State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 8, 2025

Michael Parr **VIA EFILE TEXAS**
TCEQ Executive Director

Sheldon Wayne **VIA EFILE TEXAS**
Office of Public Interest Counsel

Bryan Moore **VIA EFILE TEXAS**
Applicant

Emily Rogers **VIA EFILE TEXAS**
City of Waxahachie

Stefanie Albright **VIA EFILE TEXAS**
Ellis County

Eric Allmon **VIA EFILE TEXAS**
Texans for MUD Reform

RE: Docket Number 582-25-04889; TCEQ No. 2023-1558-MWD; *Application by LVTP Holdings LLP for TPDES Permit No. WQ0015964001*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

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

SOAH Docket No. 582-25-04889 **Suffix: TCEQ**
TCEQ Docket No. 2023-1558-MWD

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY LVTP HOLDINGS LLP FOR TPDES PERMIT NO. WQ0015964001

PROPOSAL FOR DECISION

LVTP Holdings LLP (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015964001. Applicant seeks the permit to discharge a daily average flow not to exceed 1.2 million gallons per day (MGD) of treated domestic wastewater during the final phase. The Administrative Law Judge (ALJ) recommends the Application be granted.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party has challenged notice or jurisdiction, which are addressed in the proposed order without further discussion here.

Applicant filed the Application on February 11, 2021.[1] TCEQ's Executive Director (ED) declared the Application administratively complete on May 5, 2021, and technically complete on June 13, 2022,[2] and the ED issued a draft permit (Draft Permit).[3] The ED filed their response to hearing requests on November 20, 2023.[4] On December 21, 2023, the Commission issued an interim order (Interim Order) referring two issues to SOAH for a contested case hearing and determining that Ellis County (County) and the City of Waxahachie (City) were affected persons.[5]

On December 30, 2024, ALJ Holly Vandrovec convened a preliminary hearing via Zoom videoconference. At the preliminary hearing, the ALJ admitted the administrative record, determined that SOAH had jurisdiction over the matter, and named parties. Applicant, the ED, the Office of Public Interest Counsel (OPIC), and Protestants the City, the County, and Texans for MUD Reform (TMR) were named parties.

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[1] App. Ex. AR-5 at 77.

[2] App. Ex. AR-5 at 3.

[3] App. Ex. AR-4 at 20.

[4] App. Ex. AR-4 at 0001.

[5] App. Ex. AR-2.

A hearing on the merits was held on April 24, 2025. Attorney Bryan Moore appeared for Applicant, attorney Michael Parr appeared for the ED, attorney Sheldon Wayne appeared for OPIC, attorney Stefanie Albright appeared for the County, attorney Emily Rogers appeared for the City, and attorney Eric Allmon appeared for TMR. The record initially closed on May 28, 2025 with the filing of briefs. The ALJ reopened the record on July 22, 2025, after discovering that certain documents contained in the administrative record pertained to a different application. The record finally closed on July 25, 2025, after the filing and admission of Applicant's corrected Exhibit AR-4.[6]

II. BURDEN OF PROOF, APPLICABLE LAW & REFERRED ISSUES

A. BURDEN OF PROOF

The TCEQ referred this case to SOAH under Texas Water Code section 5.556, which governs referral of environmental permitting cases. Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3), which provides:

> (i-1) In a contested case regarding a permit application referred under Section 5.556 . . . , Water Code, the filing with the office of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:

[6] The ALJ granted ED's motion to strike the incorrect exhibit and admitted corrected Applicant Exhibit AR-4. References to Applicant Exhibit AR-4 in this PFD are to the corrected version without further comment.

> (1) the draft permit meets all state and federal legal and technical requirements; and
>
> (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.
>
> (i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:
>
> (1) relates to. . . an issue included in a list [of issues referred by the Commission] in connection with a matter referred under Section 5.556, Water Code; and
>
> (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.
>
> (i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. Accordingly, the burden of proof remains with the Applicant to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.[7]

[7] 30 Tex. Admin. Code § 80.17(a), (c).

