

**SOAH DOCKET NO. 582-25-01778
TCEQ DOCKET NO. 2024-0670-MWD**

**APPLICATION BY
MUNICIPAL OPERATIONS, LLC
FOR TPDES PERMIT
NO. WQ0016171001**

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**BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR'S REPLY TO EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGES' PROPOSAL FOR DECISION**

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) submits her Reply to Exceptions to the Administrative Law Judges' (ALJs) Proposal for Decision (PFD).¹ The Executive Director supports the findings and conclusions contained in the ALJs' PFD and respectfully recommends the ALJs deny adopting the Protestants' Exceptions to the PFD.²

II. EXECUTIVE DIRECTOR'S RESPONSE TO PROTESTANTS' EXCEPTIONS

The Executive Director reiterates her support of the ALJs' findings of fact and conclusions of law contained in the PFD. As an initial matter, the Protestants' Exceptions contain multiple unsubstantiated assertions that the Draft Permit does not comply with the applicable laws and regulations. The Executive Director submits her specific Responses to Protestants' Exceptions below.

A. Burden of Proof

In their Exceptions, the Protestants contend that the PFD improperly shifts the burden of proof to Protestants.³

TCEQ received this application after September 1, 2015, and therefore 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 Tex. Admin. Code Chapters 39, 50, and 55. The Texas

¹ Proposal for Decision, SOAH Docket 582-25-01778, TCEQ Docket 2024-0670-MWD, Application by Municipal Operations, LLC for New TPDES Permit No. WQ0016171001, May 19, 2025.

² Protestants' Exceptions to the Proposal for Decision, June 9, 2025.

³ See *id.*, Section II, at 2 - 3.

Legislature enacted SB 709, effective September 1, 2015, which amended the requirements for comments and contested case hearings.

Under SB 709, the filing of the draft permit, the preliminary decision issued by the Executive Director, and any other documentation establishes a prima facie demonstration that the draft permit meets all applicable state and federal legal and technical requirements and if issued will protect human health and safety, the environment, and physical property.⁴ The statute further provides that a party may rebut the prima facie demonstration by presenting evidence relating to one of the issues the Commission referred and demonstrating that the draft permit violates an applicable state or federal requirement.⁵ The statute also provides that if the prima facie demonstration is rebutted, then the applicant and the Executive Director may present additional evidence to support the draft permit.⁶

The Executive Director maintains her position that the Applicant has met its burden of proof on all referred issues and that the Draft Permit complies with the applicable rules and regulations. The Executive Director also notes that the ALJs have considered and thoroughly addressed Protestants' similar arguments in the PFD.⁷

B. Referred Issues

In their Exceptions, the Protestants contend that the Executive Director's QUAL-TX modeling is flawed and the Executive Director did not establish a basis for her staff's reliance on TCEQ guidance materials regarding the 0.2 mg/L margin of safety for dissolved oxygen modeling.⁸ Further, the Protestants contend that the Executive Director's staff did not properly assess potential eutrophication effects during their technical review.⁹

The Executive Director maintains her position that her staff's technical review of the Draft Permit, and the Draft Permit itself, complies with the applicable rules and

⁴ TEX. GOV'T. CODE § 2003.047(i-1); 30 TEX. ADMIN. CODE § 80.17(c)(1).

⁵ TEX. GOV'T. CODE § 2003.047(i-2); 30 TEX. ADMIN. CODE § 80.17(c)(2).

⁶ TEX. GOV'T. CODE § 2003.047(i-3); 30 TEX. ADMIN. CODE § 80.17(c)(3).

⁷ See PFD, Section III, at 9 – 14; Proposed Order, Section II, Conclusion of Law Nos. 4 – 8, at 13 – 14.

⁸ See Protestants' Exceptions, Section III.A.1, at 5 – 6; ED-XL-8, *Margin of Safety in TCEQ Default QUAL-TX Modeling Analysis*.

⁹ See Protestants' Exceptions, Section III.A.3, at 13 – 14.

regulations. The Executive Director also notes that the ALJs have considered and thoroughly addressed Protestants' similar arguments in the PFD.¹⁰

III. CONCLUSION

As reflected in the ALJs' PFD, the Protestants did not provide sufficient evidence to rebut the prima facie demonstration. Further, the Protestants' Exceptions reiterates arguments that the ALJs have thoroughly considered and addressed in the PFD. The Executive Director supports the findings and conclusions contained in the ALJs' PFD and respectfully recommends the honorable ALJs deny adopting the Protestants' Exceptions to the PFD.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR
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¹⁰ See PFD, Section IV.A, at 18 – 72; n. 207, at 46; Section IV.A.3, at 46, 56 – 60.

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2025, a true and correct copy of the foregoing document was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the addresses listed below.



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