

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 6, 2023

TO: All interested persons.

RE: City of Marble Falls
TCEQ Permit No. WQ0016234001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Marble Falls City Hall, 800 3rd Street, Marble Falls, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

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- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

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

Laurie Gharis
Chief Clerk

LG/cb

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
City of Marble Falls
TCEQ Permit No. WQ0016234001

The Executive Director has made the Response to Public Comment (RTC) for the application by City of Marble Falls for TCEQ Permit No. WQ0016234001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016234001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Marble Falls City Hall, 800 3rd Street, Marble Falls, Texas.

MAILING LIST
for
City of Marble Falls
TCEQ Permit No. WQ0016234001

FOR THE APPLICANT:

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800 3rd Street
Marble Falls, Texas 78654

Mike Hodge, City Manager
City of Marble Falls
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Marble Falls, Texas 78654

Ashley Lewis
Interim Water Quality/ Permitting Team
Leader
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INTERESTED PERSONS:

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FOR THE EXECUTIVE DIRECTOR
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Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
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Austin, Texas 78711-3087

NEW TCEQ PERMIT NO. WQ0016234001

APPLICATION BY THE
CITY OF MARBLE FALLS FOR
NEW TCEQ PERMIT NO.
WQ0016234001

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BEFORE
THE TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality, or "TCEQ," files this Response to Public Comment on the application by the City of Marble Falls for new TCEQ permit number WQ0016234001 and on the Executive Director's preliminary decision on the application. Before a permit is issued, the Executive Director is required by Title 30 of the Texas Administrative Code, Section 55.156 to prepare a response to all timely, relevant, and material, or significant comments. The TCEQ's Office of the Chief Clerk, or "OCC," received timely comments from Mr. Will Fowler III, on behalf of the Fowler Family. This response addresses all comments received by the OCC in writing during the public comment period, or at a public meeting held by the OCC, whether withdrawn or not. If anyone needs more information about this permit application or the TPDES permitting process, please call the TCEQ's Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on TCEQ's website at <http://www.tceq.texas.gov>.

A. Terms, Acronyms, or Abbreviations Used in this Response to Comments

- §: Section
- SH: State Highway
- ED: TCEQ's Executive Director
- FM: Farm-to-Market Road
- No.: Number
- WQ: Water Quality
- TSS: Total Suspended Solids
- EPA: United States Environmental Protection Agency
- AGS: Aerobic granular sludge wastewater treatment system
- OCE: TCEQ's Office of Compliance and Enforcement
- OCC: TCEQ's Office of the Chief Clerk
- TWC: Texas Water Code
- CWA: Clean Water Act
- MGD: Million gallons per day
- WQD: TCEQ's Water Quality Division
- TLAP: Texas Land Application Permit for
- NORI: Notice of Receipt & Intent to Obtain a Water Quality Permit
- THSC: Texas Health and Safety Code
- NAPD: Notice of Application & Preliminary Decision
- TPWD: Texas Parks and Wildlife Department
- TPWC: Texas Parks and Wildlife Code
- CBOD₅: Five-day Carbonaceous Biochemical Oxygen Demand
- Limits: Effluent Limitations/disposal limits
- WWTF: Wastewater Treatment Facility

- **TSWQS:** Texas Surface Water Quality Standards – 30 TAC Chapter 307
- **30 TAC:** Title 30 of the Texas Administrative Code
- **Effluent:** Treated wastewater produced by a WWTF
- **Applicant:** The City of Marble Falls
- **WQD staff:** TCEQ Staff from the Water Quality Division
- **TCEQ Rules:** Title 30 of the Texas Administrative Code
- **Commission:** Texas Commission on Environmental Quality
- **The Application:** The City of Dripping Springs’ application for a TPDES permit
- **Proposed permit:** Draft-TCEQ permit No. WQ0016234001
- **Proposed facility:** The One Water Marble Falls WWTF and disposal site
- **Appendix A, TSWQS:** Appendix A of 30 TAC § 307.10
- **TCEQ’s IPs:** TCEQ’s *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010*

II. BACKGROUND

A. Application Request

The Applicant applied to the TCEQ for a new TLAP permit to authorize the proposed facility for disposal of treated domestic wastewater at a daily average flow limit of 1.5, 2.0, 3.0, 4.0 MGD via surface irrigation of 360 acres of non-public access, agricultural land in the Interim I, II, III, and Final phases (respectively). No discharge of pollutants into water in the state is authorized by the proposed permit.