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), were offered and admitted into the record for all purposes.

B. APPLICABLE LAW

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

A domestic wastewater treatment facility in Texas is subject to wastewater discharge permit requirements. Standard permit requirements, which TCEQ has adapted specifically for use in wastewater discharge permits, are found in 30 Texas Administrative Code, chapter 305, subchapter F. All wastewater discharge permits are also subject to regulations found in 30 Texas Administrative Code, chapter 319, which requires the permittee to monitor its effluent and report the results as required in the permit.

Finally, TCEQ has adopted water quality standards applicable to wastewater discharges in accordance with section 303 of the Clean Water Act and section 26.023

of the Texas Water Code. These standards, known as the Texas Surface Water Quality Standards (TSWQS), are found in 30 Texas Administrative Code, chapter 307. The TSWQS identify appropriate uses for the state's surface waters (e.g., aquatic life, recreation, and public water supply), and establish narrative and numerical water quality standards to protect those uses. TCEQ has standard procedures for implementing the TSWQS, referred to as the Implementation Procedures (IPs), which are approved by the EPA.[8] The TSWQS and IPs are used in reviewing permit applications.

The TSWQS require that proposed wastewater discharges undergo an antidegradation review.[9] Antidegradation review is divided into two tiers. Tier 1 requires that "[e]xisting uses and water quality sufficient to protect those existing uses must be maintained."[10] Tier 2 is more stringent and generally prohibits the lowering of water quality by more than a de minimis amount for waters that exceed fishable/swimmable quality, unless it can be shown that lowering is necessary for important economic or social development.[11]

The TSWQS provide that "[d]issolved oxygen concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses."[12] In addition, the TSWQS require that "[n]utrients from permitted

[8] 30 Tex. Admin. Code § 307.2(e).

[9] 30 Tex. Admin. Code § 307.5(b).

[10] 30 Tex. Admin. Code § 307.5(b)(1).

[11] 30 Tex. Admin. Code § 307.5(b)(2).

[12] 30 Tex. Admin. Code § 307.4(h)(1).

discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use."[13]

C. REFERRED ISSUES

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

A. Whether the draft permit is protective of water quality and the existing uses in the receiving waters under the applicable rules, including the Texas Surface Water Quality Standards in 30 Texas Administrative Code Chapter 307; and

B. Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under [Texas Water Code] § 26.0282 and the general policy to promote regional or area-wide systems under [Texas Water Code] § 26.081.[14]

III. THE PROPOSED FACILITY AND DRAFT PERMIT

Applicant seeks authorization to discharge treated domestic wastewater at an annual average flow not to exceed 1.2 MGD. Treated effluent would be discharged to an unnamed tributary of Long Branch, thence to an unnamed impoundment on Long Branch, thence to Long Branch, thence to an unnamed impoundment on Long Branch, thence to Long Branch, thence to Waxahachie Creek, thence to Bardwell Reservoir in Segment No. 0815 of the Trinity River Basin.[15]

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[13] 30 Tex. Admin. Code § 307.4(e).

[14] App. Ex. AR-2 (Interim Order).

[15] App. Ex. AR-4 at 3.

The proposed wastewater treatment facility (Facility) will be located approximately 2.0 miles northeast of the intersection of Rex Odom Drive and West U.S. Highway 287, in Ellis County, Texas 75165. It would be constructed to serve a 1,228-acre tract to be developed into residential dwelling units and commercial lots.[16] The Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units in the interim phase will include a bar screen, an aeration chamber, a final clarifier, a sludge digester, a chlorine contact chamber, and a dechlorination chamber. Treatment units in the final phase will include an additional aeration chamber, a final clarifier, a sludge digester, a chlorine contact chamber, and a dechlorination chamber.[17]

