proposed permitting action.

Sincerely,



Todd Little
Ellis County Judge

Cc:

Emily W. Rogers
Joshua D. Katz
Attorneys for County of Ellis

Brian Finch
Applicant/Manager
LVTP Holdings, LLC

David Bailey
Senior Director of Utilities
City of Waxahachie

Marty Nelson
City Manager
City of Ennis

Michael Scott
City Manager
City of Waxahachie