B. Description of the Facility and its Authorization

If the proposed permit is ultimately issued, the proposed facility will be located approximately 1.0 miles northwest of the intersection of FM 1431 and U.S. Highway 281, in Burnet County, Texas 78654, within the drainage basin of Marble Falls Lake in Segment No. 1405 of the Colorado River Basin.

When constructed the proposed facility will be an AGS treatment system plant with treatment units in the first three phases consisting of include one bar screen, four aeration basins, one final clarifier, one sludge digester, and one chlorine contact chamber. Treatment units in the Final phase will include two fine screens, a manual bar screen, two vortex grit removal systems, four AGS basins, two effluent filter units, a chlorine contact basin, two sludge buffer basins, and an aerated sludge storage tank.

In all phases of the proposed permit, the facility includes two storage ponds with a total surface area of 16 acres and total capacity of 220 acre-feet for storage of treated effluent prior to irrigation. The rate of wastewater application to the irrigated land must not exceed 4.74 acre-feet per year per acre irrigated. The irrigated crops include bermuda / rye grass.

The proposed permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation Sludge generated from the proposed facility is hauled by a registered transporter and disposed of at a TCEQ-permitted landfill, Micro Dirt landfill, Permit No. 42016, in Caldwell County. The proposed permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, WWTF, or facility that further processes sludge. Additionally, the proposed permit authorizes the processing and Distribution and Marketing of Class A or Class AB Biosolids via composting.

C. ED's Technical Review of the Application

The basis for the ED's Technical Review of a TPDES permit application comes from the Texas Legislature's passage of Chapter 26 (Water Quality Control) of the TWC into law, which gives the TCEQ primary authority over WQ in Texas. Chapter 26 combines the TCEQ's WQ authority with federally delegated CWA regulatory authority for the TPDES program, which controls discharges of pollutants into Texas' surface waterbodies, otherwise defined by the TWC as "Water in the State." To implement TCEQ's WQ control regime, Chapter 26 grants the TCEQ the authority to issue permits (and amendments) for the disposal of wastewater adjacent to Water in the State, so long as the parameters established through the ED's Technical Review of the application, comply with the TWC, TCEQ rules, and the TSWQS. However, the TCEQ may refuse to issue a permit when the ED's Technical Review finds that issuing the permit would violate the provisions of any state or federal law or rules or regulations derived from those laws, or when it finds that issuing the permit would interfere with the TCEQ's WQ control regime.

To ensure compliance with the TSWQS, WQD staff follow the prescribed methodology in the TCEQ's IPs for drafting a permit, its limits, requirements, and conditions. The limits for all phases of the proposed permit, based on a daily average, are 20 mg/l CBOD₅ and 20 mg/l TSS.

Through the Technical Review, the ED provides the proper limits to maintain and protect human health and the environment. For that reason, the ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, WQ, and human health. Considering the TCEQ's WQ-primacy, all determinations, reviews, or analyses related to the ED's Technical Review of the application for the proposed permit can be reexamined and subsequently modified upon receipt of newer information or information that conflicts with the bases employed in the applicable review or analysis.

D. Procedural Background

The TCEQ received the application on October 3, 2022, and declared it administratively complete on November 8, 2022. The Applicant published the NORI in Burnet County, Texas in *The Highlander* on November 15, 2022. The ED completed the technical review of the application on March 4, 2023, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the NAPD in Burnet County, Texas in *The Highlander* on May 19, 2023. The public comment period ended on June 20, 2023.

Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

E. Access to Rules, Laws, and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov

- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”)
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:** <https://www.tceq.texas.gov/compliance/complaints/index.html> (select “use our online form”) or by sending an email to the following address: complaint@TCEQ.Texas.gov.