The Draft Permit set effluent limitations, based on a 30-day average, for 5-day carbonaceous biochemical oxygen demand ($CBOD_5$), total suspended solids (TSS), ammonia-nitrogen (NH_3-N), total phosphorus (TP), colony forming units (CFU) or most probable number (MPN) of Escherichia coli (*E. coli*), minimum dissolved oxygen (DO), and total chlorine residual (after a 20-minute detention time and based on peak flow) as follows:[18]

	Interim Phase	**Final Phase**
$CBOD_5$	5 milligrams per liter (mg/L)	5 mg/L
TSS	5 mg/L	5 mg/L
NH_3-N	1.2 mg/L	1.1 mg/L

[16] App. Ex. AR-5 at 77.

[17] App. Ex. AR-4 at 0002.

[18] App. Ex. AR-4 at 0002.

TP	1 mg/L	1 mg/L
E. coli	126 CFU or MPN per 100 milliliters (mL)	126 CFU or MPN per 100 mL
Minimum DO	6.0 mg/L	6.0 mg/L
Total chlorine residual	1.0 mg/L min.	1.0 mg/L min.

IV. EVIDENCE

Applicant's Exhibits AR-1 through AR-5, constituting the administrative record, were admitted along with Exhibits APP-JM1 through APP-JM7, Exhibits APP-HG1 through APP-HG8, and Exhibit APP-CE1. After the hearing, Applicant Exhibits APP-MO1, APP-MO2, and APP-MO3 were admitted under the rule of optional completeness. Applicant also presented witness testimony from James Machin and Helen Gilbert. The County and the City (together, the Government Protestants) had their Exhibits 1-8 admitted into evidence, and they presented the testimony from witnesses Tim Osting and Michael Scott. TMR's Exhibits 1-4, 6, 100-103, and 200-210 were admitted. TMR also presented the testimony from witnesses Caroline Taylor and Wesley Tryon. ED's Exhibits ED-1 through ED-24 were admitted into evidence. The ED presented the testimony of witnesses Abdur Rahim, Xing Lu, and Peter Schaefer.

V. DISCUSSION

A. ISSUE A: WATER QUALITY

Protestants argue (primarily through the testimony of Mr. Osting) that the Draft Permit is not protective of water quality and should be denied. Protestants' technical arguments fall into the following categories: (a) the modeling performed was inaccurate and insufficient and (b) the total phosphorus limit is not protective of water quality. TMR witnesses also point to concerns regarding the discharge's potential to affect their property, the water quality of the stream and reservoir, and the groundwater they use for drinking.

1. Modeling

Two models were used to evaluate whether the limits contained in the Draft Permit would be protective of water quality and downstream uses. The first model is the QUAL-TX model used to evaluate stream conditions by predicting the dissolved oxygen concentration within the stream.[19] The second model is the Continuously Stirred Tank Reactor (CSTR) model used to evaluate oxygen concentration in impoundments, such as lakes or ponds.[20]

[19] Gov't Protestants Ex. 1 (Osting Dir.) at 11.

[20] Gov't Protestants Ex. 1 (Osting Dir.) at 10-11.

a) Coefficients

Mr. Osting's testimony faults the QUAL-TX model because some unverified site-specific inputs or coefficients were used.[21] Mr. Osting argues that default stream coefficients should be used in the case of a dry creek bed, which was the condition during an ED Staff site visit.[22] He also stated that he was unable to substantiate the site-specific data anywhere within the administrative record.[23]

During the hearing, it became apparent that ED Staff had conducted two QUAL-TX model runs, but Mr. Osting had only reviewed the first run wherein some site-specific coefficients were used.[24] The second run used default coefficients, which Mr. Osting testified is required by the TCEQ IPs and associated standard operating procedures.[25] The ALJ concludes that ED Staff properly conducted the QUAL-TX modeling for dissolved oxygen using default coefficients.

b) Modeling of Nitrate-Nitrogen and Phosphorus

Mr. Osting also faulted the Draft Permit's water quality analysis, arguing that nitrate-nitrogen and phosphorus concentrations[26] should have been modeled and

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[21] Gov't Protestants Ex. 1 (Osting Dir.) at 12, 15.

