

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 7, 2023

TO: Persons on the attached mailing list.

RE: Steven Richard Selinger
TPDES Permit No. WQ0016103001

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 Ennis Public Library, Front Desk, 501 West Ennis Avenue, Ennis, Texas.

On December 1, 2023, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

Should you have any questions, please contact Ellie Guerra of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3329.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis
Chief Clerk

LG/erg

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Steven Richard Selinger
TPDES Permit No. WQ0016103001**

The Executive Director has made the Response to Public Comment (RTC) for the application by Stephen Richard Selinger for TPDES Permit No. WQ0016103001 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 (WQ0016103001) 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 Ennis Public Library, Front Desk, 501 West Ennis Avenue, Ennis, Texas.

MAILING LIST
for
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TPDES Permit No. WQ0016103001

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See Attached List

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107 PARKER RIDGE RD
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CABRERA , AMANDA & JOHN
7674 FM 660
ENNIS TX 75119-2075

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CLARK , JEANNE
902 S PARIS ST
ENNIS TX 75119-6031

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902 S PARIS ST
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COPELAND , GLEN
1128 NOVY RD
ENNIS TX 75119-0004

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761 RISINGER RD
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1105 SUGAR RIDGE RD
ENNIS TX 75119-0174

CRYER , HERMAN L
304 EASON RD
ENNIS TX 75119-0125

DAVIS , TAMMY
1181 SHANKLE RD
ENNIS TX 75119-0117

DAVIS , WADE
1181 SHANKLE RD
ENNIS TX 75119-0117

DEWOLFE , KATHY
6062 FM 660
ENNIS TX 75119-0207

DOLEZALIK , PATRICK L
PLD COMMERCIAL DEVELOPMENT
1803 COUNTRY CLUB RD
ENNIS TX 75119-2260

DOWD , DAVID
105 SUNNY LN
WAXAHACHIE TX 75165-6204

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1308 OZRO RD
VENUS TX 76084-4870

FRENCH , GREG
824 CHMELAR RD
ENNIS TX 75119-0047

GOEDRICH , MR STUART
1491 EASON RD
ENNIS TX 75119-2063

GOSS , HELEN & RANDY
312 VANNERSON RD
ENNIS TX 75119-0093

GOSS , JUSTIN REID
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ENNIS TX 75119-0093

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ENNIS TX 75119-0041

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HAVENER , CHRISTOPHER
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ENNIS TX 75119-1633

HOLLENBACK , AMANDA
211 AMERICANA RD
PALMER TX 75152-9585

HONZA , LARRY A
920 PECAN GROVE RD
ENNIS TX 75119-8997

HONZA , SHARON
7984 FM 660
ENNIS TX 75119-0159

HUBERT , BECKY
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PALMER TX 75152-9125

HUDSON , DARRELL WAYNE
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8176 FM 660
ENNIS TX 75119-1669

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7764 FM 879
PALMER TX 75152-9106

KASOWSKI , ELAINE
113 PARKER RIDGE RD
PALMER TX 75152-9729

KASOWSKI , RONALD
113 PARKER RIDGE RD
PALMER TX 75152-9729

KEATHLY , JENNIFER
1932 ALSDORF RD
ENNIS TX 75119-7468

KELLY , CHERYL
6355 FM 879
ENNIS TX 75119-1083

KRISKA , RENATE
8122 FM 879
PALMER TX 75152-9121

KRUEGER , JENNIFER
714 TROJACEK RD
ENNIS TX 75119-0139

KUBIN , ANDREW
590 TROJACEK RD
ENNIS TX 75119-1402

KYSER , PAT
213 EASON RD
ENNIS TX 75119-0098

LANGER , DANA
560 CHMELAR RD
ENNIS TX 75119-0041

LANGER , EMIL
947 SHANKLE RD
ENNIS TX 75119-0113

LANGER , JUDY
947 SHANKLE RD
ENNIS TX 75119-0113

LANGER , PHILLIP A
560 CHMELAR RD
ENNIS TX 75119-0041

LANGER , RICHARD
706 CHMELAR RD
ENNIS TX 75119-0045

LAWS , HEATHER
7550 FM 660
ENNIS TX 75119-0132

LEAR , MARY JO & PATRICK
305 SKRIVANEK RD
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ENNIS TX 75119-0120

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ENNIS TX 75119-0120

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101 W MAIN ST
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LOWE , SANDRA
1125 EASON RD
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MACH , LESLIE & NANCY
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ENNIS TX 75119

MACH , NANCY
803 CHMELAR RD
ENNIS TX 75119-0048

MACH , LESLIE
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ENNIS TX 75119-0048

MACON , CHRIS
320 LOG CABIN RD
ENNIS TX 75119-8809

MADDOX , SHERYL
7615 FM 879
PALMER TX 75152-9133

MALONE , KEVIN
7400 FM 879
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217 OLD SETTLERS TRL
WAXAHACHIE TX 75167-4836

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ENNIS TX 75119-7226

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8820 AVIARY DR
MCKINNEY TX 75072-6726

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WAXAHACHIE TX 75165-5355

MARTINEK , MARGARET
8046 FM 660
ENNIS TX 75119-0158

MARTINEK , MARVIN LEE
670 SHANKLE RD
ENNIS TX 75119-0106

MARTINEK , THOMAS C
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ENNIS TX 75119-0148