Commission records for the Proposed facility are available for viewing and copying at TCEQ’s main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor in the OCC, for the current application until final action is taken). Some documents located at the OCC may also be found in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid.

The permit application has been available for viewing and copying at Marble Falls City Hall, located at 800 3rd Street, Marble Falls, Texas, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision were available for viewing and copying at the same location since publication of the Combined NORI-NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if individuals wish to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, the TCEQ’s OCE should be contacted. Specifically, the Regional Office (Region 11) in Austin, Texas may be contacted at (512) 339-2929 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above at the seventh bullet under “Access to Rules, Laws, and Records.” If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

III. COMMENTS AND RESPONSES

COMMENT 1:

Will Fowler commented in opposition to the proposed permit and facility, and specifically the proposed facility’s location.

RESPONSE 1:

The ED acknowledges the opposition to the proposed permit, facility, and the proposed location of the proposed facility. The TWC § 26.027, authorizes the TCEQ to issue permits for disposal of wastewater in the state. The ED evaluates applications for wastewater treatment plants based on the information provided in the application. The ED can recommend issuance or denial of an application based on whether the application complies with the TWC and TCEQ regulations.

The Applicant is the entity that proposes the location of the facility rather than the ED. The ED’s review evaluates the impact of the disposal of wastewater through land application on the environment according to the TSWQS; however, the TCEQ’s

permitting authority does not include the ability to mandate a different location for the facility if the location in the application complies with 30 TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to “Unsuitable Site Characteristics” for a treatment facility. Instead, the ED may only evaluate a proposed location for a wastewater treatment facility according to the Location Standards in the TCEQ regulations.

If the Applicant revises its application with a different location for the proposed facility, the ED will reevaluate the new location and disposal site to make sure that the proposed permit contains proper limits and conditions for the revised location of the facility and disposal site, which may require notice to additional landowners.

COMMENT 2:

Will Fowler commented that he is concerned that the proposed facility will cause ecological issues.

RESPONSE 2:

The ED carefully considers the health concerns of area residents, as well as those of the public, in reviewing applications for domestic wastewater disposal permits. The TCEQ takes the concerns and comments expressed by the public, relating to human health, existing WQ, the environment, and animal, aquatic, terrestrial, and wildlife, and protecting the State’s rivers and lakes, into consideration in deciding whether to issue a permit.

This application is for a land application permit, which prohibits a discharge of pollutants into water in the state and regulates the disposal of effluent on the land. The proposed permit prohibits unauthorized discharges of wastewater or any other waste and includes appropriate requirements. The proposed permit also includes requirements that the effluent must not be applied for irrigating when the ground is saturated¹ and certain controls implemented to prevent the discharge of any effluent from the land application area.²

As mentioned above, the federal CWA, the TWC, and the TSWQS all contain WQ goals, standards, and requirements for TCEQ authorized disposal sites and facilities, and their method of achieving that quality. Equally important, WQD staff evaluated the application as an authorization to dispose of treated wastewater adjacent to Water in the State, which requires adherence to the same goals, standards, and requirements.

Chapter 26 of the TWC and TCEQ’s TSWQS were written for the protection of human health, existing WQ, the environment, and animal, aquatic, terrestrial, and wildlife. Accordingly, the stated policy of both the TWC and the TSWQS is:

to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; 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; and to require the use of all reasonable methods to implement this policy.³

¹ City of Marble Falls Draft Permit, Special Provisions, Item 7, page 37.

² City of Marble Falls Draft Permit, Special Provisions, Item 5, page 37.

³ Texas Water Code § 26.003 and 30 TAC § 307.1.

The TSWQS is a primary mechanism for the TCEQ to protect human health, surface and groundwater quality, aquatic life, and the environment. The TSWQS require that treated effluent not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals, not degrade receiving waters, and not result in situations that impair existing WQ uses. Similarly, the treated from the proposed facility must meet the requirements of the TSWQS, and to ensure compliance with the TSWQS, the ED follows the methodology outlined in the TCEQ's IPs.

As specified in the TCEQ's IPs methodologies, TCEQ wastewater permits must maintain WQ in the state to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. Additionally, the TSWQS require that TCEQ permitted facilities not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals.