[22] Gov't Protestants Ex. 1 (Osting Dir.) at 12.

[23] Tr. at 50.

[24] Tr. at 113, 115.

[25] Gov't Protestants Ex. 1 (Osting Dir.) at 12.

[26] The ALJ notes that Mr. Osting's Direct Testimony mentions a failure to include sulfate modeling with respect to the Bardwell Reservoir. Gov't Protestants Ex. 1 (Osting Dir.) at 15. However, he only mentions sulfate one time in relation to the Draft Permit and it is unclear from the testimony why it was included. Therefore, the ALJ includes no further discussion on this issue.

analyzed due to their role in contributing to the increase of algae proliferation in the reservoir downstream from the discharge point.[27]

Mr. Machin testified that TCEQ does not normally model nutrients because it cannot reliably be done without extensive on-site data.[28] Additionally, the ALJ notes that Mr. Osting cited to no other case in which nitrate-nitrogen or phosphorus had been modeled. For these reasons, the ALJ does not find the lack of such modeling to be detrimental to the Application.

2. Total Phosphorus

Mr. Osting argued that at some point during a dry period, the unnamed reservoir could become comprised primarily of effluent and that the total phosphorus concentration in the reservoir could be higher than 0.80 mg/L and could be up to the limit contained in the Draft Permit, which is 1.0 mg/L.[29] He posits that this high concentration could have a significant impact on Bardwell Reservoir once the effluent reaches it. Mr. Osting admitted that his estimate of 0.80-1.0 mg/L was "based on professional judgement"[30] and was not the result of mass balance calculations or independent modeling.

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[27] Gov't Protestants Ex. 1 (Osting Dir.) at 13.

[28] App. Ex. AAP-JM1 (Machin Dir.) at 16.

[29] Gov't Protestants Ex. 1 (Osting Dir.) at 13.

[30] Tr. at 73, l. 9-10.

Mr. Machin testified that Mr. Osting's dire predictions could not take place for several reasons. First, he argues that phosphorus is not a conservative substance, rather, it would readily decay, degrade, or change form in a water system.[31] Mr. Osting admitted that he would expect some loss to sedimentation and to uptake by aquatic organisms or algae or aquatic plants.[32] Second, he noted that Bardwell Reservoir is over 25 miles downstream of the discharge point, such that the phosphorus would be expected to have significantly decayed or been consumed by the time it reached the reservoir. Finally, Mr. Machin notes that the City's wastewater treatment plant has a permitted flow of 8.0 MGD and has no total phosphorus limit. As such, the City's own contribution of phosphorus to Bardwell Reservoir would dwarf that of the proposed Facility, which would have a flow of only 1.2 MGD and a total phosphorus limit of 1.0 mg/L.[33]

The ALJ finds Mr. Osting's estimates and calculations to be unreliable and concludes that there is insufficient evidence relating to the effect of total phosphorous to rebut the prima facie demonstration.

3. Landowner Concerns

TMR witnesses Ms. Taylor and Mr. Tryon both live within one mile of the proposed discharge point of the Facility. Both witnesses testified as to their own experiences with water inundation onto their property after significant rain events,

[31] App. Ex. AAP-JM1 (Machin Dir.) at 16-17.

[32] Tr. at 75.

[33] App. Ex. AAP-JM1 (Machin Dir.) at 17.

their reliance on the spring water, and perceived negative impacts that would result from the Application being granted.[34] The witnesses' evidence is anecdotal in nature. The ALJ appreciates the landowners concern and involvement in the process, but finds no evidence to rebut the presumption that the Draft Permit is protective of water quality and existing uses.