MARTINEK , MR BILLY RAY
109 HUMMINGBIRD LN
OVILLA TX 75154-1647

MENZIES , LIZZEY
329 SKRIVANEK RD
ENNIS TX 75119-0034

MILLER , LAURA
3021 WILSON RD
PALMER TX 75152-8269

MOORE , TERRY
232 SKRIVANEK RD
ENNIS TX 75119-0037

MOORE , ANGEL
8102 FM 879
PALMER TX 75152-9121

MORRIS , NANCY G
320 CHMELAR RD
ENNIS TX 75119-0042

NEW , GARRETT
7874 FM 879
PALMER TX 75152-9117

NEW , MICHAEL
7874 FM 879
PALMER TX 75152-9117

NEW , PEYTON
7874 FM 879
PALMER TX 75152-9117

NEW , STEPHANIE
7876 FM 879
PALMER TX 75152-9117

NEW , JENNIFER
7874 FM 879
PALMER TX 75152-9117

NICOLAYSEN , ANDREW
668 SHANKLE RD
ENNIS TX 75119-0106

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ENNIS TX 75119-0106

NOVY , ADOLPH FRED
740 NOVY RD
ENNIS TX 75119-0002

NOVY , BRYAN ALAN
606 NOVY RD
ENNIS TX 75119-2072

NOVY , DALE
1218 NOVY RD
ENNIS TX 75119-1418

NOVY , THERESA
1218 NOVY RD
ENNIS TX 75119-1418

PATTERSON , JANICE
3631 FM 85
ENNIS TX 75119-0510

PATTERSON , STEPHEN R
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REJCEK , JERRY
6171 FM 879
ENNIS TX 75119-1672

REJCEK , MR JAMES E
6145 FM 879
ENNIS TX 75119-1672

RITCHEY , MICHAEL
VWFARM
275 VANNERSON RD
ENNIS TX 75119-0124

ROBIE , STEPHANIE
415 NOVY RD
ENNIS TX 75119-1475

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ROSSON , ELLEN
830 OLD GIN RD
ENNIS TX 75119-0198

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2301 SHERWOOD DR
ENNIS TX 75119-8023

RUDD , CONNIE H
5337 FM 660
ENNIS TX 75119-0190

SCHIFFNER , MR JUSTIN
7268 FM 879
PALMER TX 75152-9110

SHELTON , DOUG
672 ALSDORF RD
ENNIS TX 75119-7489

SLAY , AMY
BLUEBONNET TRAILS RANCH
8380 FM 879
PALMER TX 75152-1254

SLOVAK , DARREN
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PO BOX 531
ENNIS TX 75120-0531

SLOVAK , DEBBIE
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WAXAHACHIE TX 75165-8724

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8143 FM 1181
ENNIS TX 75119-6920

SPENCER , ROBERT
1776 OLD TELICO RD
ENNIS TX 75119-0315

STIFF , RENAE
1128 SHANKLE RD
ENNIS TX 75119-0116

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PALMER TX 75152-0323

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RIDDLE & WILLIAMS
PO BOX 310
PALMER TX 75152-0310

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RIDDLE & WILLIAMS
7738 FM 879
PALMER TX 75152-9106

SVEHLAK , EVELYN
2816 E HIGHWAY 34
ENNIS TX 75119-1433

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2816 E HIGHWAY 34
ENNIS TX 75119-1433

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355 VANNERSON RD
ENNIS TX 75119-0094

TAYLOR , CAROLYN
377 ELEVEN LEAGUE RD
ENNIS TX 75119-0298

TAYLOR , GARY LEE
521 SHANKLE RD
ENNIS TX 75119-0105

TAYLOR , LINDSEY
561 NOVY RD
ENNIS TX 75119-1419

TETEAK , JAMES MYLES
305 AUDRA CIR
RHOME TX 76078-3403

TURNER , WESLEY
7784 FM 879
PALMER TX 75152-9106

VALEK JR , CHRIS
380 TROJACEK RD
ENNIS TX 75119-1666

VIDRINE , JOE
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ENNIS TX 75119-0040

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WINTERS , JILL A
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OVILLA TX 75154-1647

YORK , TERESA
2810 WILSON RD
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ZAPLETAL , DANNY
6635 FM 879
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ZETT , DIANA
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PALMER TX 75152

TCEQ PERMIT NO. WQ0016103001

**APPLICATION BY
STEPHEN RICHARD SELINGER
FOR TPDES PERMIT NO.
WQ0016103001**

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§
§
§

**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Stephen Richard Selinger (APPLICANT) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016103001 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. This Response addresses all timely filed public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at <http://www.tceq.texas.gov>.

BACKGROUND

Description of Facility

The Applicant applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day (gpd).

The facility will be located at 1008 Shankle Road, Palmer, in Ellis County, Texas 75152. The proposed Shankle Road Wastewater Treatment Facility (WWTF) will serve the Shankle Road single family subdivision.

The Shankle Road Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, a flow splitter in the Interim II and Final phases, aeration basins, final clarifiers, sludge digesters, chlorine contact chambers, and dechlorination chambers in the Final phase. The facility has not been constructed.

The effluent limitations in the Interim I phase of the draft permit, based on a 30-day average, are 20 mg/l five-day biochemical oxygen demand (BOD₅), 20 mg/l total suspended solids (TSS), 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 2.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The effluent limitations in the Interim II phase of the draft permit, based on a 30-day average, are 20 mg/l BOD₅, 20 mg/l TSS, 126 CFU or MPN of *E. coli* per 100 ml, and 5.0 mg/l DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The effluent limitations in the Final phase of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l TSS, 3 mg/l ammonia-nitrogen (NH₃-N), 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow). The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual.

The treated effluent will be discharged to an unnamed tributary, thence to Fourmile Creek thence to Village Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and limited aquatic life use for Fourmile Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Segment No. 0805 is currently listed on the State's inventory of impaired and threatened waters, the 2020 Clean Water Act Section 303(d) list. The listings are for Dioxin and Polychlorinated Biphenyls (PCBs) in edible tissue from confluence of the Cedar Creek Reservoir discharge canal upstream to confluence of Elm Fork Trinity River (Assessment Units [Aus] 0805_01 thru 0805_04) and from confluence of Tenmile Creek upstream to confluence of Fivemile Creek (AU 0805_06). This is a public

domestic wastewater treatment facility. The facility does not receive industrial wastewater contributions, therefore the effluent from this facility should not contribute to the dioxin and PCBs in edible tissue impairment of this segment.

