

NEW TPDES PERMIT NO. WQ0016273001

APPLICATION BY
CLEAR UTILITIES, LLC FOR
NEW TPDES PERMIT NO.
WQ0016273001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on the application by Clear Utilities, LLC (Applicant) for new Texas Pollutant Discharge Elimination System Permit (TPDES) number (No.) WQ0016273001 and on the ED's preliminary decision on the application. Before a permit is issued, the ED is required by Title 30 of the Texas Administrative Code (30 TAC), section (§) 55.156 to prepare a response to all timely, relevant, and material, or significant comments. The TCEQ's Office of the Chief Clerk (OCC) received timely comments from Catreena Connell, Joshua Hester, Von & Linda Hulgán, Ernest Martinek, Joe Benavidez, Glenda Williams, Wes Calhoun, Mark Curry, Guadalupe Sanchez, Joun and Brenda Griffin, Todd Little, Dave Foster, Kathleen Brown, Kameron Zabochnik, Randy Stinson, Nick Hamm, Paul Burns, Darren Wynn, David Risinger, Darren Wynn, Kathleen Mavridis, Matthew Craig, Steve & Nancy Solomon, Darren Wynn, Rhonda Hamm, Richard & Kelly Kern, Aaron Risley, Marc Conway, Kimberly Curry, Kathy Dewolfe, George Martinez, John Marshall, Marie & Nick Hamm, Theresa Liska, Amy Haufler, Gregory Crow, Carolyn Taylor, Cathy York, Charles Giles, Kenneth Burns, Bettye Burns, Joseph King, Ryan King, Jerry Burch, Jack Risinger, Carla Crow, Thomas Pearl, Nancy Salmon, Geneva Risinger, Michael Jones, Krista Martin, Dennis Forester, Randy Stinson, John Williams, Jonathan Perrymore, Nicholas Jones, George Ham, Roy Edgar, David Miller, Glenda Williams, Lori Young, Carla Crow, Mercedes Garcia, and Stephanie Shuster. This response addresses all comments received by the OCC in writing during the public comment period, whether withdrawn or not, and any public meetings that were held by the TCEQ. If more information is needed about this permit application or the TPDES permitting process, please call 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>.

II. BACKGROUND

A. Application Request

The Applicant applied for new TPDES Permit No. WQ0016273001 to authorize effluent, otherwise known as treated wastewater (WW), discharges in the Interim I, II (IP1-2), and Final phases of the permit, at daily average flow limits of 0.125, 0.1875, and 0.25 Million Gallons per Day (MGD), *respectively* (the proposed discharge).

B. Description of Facility and Discharge Route

If this permit is ultimately issued, the proposed facility, a Wastewater Treatment Facility (WWTF), will serve the Risinger Ridge development and will be located approximately 0.95 miles southwest of the intersection of Risinger Road and Interstate Highway 45, in Ellis County, Texas 75125. The proposed facility will be constructed

across the three phases of the proposed permit, and when constructed will be an activated sludge process plant, operated in the complete mix mode with single staged nitrification. Treatment units across all three phases consist of a bar screen, a chlorine contact chamber, and two final clarifiers. The remaining treatment units include aeration basins and aerobic sludge digesters, with the number of each treatment unit corresponding to the number of the phase (IP1-2). In the Final Phase, the remaining treatment units consist of four aeration basins and aerobic sludge digesters. Sludge generated at the proposed facility is hauled by a registered transporter to City of Fort Worth Village Creek-WWTF (WQ0010494013), to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. Sludge is also authorized to be disposed of at a TCEQ-authorized land application site, co-disposal landfill, WWTF, or a facility that further processes sludge.

The proposed discharge route is first to a pond, then an unnamed tributary (UT1), then to a second-order unnamed tributary (UT2), which is essentially a tributary formed from first order tributaries and is used here only to distinguish between the two unnamed tributaries. The proposed discharge then continues to Brushy and Red Oak Creeks, and then to the Upper Trinity River in Segment No. 0805 of the Trinity River Basin.

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

Because the wastewater (WW) permitting process contains technical and complex terms, the list below aims to provide readers with greater clarity and readability.

- **CI:** Chlorine (disinfection for discharge)
- **UV:** Ultra-Violet light (disinfection for discharge)
- **DO:** Dissolved Oxygen
- **IP1:** Interim Phase I of the proposed permit
- **IP2:** Interim Phase II of the proposed permit
- **WQ:** Water Quality
- **WW:** Wastewater
- **TSS:** Total Suspended Solids (WW limit)
- **EPA:** United States Environmental Protection Agency
- **UT1:** The first unnamed tributary of the discharge route
- **UT2:** The second-order unnamed tributary in the discharge route
- **CFU:** Colony Forming Units
- **OCE:** Office of Compliance and Enforcement of the TCEQ
- **ALU:** Aquatic Life Use, a type of WQ Use in Texas waterbodies
- **TWC:** Texas Water Code
- **CWA:** Clean Water Act
- **MGD:** Million Gallons per Day
- **WLA:** Waste Load Allocation (pollutant loading in a WITS)
- **WQD:** Water Quality Division of the TCEQ
- **WQC:** Control of WQ from *Ch.26*, TCEQ's Water Quality Control
- **WITS:** Water(s) in the State
- **USGS:** United States' Geological Survey (federal agency)
- **NORI:** Notice of Receipt & Intent to Obtain a Water Quality Permit
- **NAPD:** Notice of Application & Preliminary Decision
- ***E. coli*:** Escherichia coli-bacteria (WW limit)
- **NH₃-N:** Ammonia Nitrogen (WW limit)
- **TMDL:** Total Maximum Daily Load

- **NOPM:** Notice of Public Meeting
- **CBOD₅:** 5-day Carbonaceous Biochemical Oxygen Demand (WW limit)
- **Limits:** WW Discharge Limits/ Effluent limits
- **Ch.26:** Chapter 26 of the TWC (Water Quality Control)
- **WWTF:** Wastewater Treatment Facility
- **WQMP:** Water Quality Management Plan of the State of Texas
- **TPDES:** Texas Pollutant Discharge Elimination System
- **NPDES:** National Pollutant Discharge Elimination System
- **USFWS:** United States' Fish and Wildlife Service (federal agency)
- **Outfall:** Discharge point / location
- **TSWQS:** Texas Surface Water Quality Standards (30 TAC Chapter 307)
- **30 TAC:** Title 30, Texas Administrative Code (Environmental Quality)
- **Effluent:** Treated domestic WW after discharge
- **DO limit:** The DO concentration required in a TPDES discharge
- **DO level:** The amount of DO in a particular WITS
- **Region 4:** TCEQ's Regional OCE for Dallas/Fort Worth, Texas
- **WQ Uses:** Designated WQ uses from the Appendices of the TSWQS
- **WQ Goals:** WQ uses, levels, standards, conditions and requirements
- **217 Rules:** Design Criteria for Domestic WWTFs (30 TAC Chapter 217)
- **Discharge:** A flow of WW emanating from a WWTF
- **WQD staff:** Staff from the Water Quality Division of the TCEQ
- **DO Criteria:** The Minimum DO Criterion assigned by the TSWQS for WITS
- **Application:** The TPDES application submitted by Clear Utilities, LLC
- **TCEQ Rules:** Title 30, Texas Administrative Code (Environmental Quality)
- **Appendix A:** Appendix A of the TSWQS-30 TAC § 307.10
- **Commission:** The Texas Commission on Environmental Quality
- **DO Modeling:** Analyses using mathematical models of DO impacts to WITS
- **Tech Review:** The Technical Review of a TPDES application by the WQD
- **Tier I Review:** The TSWQS Tier I Antidegradation Review
- **Tier II Review:** The TSWQS Tier II Antidegradation Review
- **Modeling Team:** Water Quality Assessment Team
- **Standards Team:** Water Quality Standards Implementation Team
- **Proposed permit:** Draft-TPDES permit No. WQ0016273001
- **Proposed facility:** Risinger Ridge WWTF
- **TCEQ IPs:** RG-194 - TCEQ's *Implementation Procedures for the Texas Surface Water Quality Standards*-June 2010
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III. THE EXECUTIVE DIRECTOR'S TECHNICAL REVIEW