B. ISSUE B: NEED & REGIONALIZATION

There was no dispute that wastewater treatment facilities are needed to serve the 1,228-acre tract to be developed into residential dwelling units and commercial lots.

Texas has adopted a policy "to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state."[35] The Commission is authorized to implement this policy by designating regional providers in accordance with the procedure provided in Texas Water Code sections 26.081-.083. The Water Code also allows the Commission to make permitting decisions based on the existence and needs of a designated regional provider.[36] However, no regional provider has been designated for the area where the Facility would be located. Further, the Commission has not yet adopted rules implementing the State's

[34] TMR Exs. 100 (Taylor Dir.) & 200 (Tryon Dir.).

[35] Tex. Water Code §§ 26.003, .081(a); *see also* 30 Tex. Admin. Code § 307.1.

[36] Tex. Water Code §26.0282.

regionalization policy.[37] Although the Commission has issued guidance on regionalization, this document was not consulted by Staff in its review because it was not issued until August 2023, making it inapplicable to this matter.[38] Additionally, the area to be served by the Facility is not within an incorporated municipality nor is it within the territory covered by a wastewater certificate of convenience and necessity of any retail wastewater provider.

Protestants provided evidence that the City's wastewater collection system is located approximately 2.6 miles from the Facility and has capacity to serve the development. Protestants also argue that when requesting service, Applicant did not provide the City with the information required in TCEQ's regionalization guidance document. Protestants argue that if another provider with capacity is located within 3 miles of the proposed Facility, that the Application must be denied on grounds that it violates the State's regionalization policy.

As stated above, the TCEQ guidance document was adopted years after the Application was filed at TCEQ and does not apply in this case. Additionally, the ALJ finds no legal support for the proposition that the presence of another system within 3 miles of the proposed Facility necessitates denial of the Application on regionalization grounds. Furthermore, the record is clear that the City denied service to the development. Though the City argued that they needed more information

[37] Chapter 351 of Title 30 of the Texas Administrative Code pertains only to those regional providers that have been specifically designated as such by TCEQ, which is inapplicable in this case. 30 Texas Administrative Code § 307.1 is a "General Policy Statement" that essentially recites Texas Water Code § 26.003; however, it contains no set of requirements or standards to follow.

[38] TMR Ex. 4 (Evaluating Regionalization for Proposed Wastewater Systems, Publication RG-632).

from the Applicant to determine whether they had the capacity to serve the development at the time they were asked, they never told the Applicant what information they needed and ultimately never agreed to serve the development. The ALJ interprets these actions as a refusal to serve.

For these reasons, the ALJ agrees that the State's regionalization policy does not require denial of the Draft Permit.

VI. TRANSCRIPT COSTS

Applicant incurred a total of $5,251.25 in reporting and transcription costs for the hearing on the merits.[39] Applicant proposes that 25% of the total costs should be allocated each to Applicant, TMR, the City, and the County.[40] Protestants, meanwhile, urge that all transcript costs should be borne by Applicant.

The Commission's rules require consideration of the following applicable factors in assessing transcription costs:

> (A) the party who requested the transcript;
> (B) the financial ability of the party to pay the costs;
> (C) the extent to which the party participated in the hearing;
> (D) the relative benefits to the various parties of having a transcript;
> . . .

[39] App. Closing Br. at Ex. A.

[40] Neither OPIC nor the ED may be assessed transcript costs. 30 Tex. Admin. Code § 80.23(d)(2).

(G) any other factor which is relevant to a just and reasonable assessment of costs.[41]

The ALJ required that the hearing be transcribed. All parties participated in the hearing and benefitted equally from having a copy of the transcript. Neither Applicant nor Protestants presented evidence on their respective ability to pay costs. Protestants consist of a nonprofit organization participating on behalf of local members, and local governments that are reliant on taxpayers for expenses, which might suggest they lack resources compared to Applicant. However, Protestants were represented in this case by experienced lawyers and, with respect to the Government Protestants, had the resources to retain an expert witness, which indicates they can bear litigation costs and expenses.