TMDL Project No. 5 - *Nine Total Maximum Daily Loads for Legacy Pollutants in Streams and a Reservoir in Dallas and Tarrant Counties, For Segments 0805, 0841, and 0841A* and TMDL Project No. 66 - *Two Total Maximum Daily Loads for Indicator Bacteria in the Upper Trinity River, Dallas, Texas* have been approved for this segment.

The report *Nine Total Maximum Daily Loads for Legacy Pollutants in Streams and a Reservoir in Dallas and Tarrant Counties* was adopted by the TCEQ on December 20, 2000, and approved by the USEPA on June 27, 2001. The approved TMDL does not include an allocation for point sources since chlordane, DDE, PCBs, DDT, DDD, dieldrin and heptachlor epoxide are legacy pollutants. Legacy pollutant is a collective term used to describe substances whose use has been banned or severely restricted by the EPA. Because of their slow rate of decomposition, these substances frequently remain at elevated levels in the environment for many years after their widespread use has ended. No additional loading of legacy pollutants is allowed or expected due to the EPA restrictions. Gradual declines in environmental legacy pollutant concentrations occur as a result of natural attenuation processes. No authorized point source discharges of these pollutants are allowed by law. Therefore, no load reductions for these pollutants are required for this permit at this time.

In May 2011, the Texas Commission on Environmental Quality (TCEQ) adopted *Two Total Maximum Daily Loads for Indicator Bacteria in the Upper Trinity River, Segment 0805*. The EPA approved the TMDL on August 3, 2011. This document describes total maximum daily loads (TMDLs) for two assessment units within Segment 0805 (0805_03, 0805_04) in Dallas County where concentrations of bacteria exceed the

criteria used to evaluate the attainment of the designated contact recreation use. The loads allocated in the TMDL are only applicable to those sources located in the target assessment units. This facility is not located in the area covered by the WLA requirements of the TMDL. The draft permit is not subject to the requirements of the TMDL; however, effluent limits and monitoring requirements for bacteria are included, based on other requirements. This facility is designed to provide adequate disinfection and, when operated properly, should not elevate bacteria in Segment No. 0805.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and US Environmental Protection Agency (EPA) only considered aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Procedural Background

TCEQ received the application for a new permit on January 31, 2022, and declared it administratively complete on March 30, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on April 6, 2022, in the *Waxahachie Daily Light*. The application was determined technically complete on June 15, 2022. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on August 17, 2022, in the

Waxahachie Daily Light. The comment period for this application was set to close on September 16, 2022, but was extended to the close of the public meeting held on April 27, 2023. This application was filed on or after February 12, 2019; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- for the Secretary of State website: <http://www.sos.state.tx.us>;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <http://www.statutes.legis.state.tx.us/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov; and
- for Federal environmental laws: <http://www.epa.gov/laws-regulations>.

Commission records for this application and draft permit are available for viewing and copying at the TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), until final action is taken. The draft permit, the Statement of Basis/Technical Summary, and the ED’s Preliminary Decision,

are available for viewing and copying at Ennis Public Library, Front Desk, 501 West Ennis Avenue, Ennis, Texas.

COMMENTS AND RESPONSES

Comment 1:

These individuals expressed general opposition to the permit: Judge Todd Little, Cheryl Zink, Bernard Martinek, David Surratt, Gary Taylor, Robert Alston, Bryan Novy, Justin Schiffner, Phillip Langer, Chris Macon, Lane Grayson, Judy Langer, Mary Warner, Nancy Mach, Leslie Mach, Marc Clark, Jack Chmelar, Vicki Chmelar, Amanda Cabrera, John Cabrera, and Theresa Novy.

Response 1:

The Executive Director acknowledges these comments.

Comment 2:

Deanna Betik, Andrew Kubin, Michelle Youmans, and Chris Valek expressed general concerns about the lack of infrastructure present to support 1,800 homes as proposed by the Applicant. Deanna Betik, Andrew Kubin, Michelle Youmans, Nancy Mach, Randy Stinson, and Chris Valek commented about the insufficient roads in the area. Deanna Betik, Andrew Kubin expressed concerns about the current water system and about insufficient fire department services and fire hydrants. Chris Valek expressed his concerns about culverts needing upgrading to allow for the additional runoff to not impede accessibility to property.

Response 2:

The TCEQ does not have the authority to address issues related to traffic or existing or needed infrastructure as part of the wastewater permitting process. These issues will need to be addressed with local authorities and the Applicant. Concerns regarding personal safety due to traffic issues or security should be directed to local law enforcement or the Ellis County Sheriff's Office.

Comment 3:

Michelle Youmans, Charlie Pouzar, Nancy Mach, James A. Jurik, Cheryl Zink, Chris Macon, and Andrew Kubin expressed concerns about the harmful effects of treated wastewater from the proposed facility on livestock. Eric Allmon commented that the draft permit is not protective of water quality and that the dissolved oxygen limit should have been more stringent. Michelle Youmans stated that she thought there were laws in Texas to protect livestock from discharges of wastewater. Charlie Pouzar stated that giving farm animals treated municipal reclaimed wastewater to drink potentially exposes the animals and the people to dangerous chemical compounds linked to illnesses ranging from immune disorders to cancer and could contain elevated levels of bacteria (i.e., salmonella and *E. coli*). Nancy Mach and James A. Jurik and Bernard Martinek expressed concerns with cattle consuming grass and drinking water from the receiving stream.