To achieve the goal of supporting a level of WQ sufficient to protect human health, water quality, and the environment, the proposed permit contains several WQ-specific parameters or requirements that limit the potential impact of the proposed facility and disposal site. The Applicant is required to build a wastewater collection system or treatment facility according to the plans and specifications approved by the ED and must ensure the proposed facility's plans and specifications meet all design requirements in the proposed permit.

Additionally, for each effluent irrigation area, irrigation practices are required to be designed and managed to prevent ponding of effluent or contamination of ground and surface waters and to prevent the occurrence of nuisance conditions in the area. Crops must be established and well maintained in the irrigation areas throughout the year for effluent and nutrient uptake by the crop and to prevent pathways for effluent surfacing.

Through the ED's Technical Review, the ED provides the proper limits to maintain and protect human health and the environment. For that reason, the ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, WQ, and human health.

However, the TCEQ's issuance of a permit does not authorize injuries to other persons, their property, or an invasion of their property rights. Similarly, the proposed permit's provisions do not, nor does the scope of TCEQ's regulatory jurisdiction, limit nearby landowners' ability to use a court of law's remedies for trespass, nuisance, or other causes of action from a TCEQ-authorized entity's activities, that may or do result in injury to property, animals, vegetation, or human health or welfare, or interfere with the use and enjoyment of their property.

Likewise, the Applicant has a duty to comply with all conditions of the proposed permit. Failure to comply with any permit condition is grounds for enforcement actions, permit amendments, revocations, suspensions, denial of a permit renewal applications, or even an application for a permit for another facility. This is because permit violations constitute violations of the permit and the TWC or the THSC.

COMMENT 3:

Will Fowler commented that the excessive current irrigation practices are already adversely affecting his property by filling up his creeks that he swims in and that the proposed facility could have a spill, making the situation worse.

RESPONSE 3:

As addressed below, the proposed permit has multiple safeguards or requirements that historically have been effective at keeping the Applicant or its operator informed of the proposed facility's conditions related to meeting the effluent limits, avoiding treatment system problems, and preventing unauthorized releases of raw sewage. As such, spills are not expected to occur at the proposed facility if it is maintained and operated in accordance with TCEQ rules and the provisions in the proposed permit.

The ability of the public to recreate in the waters of Texas is given significant consideration in the review of an application for, and the decision to issue, a wastewater permit. All waters in the state, whether intermittent or perennial, are considered as having primary contact recreational use, which includes activities that are presumed to involve a significant risk of ingestion of water. These activities are defined by the TPWC § 66.115, and unless otherwise specified in the TSWQS, these activities include wading by children, swimming, water skiing, diving, tubing, surfing, hand-fishing, and whitewater activities like kayaking, canoeing, and rafting.

Also protecting the recreational users of the state, is the TCEQ rules found at 30 TAC § 309.3(g)(1) (Disinfection), which requires that disinfection of domestic wastewater must be protective of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval from the ED. For the proposed facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms; however, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Chlorine is the one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.⁴ The effluent must contain a total chlorine residual of at least 2.0 mg/l after a detention time of at least 10 minutes based on peak flow. An equivalent method of disinfection may be substituted only with prior approval of the ED.⁵

The proposed permit was developed according to the TSWQS and the TCEQ IPs to be protective of WQ and maintain the recreational uses of Texas' stream and creeks, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements.

It is the Applicant's responsibility to hire the appropriate operator and, although any operator selected by the Applicant is required to operate and perform the appropriate maintenance according to the TCEQ rules and proposed permit, the Applicant is the entity that is always required to ensure that the proposed facility and all its systems of collection, treatment, and disposal are properly operated and maintained.

According to 30 TAC § 30.350, the proposed permit requires the proposed facility to be operated by a chief operator or an operator holding a Category C license or higher (Figure: 30 TAC § 30.350(e)). The ED determines the level of operator required based on the treatment technology and the maximum permitted flow. A Class C

⁴ U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

⁵ The City of Marble Falls, Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(g)(2)

operator must have a high school diploma (or equivalent), two years of work experience and 60 hours of training.

