

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

August 26, 2025

Peter T. Gregg  
Attorney for Applicant

VIA EFILE TEXAS

Stefanie P. Albright  
Attorney for Protestant Ellis County

Eric Allmon and Vic McWherter  
Attorneys Citizens for Responsible County Development & Glenda Williams

David Miller, Protestant

Michael T. Parr, II  
Attorney for ED

Josiah T. Mercer  
Attorney for OPIC

**RE: SOAH Docket No. 582-25-10508; TCEQ No. 2024-1582-MWD;  
*Application of Clear Utilities, LLC for New TPDES Permit  
No. WQ0016273001***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact

shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

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

CC: Service List

---

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

---

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

---

**TABLE OF CONTENTS**

I.	Procedural History.....	2
II.	Burden of Proof.....	3
III.	The Proposed Facility and Draft Permit.....	7
IV.	Referred Issues.....	8
A.	Water Quality & Antidegradation.....	9
1.	Protestants' Evidence and Argument .....	10
a)	Citizens.....	11
b)	Ellis County .....	16
c)	Mr. Miller .....	20

2.	ED’s Evidence and Argument.....	23
3.	Applicant’s Rebuttal and Argument.....	31
4.	OPIC’s Argument.....	33
5.	ALJ’s Analysis .....	34
	a) Certainty of Discharge Route Description.....	34
	b) Water Modeling .....	36
	c) Protectiveness of Receiving Waters.....	38
B.	Nuisance Odors .....	40
	1. Citizens’ Evidence and Argument.....	41
	2. ED’s Evidence and Argument.....	42
	3. Applicant’s Rebuttal and Argument.....	42
	4. ALJ’s Analysis .....	43
C.	Notice.....	44
	1. Citizens’ and Miller’s Evidence and Argument.....	45
	2. ED’s Evidence and Argument.....	46
	3. Applicant’s Rebuttal and Argument.....	47
	4. ALJ’s Analysis .....	48
V.	Transcript Costs .....	49
VI.	Conclusion.....	51
I.	Findings of Fact .....	1
II.	Conclusions of Law.....	8

---

---

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

---

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

---

**TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Meaning</b>
ALJ	Administrative Law Judge
Applicant	Clear Utilities, LLC
CBOD <sub>5</sub>	carbonaceous biochemical oxygen demand
CFU	colony forming units
Citizens	Protestants Citizens for Responsible County Development and Glenda Williams
Commission (or TCEQ)	The Texas Commission on Environmental Quality
CSTR	Continuously Stirred Tank Reactor
DO	dissolved oxygen
Draft Permit	Draft Permit prepared for this Application on June 7, 2023

<b>Abbreviation</b>	<b>Meaning</b>
<i>E. coli</i>	Escherichia coli
ED	TCEQ Executive Director
EPA	United States Environmental Protection Agency
g/m <sup>2</sup> d	grams per square meter per day
GIS	USGS geographical imaging system
IPs	implementation procedures
mg/L	milligrams per liter
MGD	million gallons per day
Modeling Review SOP	TCEQ's General Guidance for Modeling Review of Wastewater Permit Applications
MPN	most probable number
NAPD	Notice of Application and Preliminary Decision
NH <sub>3</sub> -N	ammonia-nitrogen
NOPM	Notice of Public Meeting
NORI	Notice of Receipt of Application and Intent to Obtain a Permit
OPIC	Office of Public Interest Counsel
Protestants	Collectively, Citizens, Ellis County, and David Miller
QUAL-TX SOP	TCEQ's Methods for Analyzing Dissolved Oxygen in Freshwater Streams Using an Uncalibrated QUAL-TX Model
SOAH	State Office of Administrative Hearings
SOD	sediment oxygen demand
SOPs	standard operating procedures
TCEQ (or Commission)	The Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System
TSS	total suspended solids

<b>Abbreviation</b>	<b>Meaning</b>
TSWQS	Texas Surface Water Quality Standards
USFW	US Fish and Wildlife Service
USGS	United States Geological Survey

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

---

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

---

**PROPOSAL FOR DECISION**

Clear Utilities, LLC (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016273001. Applicant proposes to construct a wastewater treatment facility in Ellis County (the Facility) and seeks the permit to discharge a daily average flow not to exceed 250,000 gallons of treated domestic wastewater per day during the Final phase. The proposed discharge route is from the Facility to a pond, then to two unnamed tributaries, then to Brush Creek and Red Oak Creek, and then on to the Upper Trinity River in Segment No. 0805 of the Trinity River Basin. Having considered the evidence and issues referred by the Commission, the Administrative Law Judge (ALJ) recommends the application be granted.

## I. PROCEDURAL HISTORY

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

Applicant filed the application on December 12, 2022. The Executive Director (ED) of TCEQ declared the application administratively complete on February 23, 2023.<sup>1</sup> The ED determined that the application was technically complete and prepared a draft permit on June 7, 2023 (Draft Permit).<sup>2</sup> The Commissioners voted to refer this matter to the State Office of Administrative Hearings (SOAH) on November 6, 2024, and it was docketed with SOAH on January 16, 2025.