Response 3:

The proposed permit was drafted in accordance with 30 TAC § 307.5 and the TCEQ *Procedures for the Implementation of the Texas Surface Water Quality Standards* (IPs; June 2010). The Texas Surface Water Quality Standards (TSWQS) provide that surface waters cannot be toxic to aquatic or terrestrial organisms.¹ While the TSWQS and the IPs do not specifically designate criteria for the protection of cattle or livestock, they do designate criteria for the protection of aquatic life that should preclude negative impacts to the health of cattle or wildlife.

The Executive Director has determined that the proposed draft permit for the facility meets the requirements of the TSWQS, which are established to protect human

¹ 30 TEX. ADMIN. CODE § 307.6.

health, terrestrial, and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. Therefore, no impact to terrestrial organisms from the proposed discharge is anticipated.

Comment 4:

Deanna Betik, Andrew Kubin, Michelle Youmans, Dana Langer, and Charlie Pouzar expressed concerns about the harmful effects of treated wastewater from the proposed facility on crops, trees, and other vegetation downstream. Andrew Kubin asked how wastewater from so many homes can be controlled from daily exposure to adjacent fields and crops. Michelle Youmans stated that she thought there were laws in Texas to protect crops from discharges of wastewater. Charlie Pouzar and Carol Alston commented that treated wastewater cannot be used to irrigate food crops.

Response 4:

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC § 307.6(b)(4) specifically state that water in the state shall be maintained to preclude adverse toxic effects on aquatic and terrestrial life, which also includes protection of vegetation. The effluent limitations and conditions in the draft permit were derived from a rigorous technical review to ensure compliance with the TSWQS.² If the Applicant operates the facility in accordance with the TCEQ rules and the provisions of the draft permit, aquatic and terrestrial life including vegetation will be protected.

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

² 30 TAC §§ 307.1 - 307.10.

Comment 5:

Deanna Betik, Michelle Youmans, and Carol Alston, Phillip Langer, and Bernard Martinek expressed concerns about the use of landowners properties for discharges from the proposed facility and landowner rights.

Response 5:

The TCEQ was given the authority to issue TPDES permits for the discharge of waste or pollutants into or adjacent to water in the state.³ The permit, if issued, does not grant the permittee the right to use private or public property for the conveyance of wastewater along the discharge route. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire all property rights necessary to use the discharge route. Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or interfere with the normal use and enjoyment of animal life, vegetation, or property.

However, because the State is authorized to use the bed and banks of a watercourse to transport water, and the TCEQ has the authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit, the applicant for a TPDES permit does not need permission from downstream landowners to use the watercourse running through their property, nor do downstream landowners have to be compensated because of a permitted discharge.⁴

³ Texas Water Code § 26.027.

⁴ *Domel v. City of Georgetown*, 6 S.W. 3d 349, at 358 (Tex. App. - Austin 1999).

Comment 6:

Andrew Kubin, Michelle Youmans, Chris Valek, Cheryl Zink, Deanna Betik, Bernard Martinek Jeff Pouzar, Charlie Pouzar, David Surratt, Gary Taylor, Phillip Langer, Chris Macon, Ernest Martinek, Randy Stinson, Dana Langer, Nancy Mach, Leslie Mach, and James Jurik expressed their concern with flooding. Andrew Kubin asked how the wastewater will be controlled during heavy rains. Ernest Martinek, Michelle Youmans, Nancy Mach, Leslie Mach, Amanda Cabrera, Dana Langer, and John Cabrera stated that the unnamed tributary and added effluent will not hold the runoff. Chris Valek asked how the wastewater will affect the FEMA flood map. Charlie Pouzar stated that the culvert pipe that the discharge will run through to cross Shankle Road is already undersized and causes flooding. James A. Jurik stated that the unnamed tributary is adjacent to his property in a low-lying area and subject to flooding during heavy rain.

Response 6:

The TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. However, to the extent that an issue related to flooding also involves water quality, the Applicant is required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit at all times, including during flooding conditions. Flooding concerns should be addressed with the local floodplain administrator for your area.

Comment 7:

Chris Valek, James A. Jurik, Eric Allmon, and Ernest Martinek expressed their concerns with odor from the proposed facility. Chris Valek asked how odor and air

quality will be handled and monitored and if the proper distances will be maintained between the treatment plant and property lines. James A. Jurik stated that his property is located directly north of the facility and he will have to smell odors due to south winds and that these systems can fail. Bernard Martinek raised concerns about the wastewater treatment plant failing and the impacts that will cause. Eric Allmon commented that the buffer zone requirements are incorrect and should be 500 feet rather than 150 feet.

Response 7:

All wastewater treatment facilities have the potential to generate odors. To control and abate odors the TCEQ rules require domestic WWTPs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13, which provides three options for applicants to satisfy the nuisance odor abatement and control requirements. The Applicant can comply with the rule by: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant; or 3) providing nuisance odor control.⁵

Per 30 TAC Section 309.13(e)(1), Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. According to its application, the Applicant intends to comply with the requirement to abate and control nuisance odor by locating the treatment units at least 150 feet from the nearest

⁵ 30 TEX. ADMIN. CODE § 309.13(e).

property line.⁶ This requirement is incorporated in the draft permit.⁷ Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

Further, the Applicant proposes in its application that the Shankle Road WWTP will be an activated sludge process plant operated in the extended aeration mode. The activated sludge process is the most frequently used biological wastewater treatment process for treating domestic wastewater, and the use of the extended aeration variation has been known to produce highly treated effluent with low biosolids production. When properly treated by the proposed wastewater treatment process, the effluent is not expected to have an offensive odor.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186, or the TCEQ Region 4 Office in Fort Worth at 817-588-5800.