The basis for the ED's technical review of TPDES applications is the TCEQ's WQC established by the Texas Legislature's passage of Chapter 26 of the Texas Water Code ((*Ch.26*) and (TWC)) that gives the TCEQ primary authority over WQ, or control of WQ in Texas (WQC). The TCEQ's WQC combines the WQ authority from *Ch.26* with federally delegated CWA WQ authority for the TPDES program, which controls discharges of pollutants into Texas' waterbodies, defined by the TWC as "WITS."

To implement the WQC of the TCEQ, the CWA and *Ch.26* grant the TCEQ the authority to issue permits for discharges of waste or pollutants into, or adjacent to WITS if, after the ED's Tech Review, a proposed TPDES permit complies with the WQ goals of the CWA, *Ch.26*, the TSWQS, and the TCEQ IPs. In the same way, the ED recommends issuance or denial of an application based on whether the information contained in the application complies with the WQ goals of the CWA, *Ch.26*, the

TSWQS, and the TCEQ IPs. Through the ED's Tech review, the WQD evaluates a TPDES application as an authorization to discharge to WITS and must determine the limits and conditions established in a TPDES permit comply with the WQ goals of the CWA, *Ch.26*, the TSWQS, and the TCEQ IPs.

Not only is a TPDES-permitted discharge required to achieve a certain level of WQ and meet other WQ goals, a TPDES-permitted WWTF's method of achieving that quality must also meet certain standards to achieve WQ goals. Just as the TSWQS and the TCEQ IPs provide a roadmap for a TPDES permit's limits and conditions, the TCEQ's 217 rules (Design Criteria for WWTFs) provide a guide for identifying the types of treatment technology that can achieve the treatment levels required by WQ goals. Similarly, the proposed permit requires the Applicant to submit a summary transmittal letter of the proposed facility's plans and specifications according to 30 TAC § 217.6(d). If requested by WQD staff, the permittee must submit final plans and specifications (specs), *and* a final engineering design report which comply with the TCEQ's 217 rules. The Applicant must clearly show how the treatment system will meet the permitted limits required on Pages 2, 2a, and 2b of the proposed permit.⁶ WQD staff must ensure that the WWTF design can adequately treat the effluent according to the limits in the proposed permit during the review of the plans and specs for the proposed facility.

The TSWQS, specifically the word "standards," is defined in TCEQ rule as desirable uses such as existing, attainable, designated, or presumed uses, otherwise known as WQ uses, and the necessary, narrative, and numerical WQ conditions to support and protect those WQ uses in WITS. Conversely, the TCEQ may refuse to issue a permit when the ED's Tech 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 TCEQ's WQC.

To maintain a level of WQ sufficient to protect the existing WQ uses of WITS in a route for a proposed discharge requires WQD staff on the Standards and Modeling Teams to review the data from the application and employ it, according to the TSWQS and the TCEQ IPs, when performing multiple WQ-specific analyses. This ensures compliance with the TSWQS because WQD staff follow the prescribed methodology in the TCEQ IPs when drafting limits and conditions for TPDES permits. The TCEQ IPs is a regulatory guidance document written specifically for permits to comply with the TSWQS. Correspondingly, within the regulatory framework of the TSWQS, a subset of WQ uses known as ALUs, govern the DO criteria, which refers to the 24-hour minimum DO level required to support ALUs in WITS. DO criteria are critical for the overall health of WITS, and in conjunction with ALUs, are necessary to protect the aquatic life in WITS. So, to ensure protective limits in TPDES permits, DO modeling analyses are performed by the Modeling Team to evaluate the potential impacts from a proposed discharge on instream DO levels of WITS in the route of a proposed discharge. DO levels are affected by various factors, including potential direct DO impacts by oxygen-demanding constituents in a proposed discharge, such as CBOD₅, NH₃-N, and DO, which are the specific limits established by the Modeling Team's DO modeling analyses for TPDES applications.

Thus, the WQD staff and the ED's Tech Review are responsible for evaluating impacts of a proposed discharge on the designated WQ uses of WITS in the route of a proposed discharge starting at the outfall, and then establishing appropriate limits to protect those WQ uses as the TSWQS require. Considering the TCEQ's data centric

WQC, all determinations, reviews, or analyses of the ED's Tech Review can be subsequently reexamined and modified upon receipt of contradictory data.

A. Texas Surface Water Quality Standards Review

An Antidegradation Review of the proposed discharge is the first WQ-analysis conducted on the application by the Standards Team after it reviews and verifies the classifications, designations, and descriptions of the WITS in the route of the proposed discharge (pond, UT1, UT2, Brushy and Red Oak Creeks, and the Upper Trinity River in Segment No. 0805 (Segment No. 0805)). More specifically, the TSWQS and the TCEQ IPs require the Standards Team, for all new-proposed discharges, to perform a Tier I review to assess the effects on WITS in the area of impact from the proposed discharge for a certain distance from the outfall based on the volume of the discharge, otherwise known as the "impact zone."

For this application, the impact zone was 2.0 miles based on a proposed discharge of up to 0.90 MGD. However, the standard practice of the Standards Team is to assess the first 3.0 miles of WITS to ensure a discharge is thoroughly vetted. In this case, 3.0 miles included the pond, UT1, UT2, Brushy and Red Oak Creeks.

The Standards Team assigned ALUs according to the TSWQS and additional information received during the permitting process, thus, the flow characterization of the pond and initial portion of UT1 (0.14 miles downstream of pond) is intermittent with perennial pools. UT1 then becomes UT2, which is characterized as intermittent greater than 0.14 miles downstream of the pond and returns to intermittent with perennial pools at Brushy Creek. Red Oak Creek's flow characterization is perennial.