The ALJ finds it appropriate and consistent with Commission rules to allocate one-half of the total reporting and transcription costs to Applicant and one-half to Protestants, split equally among the Protestants.

[41] 30 Tex. Admin. Code § 80.23(d)(1).

VII. CONCLUSION

For the reasons stated above, the ALJ recommends that the Commission grant the Application and issue the Draft Permit as proposed by the ED. In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated with the accompanying proposed Order of the Commission.

Signed September 8, 2025

Holly Vandrovec
Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION BY LVTP HOLDINGS LLP FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0015964001
SOAH DOCKET NO. 582-25-04889, TCEQ DOCKET NO. 2023-1558-MWD

On , the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of LVTP Holdings LLP (Applicant) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015964001 in Ellis County, Texas. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Holly Vandrovec with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on April 24, 2025, via Zoom videoconference.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Applicant filed its application (Application) for a new TPDES permit with TCEQ on February 11, 2021.

2. The Application seeks to have TCEQ authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 1.2 million gallons per day (MGD).

3. TCEQ's Executive Director (ED) declared the Application administratively complete on May 5, 2021, and technically complete on June 13, 2022. The ED then issued a draft permit.

The Facility

4. The facility will be located approximately 2.0 miles northeast of the intersection of Rex Odom Drive and West U.S. Highway 287, in Ellis County, Texas 75165.

5. The facility will be an activated sludge process plant operated in the extended aeration mode.

6. Treatment units in the interim phase will include a bar screen, an aeration chamber, a final clarifier, a sludge digester, a chlorine contact chamber, and a dechlorination chamber.

7. Treatment units in the final phase will include an additional aeration chamber, a final clarifier, a sludge digester, a chlorine contact chamber, and a dechlorination chamber.

The Draft Permit

8. The effluent limitations for all phases of the draft permit, based on a 30-day average, are 5 milligrams per liter (mg/L) five-day biochemical oxygen demand, 5 mg/L total suspended solids, 126 colony forming units or most probable number of *E. coli* per 100 ml, 1 mg/L total phosphorus, and a minimum of 6.0 mg/L minimum dissolved oxygen (DO). The effluent is required to contain a total chlorine residual of at least 1.0 mg/L.

9. The treated effluent will be discharged to an unnamed tributary of Long Branch, thence to an unnamed impoundment on Long Branch, thence to Long Branch, thence to an unnamed impoundment on Long Branch, thence to Long Branch, thence to Waxahachie Creek, thence to Bardwell Reservoir in Segment No. 0815 of the Trinity River Basin.

10. The designated uses of Segment 0815 are primary contact recreation, public water supply, and high aquatic life use.

Notice and Jurisdiction

11. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in *The Dallas Morning News* on May 13, 2021, and in Spanish in the *TexMex News* on May 13, 2021.

12. A Combined NORI and Notice of Application and Preliminary Decision (NAPD) was published in English in *The Dallas Morning News* on July 26, 2022, and in Spanish in the *La Presna Comunidad* on July 26, 2022.

13. The public comment period ended on August 25, 2022.

14. The City of Waxahachie (City) and Ellis County (County) submitted timely public comments and requests for a contested case hearing.

15. The ED's final decision that the Application meets the requirements of applicable law, and the ED's Response to Public Comment, was mailed via letter dated August 21, 2023.

16. TCEQ considered the City's and County's hearing requests at its December 13, 2023 open meeting and issued an Interim Order on December 21, 2023, granting the City's and County's hearing requests, and referring the matter to SOAH.

17. Notice of the SOAH preliminary hearing was mailed by the TCEQ Chief Clerk on November 18, 2024, and was published in *The Dallas Morning News* on November 22, 2024. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with applicable law.