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 8:

Michelle Youmans, Gary Taylor, Nancy Mach, Mary Warner, Dana Langer, Philip Langer, and Emil Langer expressed their issues with not receiving proper notice of the application and the existence of the draft permit. Michelle Youmans indicated that she

⁶ Selinger Permit Application, Administrative Report, 1.1, Section 3 attachment. page 15

⁷ Selinger Draft Permit, Other Requirements, Item No. 3, page 34.

only received one letter in conjunction with a public notice. Eric Allmon commented that notice was not adequate for the application, individuals were left off the mailing list, and that the application materials were not available in the public library.

Response 8:

The TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk. The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. Any persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that permit action.

TCEQ contacted the Applicant regarding the existence of the draft permit at the public viewing location. The Applicant stated that the draft permit was available at the public viewing location.

Comment 9:

Charlie Pouzar indicated that there were several errors in the application with regard to Worksheet 2.0 and the landowners list and map. Charlie Pouzar states that the stream flow characteristics on Page 30 of 80 should indicate intermittent with perennial pools, and the waterbody uses on Page 31 of 80 does not address the end-users (beef cattle and growers/harvesters of pecan crops) or have livestock watering checked. Charlie Pouzar also indicated that the landowners for Properties 18, 19, 20,

21, and 22 were incorrectly indicated on the map. Jeff Pouzar commented that the maps used in the application are incorrect.

Response 9:

The Applicant submitted the maps required by the application and certified that this information was true and correct. The ED relied on the mapping materials submitted by the Applicant in conducting their review.

TCEQ's Water Quality Standards Team determined that the unnamed tributary and Fourmile Creek are intermittent with perennial pools.

The instructions for Sections 4 & 5 of Worksheet 2.0 of the application refer to the applicant indicating the influences and observed or evidenced uses of the immediate receiving stream where discharge is proposed to occur. The applicant indicated that the application reflects what it observed, so livestock watering was not checked and end-users beef cattle and growers/harvesters of pecan crops was not listed.

Comment 10:

Charlie Pouzar, Jeff Pouzar, Pat Kyser, Nancy Mach, and Bernard Martinek commented that the presence of wastewater in the unnamed tributary would cause damage and loss of use, enjoyment, and access to their property. Eric Allmon, Bernard Martinek, Elaine Kasowski, Mary Warner, Phillip Langer, Charlie and Jeff Pouzar, and Amanda and John Cabrera commented that the discharge would cause erosion, as well as impact grazing area for livestock and cattle and potentially cause diseases to livestock, waterfowl and crops. Charlie Pouzar commented that recreational uses will be lost because fishing in the area will be disrupted. Pat Kyser, Gary Taylor, and Jeff Pouzar expressed concerns for how the presence of the wastewater will impact managing cattle including repairing the fences that hold them in. Nancy Mach

commented about recreational uses being diminished, impacts to wildlife and contamination from wastewater entering her pond making the fish no longer a source of food, a detriment to wildlife, and will create unsanitary conditions for her family.

Response 10:

The TCEQ does not have jurisdiction to address flooding or erosion issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC § 307.6(b)(4) specifically state that water in the state shall be maintained to preclude adverse toxic effects on aquatic and terrestrial life, which also includes protection of vegetation. The effluent limitations and conditions in the draft permit were derived from a rigorous technical review to ensure compliance with the TSWQS. If the Applicant operates the facility in accordance with the TCEQ rules and the provisions of the draft permit, aquatic and terrestrial life including vegetation will be protected.

The proposed permit was drafted in accordance with 30 TAC § 307.5 and the TCEQ *Procedures for the Implementation of the Texas Surface Water Quality Standards* (IPs; June 2010). The Texas Surface Water Quality Standards (TSWQS) provide that surface waters cannot be toxic to aquatic or terrestrial organisms.⁸ While the TSWQS and the IPs do not specifically designate criteria for the protection of cattle or livestock, they do designate criteria for the protection of aquatic life that should preclude negative impacts to the health and performance of cattle or wildlife.

⁸ 30 TEX. ADMIN. CODE § 307.4.

The Executive Director has determined that the proposed draft permit for the facility meets the requirements of the TSWQS, which are established to protect human health, terrestrial, and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms.

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC Chapter 307 require that discharges may not degrade the receiving waters and may not result in situations that impair existing, attainable or designated uses, and that surface waters not be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals.⁹ The effluent limits in the draft permit are set to maintain and protect the existing instream uses.

In this case, the designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use.¹⁰ The Executive Director determined that these uses should be protected if the facility is operated and maintained as required by the proposed permit and regulations. Additionally, the treated effluent will be disinfected prior to discharge to protect human health.

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 11:

Charlie Pouzar commented that contaminants like pharmaceuticals and household cleaning chemicals in the wastewater that get introduced into produced hay and forage for cattle would negatively affect the sale of cattle and surplus hay.

⁹ 30 TEX. ADMIN. CODE § 307.6(b)(4).

¹⁰ Texas Surface Water Quality Standards, 30 TEX. ADMIN. CODE § 307.10.

Response 11:

TCEQ does not have authority to consider economic impacts as part of the wastewater permitting process. The TCEQ has not investigated the potential effects of emerging contaminants, which includes Pharmaceuticals and Personal Care Products (PPCPs), in effluent. Neither the TCEQ nor the EPA has promulgated rules or criteria limiting emerging contaminants in wastewater. The EPA is investigating emerging contaminants and has stated that scientists have not found evidence of adverse human health effects from emerging contaminants in the environment. Removal of some emerging contaminants has been documented during municipal wastewater treatment; however, standard removal efficiencies have not been established. In addition, there are currently no federal or state effluent limits for emerging contaminants. So, while the EPA and other agencies continue to study the presence of PPCPs, there is currently no clear regulatory regime available to address the treatment of PPCPs in domestic wastewater. Accordingly, neither the TCEQ nor the EPA has rules on the treatment of contaminants such as pharmaceuticals in domestic wastewater.