The Standards Team then reviewed the information from the application consistent with the provisions of the TSWQS (30 TAC §§ 307.4 (h) & (l)) that specifically address ALUs, DO, and the assessment of unclassified waters for ALUs, as the proposed discharge is first to the pond and UT1, unclassified waterbodies. Additional data received during the permitting process enabled the Standards Team to determine the ALU designations and assign the corresponding DO criteria specified by the TCEQ's IPs and the TSWQS for pond, UT1, UT2, Brushy and Red Oak Creeks, and (Segment No. 0805)).

The Aquatic Life Uses (ALU) uses for Segment No. 0805, as designated in Appendix A of the TSWQS are primary contact recreation and a "high" ALU, with a corresponding DO criteria of 5.0 mg/L, which is also true for Red Oak Creek. The TSWQS (§ 307.4 (h)) assign the pond and UT1 a 3.0 mg/L DO criteria with a corresponding "limited" ALU designation, as they characterized as intermittent with perennial pools. UT2, characterized as an intermittent stream, is assigned a DO criteria of 2.0 mg/L by the TSWQS (§ 307.4(l)) and has a "minimal" ALU designation. Brushy Creek also has a "limited" ALU designation and is assigned criteria of 3.0 mg/L DO.

The results of the Tier I Review of the proposed discharge and its impact zone indicated that there is no expectation of impairment of existing WQ uses because the proposed discharge has limits designed to maintain numerical and narrative criteria to protect the existing WQ uses of the WITS receiving the proposed discharge.

Because the ALU designation for Red Oak Creek is "high," WITS were identified within the impact zone and Tier II Review was required, which preliminarily determined that no significant degradation of water quality is expected in Red Oak Creek and Upper Trinity River, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected.

B. Dissolved Oxygen Modeling

The second analysis of the ED's Tech Review involved the Modeling Team performing DO modeling (analyses) using a mathematical model, an "uncalibrated QUAL-TX model." Conventional limits such as those for DO, CBOD₅, and NH₃-N are based on stream standards and WLAs for WQ-limited streams established in the TSWQS and the WQMP. However, coefficients and kinetics used in the modeling come from a combination of site specific, standardized default, and estimated values.

By adhering to the provisions of the TSWQS, the TCEQ IPs, and the WQMP the Modeling Team developed protective limits, predicted to be necessary to maintain DO levels above the DO criteria indicated by the Standards Team for the pond and UT2 (3.0 mg/L 2.0 mg/L, *respectively*), of 10.0 mg/L CBOD₅, 3.0 mg/L NH₃-N, with a concentration of 5.0 mg/L DO in IP1. Limits in IP2 include 10.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, with a concentration of 4.0 mg/L DO. In the Final phase, the limits are 10.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, with a concentration of 5.0 mg/L DO.

C. Disinfection and Other limits

With prior ED approval, an equivalent method of disinfection may be substituted for the methods described below. During all phases of the proposed permit, the effluent must be monitored five times per week by grab sample, be disinfected using CI, contain a CI residual based on peak flow, of at least 1.0 mg/l, and must not exceed a total CI residual of 4.0 mg/after a detention time of at least 20 minutes.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, *eff.* 3/1/2018), and the EPA-approved portions of the TSWQS (*eff.* 3/6/2014). The proposed permit also includes 30-day average limits of 5.0 mg/L TSS and 126 CFU/Most Probable Number per 100 ml of *E.coli and* requires that the effluent's pH must always be in the range of 6.0-9.0 standard units. Similarly, and consistent with the TSWQS's general criteria to protect aesthetic parameters of water quality, the proposed discharge must be free of floating solids, visible oil, or visible foam in other than trace amounts. The proposed permit's TSS limits are of a typical value for domestic WW discharge permits with tertiary treatment, as the proposed permit has, and are set in conjunction with other permitted effluent limits and any applicable watershed rule requirements. Tertiary treatment is the next WW-treatment process after secondary treatment; it removes stubborn contaminants that secondary treatment is unable to, and further cleans effluent using stronger, more advanced treatment systems.

In a case such as this, end-of-pipe compliance with pH limits of 6.0-9.0 standard units reasonably assures instream compliance with pH criteria in the TSWQS when the discharge authorized is from a minor facility and the unclassified waterbodies have "minimal" or "limited" ALUs. This conservative, technology-based approach reasonably assures instream compliance with TSWQS due to relatively smaller discharge volumes authorized by these permits. This conservative approach is informed by TCEQ sampling conducted throughout Texas that indicate instream buffering quickly restores pH levels to ambient conditions.

Segment No. 0805 is currently listed on the State's inventory of impaired and threatened waters, the 2022 CWA § 303(d) list. The listings are for Dioxin and 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 or PCBs in edible tissue impairment of this segment.

The 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* has been approved for Segment No. 0805. The report *Nine TMDLs 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 EPA on June 27, 2001. The approved TMDL does not include an allocation for point sources for certain 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 legacy pollutants are required in the proposed permit at this time.

The 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. In May 2011, the 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 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 Waste Load Allocation requirements of the TMDL. The proposed permit is not subject to the requirements of the TMDL; however, effluent limits and monitoring requirements for bacteria are included based on other requirements.

The proposed discharge is also not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the USFWS' biological opinion on the State of Texas authorization of the TPDES program (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and 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. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

Through the ED's Tech Review, WQD Staff provide appropriate limits to maintain and protect the existing instream WQ uses. For that reason, and provided the Applicant operates and maintains the proposed facility according to the TCEQ rules and the requirements in the proposed permit, the ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of human health, the environment, and WQ.

IV. PROCEDURAL BACKGROUND

The TCEQ received the application on December 12, 2022, and declared it administratively complete on February 23, 2023. The Applicant published the applicable public notices of for this application in English in *The Ellis County Press* and in Spanish in the *ALDIA*. The Applicant published the NORI in English on March 9, 2023, and in Spanish on March 22, 2023. On June 7, 2023, the ED completed the Tech Review of the application and prepared the proposed permit, which if approved, establishes the conditions under which the proposed facility must operate. The Applicant next published the NAPD in English on July 27, 2023, and in Spanish on July 19, 2023. The Applicant published the NOPM on January 11, 2024. The public comment period ended on February 15, 2024, at the close of the public meeting held by the TCEQ. Because the application was received after September 1, 2015, and 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.

V. ACCESS TO RULES, LAWS, AND RECORDS

- Texas' administrative rules: Secretary of State Website: www.sos.state.tx.us
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ's rules on the Secretary of State Website: www.sos.texas.gov/tac/index.shtml (select "TAC Viewer" (right side) → "Title 30 Environmental Quality")
- TCEQ's website: www.tceq.texas.gov. TCEQ's rules downloadable in Adobe PDF format on the TCEQ website: navigate to "Rules, Data, Forms, Publications" (lower right side) → "Rules and Rulemaking" → "Current TCEQ Rules" → "Download TCEQ Rules"
- Federal: Title 40 of the Code of Federal Regulations: www.eCFR.gov/current/title-40
- Federal environmental laws: <https://www.epa.gov/laws-regulations>
- **Environmental or citizen complaints may be filed online at:** <https://www.tceq.texas.gov/compliance/complaints/index.html> (select "use our online form") or by sending an email to: complaint@TCEQ.Texas.gov

Since publication of the NORI, the application has been available for viewing and copying at the Ferris Public Library, located at 301 East 10th Street, Ferris, Texas 75125. 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 NAPD.