A preliminary hearing was held on March 4, 2025, via Zoom videoconference. Applicant, the ED, the Office of Public Interest Counsel (OPIC), Protestant Ellis County, Protestants Citizens for Responsible County Development and Glenda Williams (jointly, Citizens), and Protestant David Miller were named as parties. Following the preliminary hearing, the parties agreed to a procedural schedule that was adopted by the ALJ on March 14, 2025.<sup>3</sup>

The hearing on the merits was held at SOAH's Austin, Texas hearing facilities on May 28, 2025, before ALJ Sarah Starnes. Applicant was represented by attorney

---

<sup>1</sup> Ex. ED-1 (Rahim Direct) at 5.

<sup>2</sup> Administrative Record (Admin. Record), Tab C at 0025-30.

<sup>3</sup> Order Scheduling Hearing on the Merits and Adopting Procedural Schedule (March 14, 2025).

Peter T. Gregg; the ED was represented by attorney Michael T. Parr; OPIC was represented by attorney Josiah T. Mercer; Ellis County was represented by attorneys Stefanie Albright and Sara Labashosky; Citizens were represented by attorney Vic McWherter; and Protestant Miller appeared and represented himself. The hearing concluded that day, and the record closed on July 3, 2025, following the filing of the parties' post-hearing briefs and responses.

At the hearing, Citizens presented the testimony of Ms. Williams and Gregory Crow, both affected landowners.<sup>4</sup> Ellis County presented testimony from water quality modeler Peter Zamora, PhD.<sup>5</sup> The ED presented the testimony of permit writer Abdur Rahim, water quality modeler Xing Lu, PhD, and aquatic scientist Mary Anne Wallace, PhD.<sup>6</sup> Applicant presented rebuttal testimony of environmental consultant Ernest To, PhD.<sup>7</sup>

## **II. BURDEN OF PROOF**

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

(i-1) In a contested case regarding a permit application referred under section 5.556 ..., Water Code, the filing with the office of the

---

<sup>4</sup> Ex. CRCD-100 (Williams Direct); Ex. CRCD-200 (Crow Direct).

<sup>5</sup> Protestant Ex. 1 (Zamora Direct)

<sup>6</sup> Ex. ED-1 (Rahim Direct); Ex. ED-3 (Lu Direct); Ex. ED-11 (Wallace Direct).

<sup>7</sup> App. Ex. 1 (To Rebuttal).

application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:

(1) the draft permit meets all state and federal legal and technical requirements; and

(2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.

(i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:

(1) relates to . . . an issue included in a list [of issues referred by the Commission] in connection with a matter referred under Section 5.56, Water Code; and

(2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.

(i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

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

Draft Permit, would protect human health and safety, the environment, and physical property.<sup>8</sup>

Citizens raised two arguments relating to the process of rebutting the prima facie demonstration and the applicable burden of proof, neither of which the ALJ finds persuasive. First, Citizens contends the presumption associated with the prima facie demonstration extends only to the Draft Permit, not the Application or any records related to the ED's technical review, because Texas Government Code section 2003.047(i-1)(1) refers only to a presumption that "the draft permit" meets all applicable requirements.<sup>9</sup> However, section 2003.047(i-1) states that the prima facie demonstration is established upon "the filing with [SOAH] of the application, the draft permit...and other sufficient supporting documentation in the administrative record of the permit application."<sup>10</sup> If filing these materials is a requisite step in establishing a presumption of compliance for a draft permit, it follows that these materials are supportive of the prima facie demonstration. The ED having proposed the Draft Permit in this case indicates that the Application and supporting materials met the requirements of the ED's review, subject to rebuttal as provided by section 2003.047(i-2).

Next, Citizens look to the language of 40 Code of Federal Regulations section 122.44—incorporated by TCEQ as part of its federally-delegated authority over

---

<sup>8</sup> 30 Tex. Admin. Code § 80.17(a), (c).

<sup>9</sup> Glenda Williams and Citizens for Responsible County Development's Written Closing Arguments (Citizens Closing) at 3.

<sup>10</sup> Tex. Gov't Code § 2003.047(i-1).