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 12:

Michelle Youmans commented that she has contacted the Texas Animal Health Commission, Cattle Raisers Association (TSCRA), Texas Department of Agriculture, US Department of Agriculture, and the Texas Landowner Commission to see if there is any protection or recourse for the livelihood of farmers and ranchers.

Response 12:

The proposed permit was drafted in accordance with 30 TAC § 307.5 and the TCEQ *Procedures for the Implementation of the Texas Surface Water Quality Standards* (IPs; June 2010). The Texas Surface Water Quality Standards (TSWQS) provide that surface waters cannot be toxic to aquatic or terrestrial organisms.¹¹ While the TSWQS and the IPs do not specifically designate criteria for the protection of cattle or livestock, they designate criteria for the protection of aquatic life that should preclude negative impacts to the health and performance of cattle or wildlife.

The Executive Director has determined that the proposed draft permit for the facility meets the requirements of the TSWQS, which are established to protect human health, terrestrial, and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms.

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC § 307.6(b)(4) specifically state that water in the state shall be maintained to preclude adverse toxic effects on aquatic and terrestrial life, which also includes protection of vegetation. The effluent limitations and conditions in the draft permit were derived from a rigorous technical review to ensure compliance with the TSWQS. If the Applicant operates the facility in accordance with the TCEQ rules and the provisions of the draft permit, aquatic and terrestrial life including vegetation will be protected.

TCEQ rules requires that all applications for wastewater discharge permits include mailed notice of both the NORI and the NAPD to the entities listed at 30 TAC § 39.413, which includes government agencies such as the Texas Department of Health, the Texas Parks and Wildlife Department, and the Texas Railroad Commission.

¹¹ 30 TEX. ADMIN. CODE § 307.4.

As part of the TPDES permitting process, the applicant must submit a Supplemental Permit Information Form (SPIF). This completed form is subsequently sent to the Texas Historical Commission, Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers. The application and the draft permit were also reviewed by the U.S. Environmental Protection Agency (EPA).

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 13:

Chris Valek expressed concern over the wastewater treatment plant being near his home and farming business. He asks what will be done about the land if it receives a constant flow of water, which is currently does not. Marc Clark also expressed concern for the surrounding community and farms.

Response 13:

The TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The TCEQ was given the authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to water in the state.¹² The State is authorized to use the bed and banks to transport water, and the TCEQ has the authority to authorize a discharge of treated domestic wastewater into

¹² Texas Water Code § 26.027.

water in the state through a TPDES permit, even when the stream has normally been a dry stream bed.

The permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 14:

Andrew Kubin, Jeff Pouzar, and Nancy Mach requested a public hearing.

Response 14:

The Executive Director acknowledges the requests.

Comment 15:

Michelle Youmans, Chris Valek, Emil Langer, and Carol Alston request a public meeting.

Response 15:

Based on the rules located in 30 TAC § 55.154(1), if the Executive Director determines that there is a substantial or significant degree of public interest in an application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input. A public meeting was held on April 27, 2023.

Comment 16:

Judge Todd Little commented that the municipal utility district application should be denied and requested that the TCEQ consider a 3-mile distance for impact from the effluent discharge point. Ernest Martinek and Theresa Novy commented that the MUD should not be approved.

Response 16:

The TPDES application for Stephen Richard Selinger that is the subject of this response to comments is for a wastewater treatment plant, not for creation of a municipal utility district. Chapter 54 of the Texas Water Code governs Municipal Utility Districts and their creation, while Chapter 26 of the Texas Water Code governs the TCEQ wastewater permitting process. District creation is not part of the review process for wastewater treatment applications.

As part of the permitting process, the applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point.

Comment 17:

Deanna Betik requested that an environmental impact study be performed to determine flooding impacts and use of the land.

Response 17:

An environmental impact study is not required for TPDES applications. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements which include an Environmental Assessment and either a Finding of No Significant Impact or Environmental Impact Statement. However, these requirements pertain to a

proposed federal action. An environmental impact statement and compliance with NEPA are not required as part of the TPDES wastewater permitting process.

Comment 18:

Cheryl Zink, Phillip Langer, and Nancy Mach expressed concern about impacts to drinking water sources from the proposed discharge. Cheryl Zink also commented that the location of the proposed development is incorrect.

Response 18:

The Water Quality Division has determined that the draft permit is in accordance with the Texas Surface Water Quality Standards, which ensures that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge. Therefore, the permit limits given in the draft permit intended to maintain the existing uses of the surface waters and preclude degradation will also protect groundwater.

The legislature has determined that “the goal of groundwater policy in this state is that the existing quality of groundwater not be degraded. This goal of non-degradation does not mean zero-contaminant discharge.” Chapter 26 of the Texas Water Code further states, “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard.”

Further, 30 TAC § 309.13(c) states that a wastewater treatment plant unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. Public water supply systems in Texas are regulated by the TCEQ's Water Supply Division. Please contact the Water Supply Division at 512-239-4691 for more information.

The Ground Water Rule does not address private wells because they are not under the jurisdiction of the Safe Drinking Water Act and are therefore not subject to TCEQ regulation. TCEQ recommends that well owners periodically test their water for microbial and chemical contaminants and properly maintain their well. It is the responsibility of the private well owner to take steps to have his or her water quality tested at least annually for possible constituents of concern—or more often if the well is thought to have a surface water connection.