Commission records for the proposed facility are available for viewing and copying at TCEQ's main office in Austin, Texas 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.

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 regional OCE should be contacted. Specifically, Region 4 at (817) 588-5800 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 at the eighth bullet under "Access to Rules, Laws, and Records," above. 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.

VI. COMMENTS AND RESPONSES

COMMENT 1:

Lori Young, Vincent Fasulo, Gudalupe Sanchez, Kathleen Bowen, and Todd Little all commented in opposition of the proposed facility, its location, and its discharge.

RESPONSE 1:

The ED acknowledges the comments in opposition to the proposed permit, the proposed facility, the proposed facility's location, and the concerns expressed by all commenters.

However, the TCEQ is statutorily mandated by TWC § 26.028 (Action on Application) to begin processing applications for TPDES permits, when it receives the application, and to issue notices to the public of the TCEQ's processing of the application. Likewise, TWC § 26.027 makes clear that the TCEQ may issue permits for discharges into Water in the State through the ED's evaluation of TPDES permit applications using the information provided in the application and recommending permit issuance or denial, based on the application's compliance with the TWC, TCEQ rules, and the TSWQS (30 TAC Chapter 307).

Applicants are the entity that proposes the location of the WWTF, the discharge point, and the route for the proposed discharge, rather than the ED. Instead, the ED may only evaluate a location for a WWTF according to what is proposed in the application, the Location Standards of the TCEQ rules, and the impact of the discharge on the WQ uses of the receiving streams starting at the outfall. Likewise, the TCEQ's WQC does not include the ability to mandate a different location for a WWTF, 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 discharge facility.

If an applicant were to revise its application with a different location and discharge route for a WWTF, the ED would reevaluate the new location and discharge route to make sure that the permit contains proper limits and conditions for the revised discharge route and location, which may require notice to additional landowners because of the new location and discharge route.

COMMENT 2:

Kathleen Bowen commented expressing concerns about water quality and the proposed discharge negatively affecting downstream water supplies to the detriment to those who recreate in the Upper Trinity River. Nancy Salmon commented that she is concerned about the effect on human health from the proposed discharge, as she is a cancer survivor. Kathy Dewolfe commented expressing concern about exposure to harmful chemicals from the proposed discharge.

Kameron Zabochnik commented expressing concerns about prescriptions and heavy metals in the proposed discharge.

RESPONSE 2:

The ED acknowledges these comments and the significance of protecting human health, and the WQ and WQ uses of WITS, and gives that significance due consideration in deciding whether to issue a TPDES permit. Similarly, the ED considers the health of area residents, as well as those of the public when reviewing applications for wastewater discharge permits. As discussed above and below, the ED's technical review of TPDES applications also considers human health.

As mentioned previously, the CWA, *Ch.26*, the TSWQS, and the TCEQ IPs contain WQ goals that TPDES permits, and their methods of achieving that quality, must meet. Equally important, WQD staff evaluated the application as an authorization to discharge to WITS, which requires adherence to those same WQ goals. In the same way, the TSWQS, *Ch.26*, and the TCEQ IPs were established for the protection of human health, existing surface and groundwater quality, the environment, the health of aquatic and animal life, and specifically, existing, designated WQ uses of WITS, all of which are the same WQ goals. In the same way, the policy of the TSWQS and *Ch.26* 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.¹

The TSWQS is a primary mechanism for the TCEQ to implement its WQC to achieve WQ goals, such as protection of human health, existing surface and groundwater quality, the environment, the health of aquatic and animal life, and specifically, existing, designated WQ uses of WITS, which involves meeting and maintaining numerical and narrative WQ conditions. The TSWQS require discharges not cause WITS to be toxic to any form of life, not degrade WITS, and not result in impairments of existing, attainable, or designated WQ uses. Similarly, TCEQ's WQC mandates discharges adhere to the TSWQS by use of the TCEQ IPs for drafting TPDES permits.

The focus of the TCEQ's IPs is for WQD staff to draft permits with provisions to meet the requirements of the TSWQS, namely specific numeric and narrative WQ criteria applicable to WITS receiving a discharge that protect WQ goals like existing WQ uses of WITS, human health, the environment, and the health of aquatic and animal life. With that focus, WQD staff designed the proposed permit to be protective of the uses of all WITS that could be potentially affected by the proposed discharge. In other words, to achieve the goal of supporting a level of WQ sufficient to protect existing WQ uses of WITS, the proposed permit was drafted to preclude degradation of WQ in the Upper Trinity River (Segment No. 0805) with effluent limits, monitoring requirements, and conditions designed to ensure protection of WITS according to the TSWQS and the TCEQ's IPs.

Protecting WQ in WITS receiving the proposed discharge are the assigned ALUs themselves, which govern what WQ uses and criteria will apply to protect Segment No. 0805 and the creeks upstream of Segment No. 0805, their ALUs, and the aquatic life that dwell in them, as well as consumption by terrestrial wildlife. The proposed facility is a minor municipal facility that will discharge first to a pond, which is unclassified

¹ Texas Water Code § 26.003 and 30 TAC § 307.1.

and has a “limited” ALU, as is the same for UT1. WITS, such as the pond and UT1 that support only “limited” ALUs still have criteria protecting both the aquatic life that live in the waterbodies and terrestrial wildlife that use the waterbodies as a source of water or food. To ensure that DO will be maintained above the limit established by the Standards Team for UT2 and UT2 (2.0 and 3.0 mg/L DO, *respectively*), the proposed permit requires a DO limit or concentration of 5.0 mg/L to meet a DO criteria that supports an aquatic community with a “minimal” or “limited” ALU but will not negatively affect WITS that support a “high” ALU, such as the Upper Trinity River.

According to the TCEQ’s IPs, “Limited” ALUs fall under a Tier I Antidegradation Review, which evaluates all pollution that could cause an impairment of existing WQ uses and ensures that those WQ uses are not impaired by increases in pollution loading. The numerical and narrative criteria necessary to protect existing WQ uses will be maintained because the primary focus of WQD Staff performing the ED’s Tech Review, the TSWQS, and the TCEQ’s IPs, is DO, which is critical for the overall health and WQ of WITS.