The proposed facility must be operated a minimum of five days a week by the licensed chief operator or an operator holding the required level of license or higher. In addition, the Applicant may contract with a licensed operator or operations company for the day-to-day operations of the wastewater treatment facility with a Class C license or higher.

With respect to a facility's operation and maintenance, the proposed permit describes the conditions under which the proposed facility must operate and has maintenance and operational safeguards intended to minimize the occurrence of operational mishaps.

First, Operational Requirement No. 1 of the proposed permit requires the Applicant to ensure that the proposed facility and all its systems of collection, treatment, and disposal are always operated and maintained consistent with applicable TCEQ rules, including regular, periodic examination of wastewater solids within the proposed facility by the operator to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control.

Compliance Condition 2(a) of the proposed permit requires the Applicant to tacitly acknowledge that acceptance of an issued permit is an agreement to comply with all the terms and conditions embodied in the permit and the rules and other orders of the Commission.

Compliance Condition 2(b) requires the Applicant to comply with all conditions of the proposed permit, and failure to do so constitutes a violation of the permit and the TWC or the THSC.

Operational Requirement No. 4 makes the Applicant responsible for installing, prior to plant start-up, and subsequently maintaining adequate safety measures to prevent the release of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

Operational Requirement No. 2 requires the Applicant, upon request by from the ED, to take appropriate samples and provide proper analysis to demonstrate compliance with Commission rules. Sampling, analysis, and reporting for compliance with provisions of the proposed permit must be performed by the Applicant according to the proposed permit's provisions on Monitoring and Reporting Requirements, the proposed permit's Definitions and Standard Permit Conditions, which are based on the TCEQ's rules found at 30 TAC §§ 319.4 - 319.12.

Compliance Condition 2(d) requires the Applicant to take all reasonable steps to minimize or prevent any release or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment, and Compliance Condition 2(g) prohibits unauthorized releases of wastewater or any other waste.

Lastly, Compliance Condition 2(i) ties all these proposed permit conditions together and allows them to function as intended because it subjects the Applicant to administrative, civil, and criminal penalties from Chapter 7 of the TWC (Enforcement), for violations of the proposed permit and TCEQ rules, including, but not limited to, negligently or knowingly violating the federal Clean Water Act (CWA) §§ 301, 302, 306,

307, 308, 318, or 405, or any condition or limitation implementing any sections in the proposed permit issued under the CWA § 402, or any requirement imposed in proposed permit's pretreatment requirements approved under the CWA §§ 402(a)(3) or 402(b)(8).

These and other requirements in the proposed permit have historically been effective at keeping applicants informed as to conditions at the facility related to meeting the effluent limits, avoiding treatment system problems, and preventing unauthorized releases of raw sewage.

If spills were to occur at the facility, it would be an unauthorized discharge in violation of the proposed permit for which an enforcement action can be brought by the TCEQ against the Applicant. However, spills are not expected to occur at the proposed facility if it is maintained and operated in accordance with TCEQ rules and the provisions in the proposed permit.

Additionally, according to the TCEQ rules any noncompliance which may endanger human health or safety or the environment must be reported to the TCEQ by the Applicant, and the report of noncompliance must be provided orally or by facsimile transmission to the Regional Office (Region 11) within 24 hours of becoming aware of the noncompliance.⁶ A written submission of the report of noncompliance information must also be provided by the Applicant to the Regional Office (Region 11) *and* the Compliance Monitoring Team within five working days of becoming aware of the noncompliance. This includes any unanticipated bypass that exceeds any effluent limitation in the proposed permit, and any effluent violation which deviates from the permitted effluent limitation by more than 40% must be reported in writing to the TCEQ Regional Office (Region 11) in Austin, Texas, and the Compliance Monitoring Team within five working days of becoming aware of the noncompliance by more than 40%. The written submission must contain a description of the noncompliance; its cause; the potential danger to human health or safety or the environment; the period of noncompliance, including exact dates and times; the time the noncompliance it is expected to continue if has not been corrected; and the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

As provided by Chapter 7 of the TWC (Enforcement), the Applicant is subject to applicable administrative (TWC §§ 7.051 - 7.075), civil (TWC §§ 7.101 - 7.111), and criminal penalties (TWC §§ 7.141 - 7.202) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA § 402, or any requirement imposed in a pretreatment program approved under CWA §§ 402 (a)(3) or 402 (b)(8); TWC §§ 26, 27, and 28; and THSC § 361 including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the proposed permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

⁶ 30 TAC § 305.125(9).