Please see <http://wellowner.org/water-quality/water-testing/> for more information about testing private water wells. If your well tests positive for fecal coliform bacteria, please see the Texas A&M AgriLife Extension publication titled “What to Do About Coliform Bacteria in Well Water” at <https://twon.tamu.edu/wp-content/uploads/sites/3/2021/06/what-to-do-about-coliform-in-well-water.pdf> or the TCEQ publication titled “Disinfecting Your Private Well” at <https://www.tceq.texas.gov/downloads/drinking-water/preparedness-resources/gi-432.pdf> for more information.

Comment 19:

Robert Alston asks how the Applicant will manage the natural gas line that runs through the property, specifically where the creek runs across it. Mr. Alston wants to make sure the gas line will be protected and not cause dangerous conditions.

Response 19:

The TCEQ does not have the authority to address the issue of existing gas pipelines as part of the wastewater permitting process. Texas Water Code Chapter 26 and applicable wastewater regulations do not authorize the TCEQ to consider this issue. Any concerns regarding a gas pipeline would fall under the jurisdiction of the Railroad Commission of Texas.

However, the permit does not limit the ability of an individual to seek legal remedies against Stephen Richard Selinger regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 20:

Eric Allmon commented that a Tier two antidegradation review should have been performed on this permit application. He also commented that there is no water in the state at the location of the discharge point such that TCEQ would have jurisdiction to issue the permit at this location.

Response 20:

The treated effluent will be discharged to an unnamed tributary, thence to Fourmile Creek, thence to Village Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and limited aquatic life use for Fourmile Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed.

A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Comment 21:

Carol Alston and Cherie Batsel asked the rate at which TCEQ denies wastewater permit applications.

Response 21:

TCEQ performs an administrative review of the application, upon receipt, to ensure that all required information is provided therein. TCEQ also performs a technical review of the application to ensure that the applicant adequately addressed all required technical issues to show that wastewater from the facility will be treated to required standards and to effluent limits that will ensure protection of existing uses for the receiving water bodies. During review process, TCEQ issues notice of deficiencies to applicants for insufficient information and then review the responses from the applicant. This process continues unless and until the applicant provides all required information; the applicant complies with the relevant rules, regulations, and guidelines; and TCEQ staff has all information necessary to draft the permit.

Comment 22:

Justin Schiffner expressed concern on impacts to property value, increased taxes, and traffic.

Response 22:

TCEQ does not have jurisdiction to consider these factors as part of the wastewater permitting process.

Comment 23:

Lane Grayson commented that local matters should be handled locally and not through the TCEQ.

Response 23:

TCEQ has been given the authority to issue permits throughout the State of Texas to discharge treated wastewater into or adjacent to water in the State under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code. The Executive Director's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. The State of Texas assumed the authority to administer the National Pollutant Discharge Elimination System (NPDES) program September 14, 1998.

The TPDES permit does not grant the permittee the right to use private or public property for the conveyance of wastewater along the discharge route. Also, the permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire all property rights necessary to use the discharge route. Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property.

Comment 24:

Judy Langer and Randy Stinson asked why the Applicant is not required to use septic systems for the development rather than building a wastewater treatment plant. James Jurik asked why the wastewater is not routed via pipeline into the trinity to protect groundwater from contamination.

Response 24:

The Executive Director does not have authority to mandate a different discharge route or treatment method. Decentralized wastewater treatment units such as septic tanks are types of on-site sewage facilities (OSSF). A septic tank is a buried, watertight tank designed and constructed to partially treat raw wastewater. The tank separates and retains floatable and settleable solids in the wastewater. Following the primary treatment, wastewater is then disposed of to a drain field for further treatment by and dispersal to the environment.

If the Applicant decides to utilize individual septic tanks to serve the proposed residential area, the application be subject to 30 TAC Chapter 285, relating to “On-site Sewage Facilities (OSSF)”. However, the anticipated combined flow from all systems on a tract of land must be less than 5,000 gallons per day (gpd) on an annual average basis. If the anticipated combined flow exceeds 5,000 gpd, a domestic wastewater treatment facility is required because wastewater treatment facilities produce a higher quality effluent than septic tanks and are therefore more protective of the environment.

The quality of effluent from an individual anaerobic OSSF and from a WWTP is significantly different. An OSSF treats a limited volume of domestic wastewater to primary treatment standards. The wastewater strength, or organic loading, of BOD₅ and NH₃-N in untreated or raw sewage from a residential subdivision is estimated to be

250-400 mg/l and 15-75 mg/l, respectively. The draft permit, for example, requires that the treated effluent shall not exceed 10 mg/l CBOD₅, with 3 mg/l NH₃-N.

Therefore, the Shankle Road Wastewater Treatment Facility will be required to achieve a more than 90 or 95% reduction in CBOD₅ concentration in the treated effluent prior to discharge.

In comparison, a well-maintained septic tank treats sewage to approximately 100 mg/l BOD₅ prior to disposing into the underground drain field, or soil absorption field. To meet its effluent limits, the proposed facility will have to provide better than secondary treatment including disinfection. For a proposed development of this type, a wastewater treatment facility will provide a higher level of environmental protection than septic tanks.

For more information regarding OSSF rules and regulations please contact the TCEQ OSSF Program at (512) 239-3799.

Comment 25:

Laura Miller commented that the local school district is not prepared to handle the increased amount of students due to the housing development.

Response 25:

The TCEQ does not have jurisdiction to consider population impacts during consideration of the issuance of TPDES permits.

Comment 26:

Thomas Martinek asked for the credentials of the TCEQ staff members that perform wastewater permit application reviews as well as if any civil engineers are on staff at TCEQ. Mr. Martinek also asked if TCEQ outsources engineering services in their assessment of wastewater applications and if those reviews include a scientific assessment of discharge flow.