Proceedings at SOAH

18. The ALJ convened a preliminary hearing via Zoom videoconference on December 30, 2024.

19. At the preliminary hearing, the ALJ admitted into evidence the administrative record, including jurisdictional exhibits, and determined that jurisdiction was established.

20. At the preliminary hearing, the ALJ admitted Applicant, the ED, the Office of Public Interest Counsel (OPIC), the City, the County, and Texans for MUD Reform (TMR) as parties.

21. Per Order No. 1, issued on January 23, 2025, the ALJ adopted the procedural schedule agreed to and proposed by the parties.

22. The hearing on the merits was held via Zoom videoconference on April 10, 2025, before SOAH ALJ Holly Vandrovec. Applicant was represented by attorney Bryan Moore. City was represented by attorney Emily Rogers. County was represented by attorney Stefanie Albright. TMR was represented by attorney Eric Allmon. The ED was represented by attorney Michael Parr. OPIC was represented by attorney Sheldon Wayne. The record initially closed on May 28, 2025, with the filing of briefs. The ALJ reopened the record on July 22, 2025, after discovering that certain documents contained in the administrative record pertained to a different application. The record finally closed on July 25, 2025, after the filing and admission of Applicant's corrected Exhibit AR-4.

Water Quality

23. The Draft Permit is protective of water quality and the existing uses in the receiving waters under the applicable rules, including the TSWQS in 30 Texas Administrative Code Chapter 307.

24. The ED's modeling supporting the Draft Permit appropriately used default coefficients, which followed TCEQ guidelines for using the QUAL-TX model for dissolved oxygen in the case of a dry creek bed.

25. Modeling of nitrate-nitrogen and phosphorus was not necessary.

Need and Regionalization

26. The Application complies with the "need" component of the state's regionalization policy as it is needed to serve a 1,228-acre tract to be developed into residential dwelling units and commercial lots.

27. There is no regional provider designated for the territory to be served by the facility pursuant to TCEQ rules.

28. The proposed territory to be served by the facility is not within an incorporated municipality.

29. The proposed territory to be served by the facility is not within the wastewater certificate of convenience and necessity territory of any retail wastewater provider.

30. Before filing the Application, Applicant petitioned the City for wastewater service, and the City refused to serve the area.

31. If it needed additional information prior to being able to agree to serve the area, the City did not request the information needed.

II. CONCLUSIONS OF LAW

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

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

3. Notice was provided in accordance with Texas Water Code sections 5.115 and 26.028; Texas Government Code sections 2001.051 and .052, and 30 Texas Administrative Code sections 39.405 and .551.

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

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

6. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to a matter referred under Texas Water Code section 5.557; and (2) demonstrates that one or more provisions in the draft permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).

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

8. Applicant retains the burden of proof by preponderance of the evidence on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

9. The draft permit is protective of water quality, including the existing uses of the receiving waters and groundwater in the area in accordance with applicable regulations including the Texas Surface Water Quality Standards in 30 Texas Administrative Code, chapter 307.

10. The Commission may require all reasonable methods to encourage and promote the development of area-wide and regional wastewater systems to protect water quality. Tex. Water Code §§ 26.003, .081.

11. Texas Water Code sections 26.0282 and .081 give the Commission several options that it may exercise to encourage and promote regionalization based on the evidence presented concerning the need for the permit and other systems in the geographic area.

12. The draft permit should not be denied nor should its terms and conditions be altered based on regionalization or need.

13. No transcript costs may be assessed against the ED or OPIC because TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).

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

15. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), a reasonable assessment of hearing transcript costs is that Applicant should pay half of the costs while the City, County, and TMR should split the remaining costs equally.

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

1. The Application of LVTP Holdings LLC for Texas Pollutant Discharge Elimination System Permit No. WQ0015964001 is granted.

2. Applicant must pay half of the transcription costs while the City, County, and TMR must split the remaining costs equally.

3. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code § 50.117(f).

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

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

6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

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