The proposed permit also contains several water quality-specific parameters or requirements that limit the potential impact on WITS receiving the proposed discharge. This is because the proposed permit’s effluent limits and conditions were derived from a rigorous, data-centric technical review to ensure compliance with the TSWQS. As stated above, the proposed permit’s limits for some of the major constituents were evaluated with a mathematical model of the receiving waters, and results indicated that limits of 10 mg/L CBOD₅, 2.0 mg/L NH₃-N, and a 5.0 mg/L DO concentration are required for the proposed facility to discharge up to 0.25 MGD to the WITS receiving the proposed discharge. These effluent limits are consistent with the WQMP, and while they are not contained in the approved WQMP, the limits will be included in the next WQMP update.

WQD staff, when drafting the proposed permit, also incorporated pertinent site-specific factors to reduce uncertainty and bolster confidence in the results of the ED’s Tech Review. For example, the Applicant is required to build a collection system and WWTF 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 and the 30 TAC Chapter 217 rules. The proposed permit requires the Applicant to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation reasonably likely to adversely affect human health.” WQD Staff determined that the proposed permit complies with the TSWQS, ensuring that the proposed discharge is protective of human health. This is because the ED followed the methodologies outlined in the TCEQ’s IPs for drafting the proposed permit, which specify that TPDES permits must maintain WITS 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. The methodologies were specifically designed to ensure no source will be allowed to discharge WW that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical standard in the TSWQS; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health. Accordingly, human health impacts from the proposed discharge are unlikely to occur, as the Applicant is only authorized to discharge according to the limitations, monitoring requirements, and other conditions of the proposed permit.

Human health is protected by the TCEQ rules in 30 TAC § 309.3(g)(1) (Disinfection), which requires disinfection of WW or effluent prior to discharges to WITS in a manner conducive to the protection of public health. The TCEQ's Disinfection rules, implemented through provisions in a TPDES permit protect human health with bacteria limits to ensure that the proposed discharge meets the stream bacterial standard of the TSWQS. The proposed permit not only includes bacteria limits, but also monitoring requirements to verify proper disinfection, which is another example of protection of human health from the TSWQS.

TCEQ's Disinfection rules do not mandate a specific method of disinfection, as an applicant may disinfect domestic WW through use of 1) chlorination, 2) UV, or 3) an equivalent method of disinfection with prior approval from the ED. Whichever form is used, the design criteria for the disinfection system, including safety requirements, must follow the requirements of the 217 rules, specifically Subchapters K or L (Chemical or UV disinfection, *respectively*).

Subchapter K specifies the disinfection requirements for CI systems such as sizing, configuration, dosage, system details, controls, cleaning, safety, and minimum replacement parts for the CI disinfection units. Whereas Subchapter L of the 217 rules specifies the requirements for UV systems, including effluent limits, redundancy, dosage, system sizing, reactor design, Bioassay test procedures, monitoring/alarms, cleaning, safety, and maintenance, of UV systems. Most importantly for protection of human health, the 217 rules require all disinfection systems to have a backup power system capable of providing sufficient power to operate continuously during all power outages.

In this case, the Applicant chose chemical disinfection using CI in all phases of the proposed permit. Chlorination may be via gaseous, liquid, or tablet forms. CI is 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.² Thus, the proposed discharge, when disinfected with CI, must contain a CI residual of at least 1.0 mg/L. The permit limit for maximum total CI residual is 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow), which must be monitored five times per week by grab sample.³

Related to heavy metals, contaminants, or other chemicals in the proposed discharge, the only chemical addition to the treatment process is CI for disinfection purposes. Other than the permit limitation for maximum total CI, no other chemical treatment was indicated in the application. Moreover, conventional domestic WW does not typically contain toxic contaminants in measurable quantities that might result in toxic effects in the receiving waters unless there are significant industrial users contributing to the waste stream. The proposed facility will receive WW from residential users and will not be accepting industrial WW.

The TCEQ does not anticipate that there will be any industrial wastewater, insecticides, and banned chemicals not allowed to be disposed of and routed to a water treatment plant; therefore, hazardous liquids and harmful chemicals are not expected to be discharged into the collection system and enter the treatment system of the proposed facility. Additionally, Minor municipal facilities with conventional domestic sewage do not typically contain toxic compounds in measurable quantities

² U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062).

³ Aqua Texas Inc., Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(g)(2).

that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing wastewater. Therefore, human health and water quality will be protected as long as the Applicant operates the proposed facility in compliance with TCEQ's rules and the terms and conditions of the proposed permit.

COMMENT 3:

John Williams, Dennis Forester, and Heather French all commented expressing concerns about the harmful effects of the proposed discharge on the ecosystem, cattle, deer, wild hogs, bobcats, armadillos, raccoons, rabbits, and other wildlife.

David Miller commented that there are numerous species of amphibians that require the intermittent water to survive, and some of these species may be threatened as their habitat is changed. Constant flow will adversely affect their habitat and these species will die off.

RESPONSE 3:

The proposed permit was developed to protect all animal life, vegetation, and aquatic and terrestrial life according to the TSWQS, provided the Applicant operates and maintains the proposed facility according to TCEQ rules and the requirements in the proposed permit. The TSWQS require that TPDES-permitted discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or other animal life, not degrade receiving waters, and not result in situations that impair existing, attainable, or designated WQ uses. Likewise, the proposed permit's effluent limits will protect the WQ uses and the WQ of the WITS receiving the proposed discharge for the benefit of the aquatic and terrestrial wildlife that depend on it. This is because WQD Staff, during the ED's technical review must verify that the proposed permit's limits, conditions, and provisions will ensure that the TSWQS will be maintained by the proposed discharge, which provides protection for aquatic, terrestrial, and wildlife.

WQD Staff determined that the proposed discharge will be consistent with the TSWQS, which validates that it is protective of animal, aquatic, terrestrial, and wildlife. WQD Staff's determination is possible because WQD Staff drafted the proposed permit with provisions that safeguard compliance with the TSWQS. For example, the proposed permit contains additional protection for animal, aquatic, terrestrial, and wildlife through the conditions related to the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires the effluent to be disinfected prior to discharge in a manner conducive to protect, aquatic, terrestrial, and wildlife.

For any wildlife concerns, please visit the Texas Parks and Wildlife Department's (TPWD) website at <https://tpwd.texas.gov> or by phone at (800) 792-1112, as it is the state agency that oversees and protects wildlife and their habitat. The TPWD was also sent notice of the application and did not express any opposition to the proposed permit.

COMMENT 4:

John Williams, Gregory Crow, Roy Edgar, Ernest Martinek, Nick Hamm, and Geneva Risinger commented expressing concern about nuisance odors.

RESPONSE 4:

Instances of foul odors from a discharge of effluent can exist when there are insufficient levels of DO concentrations in the effluent. To prevent odors from occurring the number of oxygen-demanding constituents must be controlled, as

maintaining an adequate DO concentration in the early stages of WW treatment helps to minimize sulfide generation, which is the most common cause of odor. The proposed effluent limits, specifically the minimum DO limit, restrict the amount of oxygen-demanding constituents and are set at levels to significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters. However, all WWTFs have the potential to generate odors. The treatment process proposed by the Applicant supplies oxygen in the air, “aeration,” into the effluent for biodegradation of organic contaminants in the effluent, and oxygen converts the sulfide compounds into odorless sulfates.