COMMENT 4:

Will Fowler commented expressing concerns that the Applicant is proposing collection system lines through his family's property carrying raw sewage and that he does not consent to the lines in his land.

RESPONSE 4:

During its review of permit applications, the ED relies on the representations made in the application. Permit applicants are required to certify the accuracy of the information submitted and the application must be signed by a responsible party under penalty of law.

The proposed permit, if issued, does not grant to the Applicant any property rights to use private property for treatment of wastewater in relation to the proposed facility. General Permit Condition No. 1(b) states that the proposed permit is granted based on the information supplied and representations made by the Applicant during the processing of the application and the permitting process and relying upon the accuracy and completeness of that information and those representations.

It is the responsibility of the Applicant to acquire property rights as is necessary to construct the proposed facility. This includes property belonging to any individual, partnership, corporation, or other entity. In addition, the proposed permit does not authorize the invasion of any personal rights or any violation of federal, state, or local laws and regulations.

COMMENT 5:

Will Fowler commented that the excessive current irrigation practices not only fill up his creeks but adversely affect his property by creating areas that remain wet at all times, wash out roads, erode land along the creek bank, and attract wild animals. Mr. Fowler commented that the proposed facility will adversely affect the value of his property and its marketability.

RESPONSE 5:

The ED encourages the participation of all individuals in the environmental permitting process. However, there are certain concerns of individuals that the TCEQ cannot address in the review of a wastewater permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute.

While the Texas Legislature has given the TCEQ the responsibility to protect WQ, and TWC § 26.027 authorizes the TCEQ to issue permits to control the disposal of wastes or pollutants adjacent to state waters and to protect the WQ of the state's rivers, lakes and coastal waters; and while the proposed permit establishes terms and conditions that are intended to provide WQ pollution control, which focuses on controlling the disposal of pollutants adjacent to water in the state, the ED through the WQD has no jurisdiction in its determination of whether to issue a water quality permit, to address flooding, erosion, invasive wildlife, or to consider property values, and the marketability of surrounding properties, if water quality is maintained. Rather, the ED is limited to controlling the disposal of pollutants adjacent to waters in the state and protecting the WQ of the state's waterbodies.

While the TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit, to the extent that a concern over flooding also involves WQ, the Applicant is always required to comply with all the numeric and narrative

effluent limitations and other conditions in the proposed permit, including during flooding conditions. Likewise, the proposed permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. According to the application, the proposed facility will be located above the 100-year flood plain. For additional protection, the proposed permit includes Other Requirement No. 4, which requires the Applicant to provide protection for the facility against a 100-year flood event.

For flooding concerns, members of the public may contact the Burnet County Floodplain Administrator by contacting the Burnet County Development Service Department at (512) 715-5260 8:00 a.m. – 5:00 p.m., Monday through Friday. The TCEQ Resource Protection Team can be contacted for aid in identifying and contacting the appropriate county officials or offices, by calling (512) 239-4600, or by email at: wcp@tceq.texas.gov. Additionally, the Federal Emergency Management Agency has programs designed to mitigate damage caused by flooding, that can be found at the following website: <https://www.fema.gov/floodplain-management>.

For any wildlife concerns, please visit the Texas Parks and Wildlife Department's Texas Wildlife Nuisance webpage at <https://tpwd.texas.gov/huntwild/wild/nuisance/> or by phone at (800) 792-1112. Additionally, the United States Department of Agriculture has programs designed to mitigate damage caused by invasive pigs, that can be found at the National Feral Swine Damage Management Program's webpage at <https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/operational-activities/feral-swine>, which can be reached by phone at (866) 487-3297.

IV. CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

V. CERTIFICATE OF SERVICE

I certify that on August 29, 2023, the Executive Director's Response to Public Comment for Permit No. WQ0016234001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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