Response 26:

The Executive Director's staff are well qualified to review TPDES applications. TCEQ does not outsource engineering services in their assessment of wastewater applications.

Comment 27:

Dana Langer expressed concern regarding an increase in mosquito breeding and disease in the area as a result of pooled water from the discharge.

Response 27:

TCEQ does not have jurisdiction to evaluate mosquito breeding as part of the Texas Pollutant Discharge Elimination System permit review process. The discharge was evaluated according to TCEQ rules and guidance to be protective of human health, aquatic life, recreational uses, wildlife, and livestock. This permit is protective of the uses mentioned in TCEQ rules and guidance.

Comment 28:

Cherie Batsel asked why the quantity of water is not considered when TCEQ receives an application. She also stated that the standards review is only a surface review that will not be met in reality.

Response 28:

The "quantity" or flow of the proposed discharge is considered during the Water Quality Standards review. The size of the discharge determines the evaluation distance of the receiving streams. *The Procedures to Implement the Texas Surface Water Quality Standards* (RG-194), page 17 designates a required evaluation distance based on the size of the discharge. The proposed discharge in its final phase is 500,000 gallons per day, or 0.5 million gallons per day, which requires an evaluation distance of 2.0 miles according to the IPs.

The Standards Implementation Team conducts a review and writes a memo with recommendations for the critical conditions and modeling staff and can impose limits in the permit based on the review. The critical conditions team assesses the receiving stream based on the Standards review and submits their recommendations through a memo as well. The modeling staff then write a memo based on the assigned dissolved oxygen criteria designated by the Standards review and submits their recommendations via memo for the permit writer. The permit writer then consolidates the recommendations to form a draft permit.

All recommendations are implemented in the proposed permit as written and govern the permittee and facility operations. The wastewater plant is required to conduct testing and has reporting requirements that must be met to remain in compliance with the permit. If the testing and reporting are not conducted, the permittee is considered out of compliance and will be placed under enforcement action.

The process of developing a permit and recommendations is a highly cooperative process and therefore is more than a surface review. The implemented limits and requirements must be met in accordance with TCEQ rules and regulations to continue to operate a wastewater plant.

Comment 29:

Cherie Batsel asked why the applicant was not required to regionalize in this application and why “local control” was not considered.

Response 29:

Texas Water Code § 26.081 enumerates the state’s regionalization policy. Section 26.081 states that the policy should “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 prevent pollution and maintain and enhance the quality of the water in the state.” In furtherance of that policy TWC § 26.0282 authorizes the TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems.

Domestic Technical Report 1.1 of the application requires information concerning regionalization of wastewater treatment plants. Applicants requesting a new permit or certain major amendments are required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can utilize. Applicants are required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility does have the capacity and is willing to accept the proposed wastewater, the applicant must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion.

Finally, applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding regionalization with their system. Per information provided in the application, there are no existing wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility site location. This information was verified by TCEQ staff. TCEQ rules require that all applications for wastewater discharge permits include mailed notice of both the NORI and the NAPD to the entities listed at 30 TAC § 39.413, which includes government agencies such as the Texas Department of Health, the

Texas Parks and Wildlife Department, and the Texas Railroad Commission. As part of the TPDES permitting process, the applicant must submit a Supplemental Permit Information Form (SPIF). This completed form is subsequently sent to the Texas Historical Commission, Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers. The application and the draft permit were also reviewed by the EPA, and they did not have any objections to the permit.

Comment 30:

Suzie Betik asked if the TCEQ takes into consideration the amount of people opposed to a permit application. She also asked if any investigation into endangered species was conducted here. Ms. Betik asked what recourse is available if the applicant does not meet the requirements of the draft permit and who monitors the plant to make sure it is operating safely.

Response 30:

TCEQ encourages public participation and considers all timely filed comments when reviewing an application. However, the Executive Director has no authority to make permitting decisions based on the number of people opposed to an application. Endangered species are considered as a part of TCEQ rules. The IPs require that the Standards review evaluate the watershed (basin), receiving stream, segment, and the county for endangered species. The Trinity River Basin was evaluated as a part of this review. The Navasota ladies' tresses are within the Trinity River Basin. The Least tern is located within Segment 0805 and Ellis County, however all of the species mentioned are impacted by stormwater and multisector storm sewer permits and therefore should remain unaffected by this discharge.

Per Other Requirement 1 of the permit, this Category C facility must be operated by a chief operator or an operator holding a Class C license or higher. The

facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week.

The TCEQ issues permits that describe the conditions under which the wastewater facility must operate. All facilities must be designed, operated, and maintained consistent with applicable TCEQ rules. These provisions require that a facility is properly operated and maintained at all times.

The TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. If applicable, the Region 4 office is required to conduct a mandatory comprehensive compliance investigation (CCI) at minor facilities (facilities with permitted flow less than 1 million gpd) once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of the TCEQ and is based on self-reported effluent violations.

If the facility is found to be out of compliance with the terms or conditions of the permit, the applicant may be subject to enforcement. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report these to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Region 4 Office in Fort Worth at 817-588-5800. Citizen complaints may also be filed on-line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>. If applicant fails to comply with all requirements of the permit, it may be subject to enforcement action.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENTS

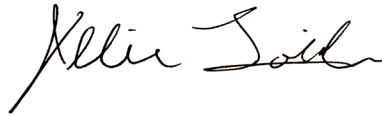
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division

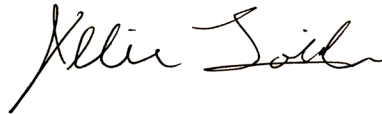


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 01, 2023, the “Executive Director’s Response to Public Comment” for Permit No. WQ0016103001 was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk.



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