To control and abate odors, the TCEQ rules require domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides options for applicants to satisfy the nuisance odor abatement and control requirements. Additionally, nuisance-odor controls have been incorporated into the proposed permit according to 30 TAC § 309.13(e) of the TCEQ’s rules, which require domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor by complying with one of three options: 1) ownership of the buffer zone area; 2) restrictive easements from the adjacent property owners for any part of the buffer zone not owned by the applicant; or 3) providing nuisance odor control.

For the proposed facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms. Chlorine is 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 from the proposed facility, disinfected with chlorine, must contain a chlorine residual of at least 1.0 mg/L. The permit limit for maximum total chlorine residual is 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow), which must be monitored five times per week by grab sample.⁵

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 if anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules. The proposed permit does not limit affected individual’s ability to seek legal remedies against the Applicant for 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 interfere with the normal use and enjoyment of 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 permit renewal applications, or even an application for a permit for another facility. This is because permit violations constitute violations of not only the TWC, but also the Texas Health and Safety Code.

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

⁵ Clear Utilities, LLC Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(g)(2).

COMMENT 5:

Lori Young commented expressing concern that there will be no oversight to keep the proposed facility in compliance with the TCEQ rules.

Darren Wynn commented expressing concerns about severe weather causing freezing temperatures to freeze pipes or do other damage to the proposed facility.

RESPONSE 5:

The proposed permit was developed according to the TSWQS and the TCEQ IPs to be protective of WQ goals referenced above, provided the proposed facility is operated and maintained according to TCEQ rules and the proposed permit's requirements, which describe enforceable conditions for operating and maintaining a WWTF that act as safeguards intended to minimize the occurrence of operational mishaps.

For example, 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. Moreover, 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 Texas Health and Safety Code. Compliance Condition 2(d) requires the Applicant to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.

Operational Requirement No. 9 of the proposed permit requires the proposed facility, a domestic WWTF, to be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined by the TCEQ rules, found at 30 TAC Chapter 30. 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 operator must have a high school diploma (or equivalent), two years of work experience and 60 hours of training.

Additionally, it is the Applicant's responsibility to hire the appropriate operator, as Other Requirement No. 1 requires Applicants to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, ((Occupational Licenses and Registrations), and in particular Subchapter J, (Wastewater Operators and Operations Companies)); 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, Operational Requirement No. 1 requires the Applicant to always ensure that the proposed facility and all its systems of collection, treatment, and disposal are properly operated and maintained. For instance, 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.

Related to severe weather, Operational Requirement No. 4 makes the Applicant responsible for installing, prior to plant start-up, and subsequently maintaining adequate safety measures to prevent the discharge of untreated or inadequately

treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated WW.

For ensuring the proposed facility is compliant with applicable TCEQ rules, the TCEQ's 30 TAC Chapter 217 rules identify types of treatment technology that can achieve the treatment levels required in the proposed permit. Similarly, Other Requirement No. 6 of the proposed permit requires the Applicant to submit a summary transmittal letter of the proposed facility's plans and specifications according to 30 TAC § 217.6(d). If requested by WQD staff, the permittee must submit final plans and specifications *and* a final engineering design report which comply with the TCEQ's 30 TAC Chapter 217 rules. The Applicant must clearly show how the treatment system will meet the permitted limits required on Pages 2, 2a, and 2b of the proposed permit.⁶ The ED's staff will ensure that the plant design can adequately treat the domestic WW in accordance with the effluent limits in the proposed permit during the review of the plans and specifications for the proposed facility.

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 and 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. Data from Discharge Monitoring Reports (DMRs) must be submitted each month to the TCEQ's Compliance Monitoring Team within the OCE and must be available for inspections by compliance investigators from OCE's Region 4.

Compliance Condition 2(g) prohibits unauthorized discharges of WW or any other waste, and 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 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 discharges of raw sewage. That being so, 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.

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 OCE's Region 4 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 OCE's Region 4 *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 OCE's Region 11, and the Compliance Monitoring Team within five working days of becoming aware of the noncompliance by more than 40%. The written submission must describe 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 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.

The TCEQ's OCE plays an important role in protecting human health because it ensures that the Applicant, its operator, and the proposed facility follow applicable state and federal regulations. OCE's Region 4 is required to conduct a mandatory Comprehensive Compliance Investigation at minor facilities (facilities with permitted flow less than 1 MGD) once every five fiscal years. Additional mandatory investigations can be required if the proposed facility is classified as Significantly Non-Complaint (SNC). SNC is determined by the Compliance Monitoring Section of the TCEQ's OCE and is based on self-reported effluent violations.

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); *Ch.26, 27, and 28 of the TWC*; and *Ch. 361 of the Texas Health and Safety Code* 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 a 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 a permit or violating any other requirement imposed by state or federal regulations.

According to the rules in 30 TAC Chapter 60 (CHs), during the ED's technical review, WQD staff review the CH for the five-year period prior to the date the application was received by the TCEQ. of an applicant for the company or entity, and the proposed site for the five-year period prior to the date the application was received by the TCEQ, which for permit applications received after September 1, 2002, include a rating for both an Applicant and a proposed or existing site with classifications and ratings including:

1. ***High Performer classification***, a rating of fewer than 0.10 points, considered to have an above-satisfactory compliance record;
2. ***Satisfactory Performer classification***, a rating between 0.10 points to 55 points and is considered to generally comply with environmental regulations;

⁶ 30 TAC § 305.125(9).

3. ***Unsatisfactory performer classification***, has a rating above 55 points and is considered to perform below minimal acceptable performance standards established by the commission.¹⁰

A CH includes multimedia compliance-related components about the site under review and include enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

A CH is created for (1) the Applicant, the Owner or Operator of a WWTF (OO), which can be an individual, a company, a governmental agency, or any of several other kinds of entities, and (2) the site or facility. The OO rating and classification is the average of the ratings for all sites the OO owns or operates.

COMMENT 6:

Kathleen Bowen commented expressing concerns about air contaminants from the proposed facility affecting quality of life for nearby residents.

RESPONSE 6:

The TCEQ is the agency responsible for enforcing air pollution laws. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health, and the environment will be protected. According to the TCEQ rules in 30 TAC Section 106.532, domestic WWTPs have undergone this review and are permitted by rule if the WWTP only performs the functions listed in the rule.

The proposed facility will be an activated sludge process plant operated in the complete mix mode. The activated sludge process is the most frequently used biological wastewater treatment process for treating domestic wastewater, and the use of the complete mix aeration variation has been known to produce highly treated effluent with low biosolids production. Activated sludge process plants do not make a significant contribution of air contaminants to the atmosphere pursuant to the THSC-Texas Clean Air Act § 382.057 and § 382.05196 and is therefore permitted by rule.

This application was reviewed for health impacts and the application of best available control technology; and based on this review, the proposed facility should comply with all applicable health effects guidelines and emission control requirements.

However, if anyone experiences 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. Citizen complaints may also be filed on-line at <http://www2.tceq.texas.gov/oce/complaints/index.cfm>.

Similarly, the proposed permit's provisions do not, nor 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.

If the proposed facility, its discharge, or the Applicant create any non-compliance conditions, the TCEQ may be contacted to investigate if potential permit violations

occurred by the methods described above on page no. 9 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.

COMMENT 7:

Kameron Zabojnik commented expressing concern about groundwater contamination.

RESPONSE 7:

The ED’s Tech review of a TPDES application focuses on controlling the discharge of pollutants into WITS, which includes both navigable and non-navigable water bodies. *Ch.26* defines “water” or “WITS” to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.⁷

WQD staff determined that the proposed permit fully complies with the TSWQS, ensuring that the proposed discharge is protective of human health, WQ, aquatic life, and the environment. Further, the WQD has made the determination that if the surface water quality is protected, groundwater quality in the vicinity will not be impacted by the discharge. Thus, the limits of the proposed permit intended to maintain the existing uses and preclude degradation of the surface waters protect against degradation of groundwater.

The TCEQ rules, found at 30 TAC § 309.13(c), state that a treatment unit at the proposed facility may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. For public water sources, the provisions of 30 TAC § 309.13(c) bolster the safeguards from TCEQ’s Groundwater Rule (GWR) that protect drinking water quality against disease-causing microorganisms.

The legislature has determined that “the goal of groundwater policy in this state is that the existing quality of groundwater is not degraded. This goal of non-degradation does not mean zero-contaminant discharge.”⁸ Chapter 26 of the Texas Water Code further states, “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies must be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard (TWC § 26.401(c)(2)).”

For further details about the information discussed in this paragraph, please see the Ground Water Links section below. For more information on total coliform and *E. coli* compliance related to the Revised Total Coliform Rule and the GWR, please see TCEQ’s guidance, *Coliform Monitoring, Analyzing, and Reporting Guide* (RG-421). If your well tests positive for fecal coliform bacteria, please see Texas A&M AgriLife Extension’s guidance, *What to Do About Coliform Bacteria in Well Water*, or TCEQ’s guidance, *Disinfecting Your Private Well*. For more information about testing private water wells, please see the National Ground Water Association’s *Water Testing*. For more information on groundwater contamination or reporting groundwater

⁷ Texas Water Code § 26.001(5).

⁸ Texas Water Code § 26.401(b)

contamination, please see the Texas Groundwater Protection Committee's (TGPC) webpages, *Ground Water Contamination and Reporting Contamination*.

The TGPC may be contacted through email at tgpc@tceq.texas.gov, through the TGPC website, or at (512) 239-4600. However, for groundwater emergencies, please contact the OCE's Region 4 at (512) 339-3795, or 1-888-777-3186.

Ground Water Links

Coliform Monitoring, Analyzing, and Reporting Guide (RG-421)

<https://www.tceq.texas.gov/downloads/drinking-water/microbial/rg-421.pdf>

National Ground Water Association's webpage *Water Testing*

<http://wellowner.org/water-quality/water-testing/>

What to Do About Coliform Bacteria in Well Water <https://twon.tamu.edu/wp-content/uploads/sites/3/2021/06/what-to-do-about-coliform-in-well-water.pdf>

Disinfecting Your Private Well

<https://www.tceq.texas.gov/downloads/drinking-water/preparedness-resources/gi-432.pdf>

Texas Groundwater Protection Committee (TGPC)

<https://tgpc.texas.gov/>

TGPC's *Groundwater Contamination and Reporting Contamination* webpages

<https://tgpc.texas.gov/groundwater-contamination/>

<https://tgpc.texas.gov/groundwater-contamination/#3>

COMMENT 8:

Lynda Hulgan commented expressing concerns over the public notice process for the proposed permit.

RESPONSE 8:

Notice provisions for Applicants and the Commission are found in 30 TAC Chapter 39 (Public Notice). When the ED determines that an application is administratively complete, the Chief Clerk mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.⁹ Not later than 30 days after the ED determines that the application is administratively complete, the Applicant must publish the NORI in the newspaper that has the largest circulation within the county or municipality in which the facility is located.¹⁰ The Applicant must also make a copy of the administratively complete application available for public viewing in the county in which the facility is located.¹¹ Finally, the Applicant, using county deed records, must identify all landowners adjacent to the proposed facility and discharge and submit the list to the TCEQ Chief Clerk's office so it can mail timely copies of the public notices for the application to the adjacent landowners.

After completing the technical review of an application, the ED files its preliminary determination and the draft permit with the Chief Clerk.¹² The Chief Clerk must mail the preliminary decision, along with the Notice of Application and Preliminary Decision

⁹ 30 TAC § 39.418(a).

¹⁰ 30 TAC § 39.405(f).

¹¹ 30 TAC § 39.405(g).

¹² 30 TAC § 39.419(a).

(NAPD), to the Applicant, who must then publish the NAPD in the same newspaper as the NORI.¹³ The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.¹⁴

The NAPD must set a deadline for filing public comments with the Chief Clerk that is no earlier than 30 days after its publication in a newspaper.¹⁵ If the ED holds a public meeting on the application after the 30 day period, then the public comment period is automatically extended to the end of the public meeting.¹⁶ The ED may hold a public meeting at any time in the county where the facility is located if there is evidence of substantial public interest, or if a legislator representing the general area where the facility will be located requests a meeting.¹⁷ As the public comment period has ended, the ED must file this Response to Public Comments, addressing all timely, relevant and material, or significant public comments submitted during the comment period, regardless of whether the comments were withdrawn.¹⁸

In this case, the application was received on December 12, 2022, and declared administratively complete on February 23, 2023. The Applicant published the applicable public notices of for this application in English in *The Ellis County Press*, and in Spanish in the *ALDIA*. The Applicant published the NORI in English on March 9, 2023, and in Spanish on March 22, 2023. On June 7, 2023, the ED completed the Tech Review of the application and prepared the proposed permit, which if approved, establishes the conditions under which the proposed facility must operate. The Applicant next published the NAPD in English on July 27, 2023, and in Spanish on July 19, 2023. The Applicant published the NOPM on January 11, 2024. The public comment period ended on February 15, 2024, at the close of the public meeting held by the TCEQ. The notices are not intended to provide a full description of the application, but rather to provide instructions on where to obtain additional information, such as more comprehensive description of the information in the application. Documents associated with the application are made public at the locations below to allow the public to review them and determine if they have additional comments or questions.

The permit application has been available for viewing and copying at the Ferris Public Library, located at 301 East 10th Street, Ferris, Texas 75125, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the NAPD. Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

COMMENT 10:

John Hamilton Williams expressed concern that the area is in a FEMA Zone AE Special Flood Hazard area.

¹³ 30 TAC § 39.419(b).

¹⁴ 30 TAC § 39.413.

¹⁵ 30 TAC § 39.551(c)(3).

¹⁶ 30 TAC § 55.152(b).

¹⁷ 30 TAC § 55.154(c).

¹⁸ 30 TAC § 55.156.

RESPONSE 10:

In section 5.A of Domestic Technical Report 1.1, the applicants provided information regarding the facility's location in relation to the 100-year flood plain. According to that response (FEMA Firm Panel 0225F, Map No. 48139C0225F), the facility will be located above the 100-year flood plain. Therefore, the facility will meet the section 309.13(a) requirements.

COMMENT 11:

Todd Little commented questioning whether the TPDES program has a greater requirement or standard for the public good than the national, NPDES program administered by the EPA. Mr. Little asked if the standard is greater to or equal, or is it a lesser standard.

RESPONSE 11:

The NPDES program is a federal regulatory program to control discharges of pollutants to surface waters of the United States. On September 14, 1998, Texas assumed the authority to administer the NPDES program within its boundaries, which is the inception of the TPDES program. The TCEQ's WQC in Texas is a combination of the WQ authority from *Ch.26* and the federally delegated NPDES authority, which adds WQ oversight from the Clean Water Act. The TPDES program now controls discharges of pollutants into Texas' waterbodies, defined by the TWC as "WITS," with the exception of discharges associated with oil, gas, and geothermal exploration and development activities, which are regulated by the Railroad Commission of Texas.

The standards of the NPDES program apply equally to the TPDES program.

COMMENT 12:

George Martinez commented that the developer must adhere to home sites on a minimum of 1-acre lots as he has done for the past five years, and that the financial interest of developers seeking to maximize their returns at the price of local residents and ecosystems is not the best plan of action.

Michael Jones, Nancy Salmon, Charles Giles, and Gregory Crow all commented expressing concerns that Risinger Road cannot handle the increased traffic the development will cause, making it a dangerous situation.

Michael Jones commented that the proposed development will bring thousands of extra residents, the area schools are not prepared to handle that many additional students, and Ellis County doesn't have the resources to support such a large increase in population in a short period of time. Mr. Crow also expressed concern that a proposed increase of approximately 1800 mobile homes will strain public utilities and services. Mr. Crow commented that local water officials have already stated there would be inadequate water supply for the 1800 additional homes. Mr. Risinger commented that potable water is not available for this proposed development.

Charles Giles and John Forehand commented expressing concerns about the decrease in property values from the proposed facility. Mr. Giles also commented about dumping trash, and an increase in crime because of the proposed facility.

RESPONSE 12:

The ED encourages and advocates for public participation in the environmental permitting process and appreciates participation from all the citizens that do.

Although the ED gives due consideration to public input and participation in the permitting process, the scope of the TCEQ's jurisdiction for reviewing applications for TPDES permits is limited to what information *Ch.26* allows the TCEQ to require and evaluate in a TPDES application. Thus, there are certain concerns of citizens that the ED cannot address as part of the technical review for a TPDES application, and while the ED understands the significance of these concerns, she does not have the authority to address these concerns in the context of a TPDES permit. Rather, the ED is limited to providing pollution control by limiting the discharges of pollutants through a TPDES permit, which protects the WQ of WITS.

More specifically, the technical review performed by the ED for TPDES applications focuses on controlling the discharge of pollutants into WITS. Likewise, TPDES permits establish terms and conditions that apply pollution control for TPDES discharges based on TCEQ's water quality pollution control; as such, the water quality permitting process is limited to controlling the discharge of pollutants into WITS, which includes both navigable and non-navigable water bodies. *Ch.26* defines "water" or "WITS" to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.¹⁹

The Commission and the ED, in their respective determinations of whether to issue a TPDES permit, do not have jurisdiction under *Ch.26* or the TCEQ rules to address or consider property values, the marketability of surrounding properties, traffic hazards or volumes, impacts to municipal or country roads, road maintenance or repair, availability of public utility services, types of developments and their anticipated sizes, or trash along the discharge route, unless related to a permit violation, if water quality is maintained. These issues are more appropriately addressed by departments within local governmental entities such as the County of Ellis and the Cities of Ferris or Palmer. For more information, please visit the websites or the phone numbers for general information below.

The TCEQ's Resource Protection Team may also be contacted to identify the appropriate local or county officials or offices, by calling (512) 239-4600, or by email at: wcp@tceq.texas.gov.

Ellis County

- <https://co.ellis.tx.us/>
Phone: (972)-825-5000

City of Ferris

- <https://www.ferristexas.gov/>
Phone: (972) 544-2110

City of Palmer

- <https://ci.palmer.tx.us/>
Phone: (972)-449-3160

¹⁹ Texas Water Code § 26.001(5).

COMMENT 13:

Aaron Risley, John Williams, Jerry Burch, Jack Risinger, Geneva Risinger, Michael Jones, Donna Blagg, Travis Jenkins, Dave Foster, Ryan King, Kenneth Holland, Rita Holland, Beth Foster, Robert Spencer, Randy Stinson, Cheryl Zink, Jerry Burch, Lance Hanson, Gregory Crow, Cathy York, Paul Burns, George Ham, Theresa Liska, Carolyn Taylor, Lawrence Hunt, Robert Rosson, Margaret Martinek, Emil Martinek, Ragen Martinek, Jennifer Martinek, Leah Martinek, Ernest Martinek, Roy Edgar, Lori Young, Stephanie Shuster, Brenda Mavridis, David Risinger, Randy Stinson, Glenda Williams, George Martinez, and Kenneth and Bettye Burns all commented expressing concerns about flooding and erosion from the proposed discharge.

RESPONSE 13:

While the Texas Legislature has given the TCEQ the responsibility to protect WQ, and *Ch.26* authorizes the TCEQ to issue TPDES permits to provide WQ pollution control by limiting the discharges of pollutants to WITS through a TPDES permit, the TCEQ, nor the ED, has any jurisdiction to address flooding or erosion along the discharge route.

Even though the TCEQ has no 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 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 Ellis County Floodplain Administrator for Ellis County by contacting Ellis County Floodplain Management Office, at (785) 625-1061 or <https://www.elliscounty.net/345/Flood-Plain-Management> from 8:00 a.m. - 5:00 p.m., Monday through Friday.

The TCEQ's Resource Protection Team can be contacted for identifying and contacting the appropriate local or county officials or offices, by calling (512) 239-4600, or by email at: wcp@tceq.texas.gov.

Other state resources include the Texas Water Development Board's program to mitigate damage caused by flooding, which can be contacted through: <http://www.twdb.texas.gov/flood/index.asp>.

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>.

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Erin Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division



Michael T. Parr II, Staff Attorney
Environmental Law Division
State Bar No. 24062936
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239 0611
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VII. CERTIFICATE OF SERVICE

I certify that on August 5, 2024, the Executive Director's Response to Public Comment for Permit No. WQ0016273001 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