TPDES permits—to contend that they need only show “a reasonable potential” that the Draft Permit fails to meet applicable requirements in the Texas State Water Quality Standards (TSWQS).<sup>11</sup> In response, the ED argues that Citizens have misconstrued section 122.44, and that the regulation addresses requirements that may be added to TSWQS “in addition to or more stringent than” what is federally required, not to restrictions that may be added to any individual permit.<sup>12</sup> The ED further notes that the preamble to section 122.44 says the listed requirements must be met only “when applicable,” meaning the rule’s provisions do not apply to every permit.<sup>13</sup> The ALJ agrees with the ED that section 124.44 does not change the presumptions and burdens of rebuttal set forth in Texas Government Code section 2003.047(i-1).<sup>14</sup>

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), were offered and admitted into the record for all purposes.<sup>15</sup>

---

<sup>11</sup> Citizens Closing at 3-4, *citing* 30 Tex. Admin. Code § 305.531(4) (making limitations, standards, and permit conditions in 40 C.F.R. § 122.44 applicable to TPDES permits); 40 C.F.R. § 122.44(d)(1)(i) (providing that water quality standards and state requirements must set limitations to control pollutants that “have the reasonable potential to cause” a violation of any state water quality standard).

<sup>12</sup> Executive Director’s Reply to Closing Arguments (ED Reply) at 5.

<sup>13</sup> ED Reply at 5.

<sup>14</sup> *See also Application by Municipal Operations, LLC for New TPDES Permit No. WQ0016171001*, SOAH Docket 582-25-01778; TCEQ Docket 2024-0670-MWD, Proposal for Decision at 12-14 (May 19, 2025) (rejecting same arguments).

<sup>15</sup> Admin. Record, Tabs A-E.

### III. THE PROPOSED FACILITY AND DRAFT PERMIT

Applicant seeks a permit to discharge treated domestic wastewater effluent at a daily average flow not to exceed 0.125 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.1875 MGD in the Interim II phase, and a daily average flow not to exceed 0.25 MGD in the Final phase.<sup>16</sup> The proposed Facility will serve the Risinger Ridge Development in Ellis County, and will be located approximately 0.95 miles southwest of the intersection of Risinger Road and Interstate Highway 45.<sup>17</sup> The Draft Permit provides that treated effluent will be discharged to a pond and then flow through two unnamed tributaries, Brushy Creek, and Red Oak Creek, ending in the Upper Trinity River in Segment 0805 of the Trinity River Basin.<sup>18</sup>

The Facility will be an activated sludge process plant operated in the complete mix mode with single staged nitrification. Treatment units in the Interim I phase will include a bar screen, an aeration basin, two final clarifiers, an aerobic sludge digester, and a chlorine contact chamber. A second aeration basin and a second aerobic sludge digester will be included in the Interim II phase. Treatment units in the Final phase will include a bar screen, four aeration basins, two final clarifiers, four aerobic sludge digesters, and a chlorine contact chamber.<sup>19</sup>

---

<sup>16</sup> Admin. Record, Tab C at 0025.

<sup>17</sup> Admin. Record, Tab C at 0025.

<sup>18</sup> Admin. Record, Tab C at 0026.

<sup>19</sup> Admin. Record, Tab C at 0025.

The Draft Permit set effluent limitations, based on a thirty-day average, for five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS), ammonia-nitrogen (NH<sub>3</sub>-N), colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*), minimum dissolved oxygen (DO), and total chlorine residual (after a 20-minute detention time and based on peak flow) as follows:<sup>20</sup>

	<b>Interim I Phase</b>	<b>Interim II Phase</b>	<b>Final Phase</b>
CBOD <sub>5</sub>	10 milligrams per liter (mg/L)	10 mg/L	10 mg/L
TSS	15 mg/L	15 mg/L	15 mg/L
NH <sub>3</sub> -N	3.0 mg/L	2.0 mg/L	2.0 mg/L
<i>E. coli</i>	126 CFU or MPN per 100 milliliters (ml)	126 CFU or MPN/100 ml	126 CFU or MPN/100 ml
Minimum DO	5.0 mg/L	4.0 mg/L	5.0 mg/L
Total chlorine residual	1.0 mg/L min., 4.0 mg/L max.	1.0 mg/L min., 4.0 mg/L max.	1.0 mg/L min., 4.0 mg/L max.

#### **IV. REFERRED ISSUES**

The Commission referred the following issues to SOAH:

- A. Whether the Draft Permit is protective of water quality, including the protection of existing uses in the receiving waters, aquatic life, animal life, and the requester’s and their families’ health, in accordance with applicable regulations including TSWQS;
- B. Whether the Draft Permit complies with applicable antidegradation requirements;

---

<sup>20</sup> Admin. Record, Tab C at 0027-28.

- C. Whether the Draft Permit adequately addresses nuisance odor in accordance with 30 Texas Administrative Code § 309.13; and
- D. Whether Applicant substantially complied with applicable notice requirements.

**A. WATER QUALITY & ANTIDegradation**

The Facility’s proposed discharge is subject to the TSWQS found in title 30, chapter 307 of the Texas Administrative Code. The TSWQS identify appropriate uses for the state’s surface waters (e.g., aquatic life, recreation, and public water supply), and establish narrative and numerical water quality standards to protect those uses. The TCEQ has standard procedures for implementing the TSWQS, referred to as the Implementation Procedures (IPs), which are approved by the United States Environmental Protection Agency (EPA).<sup>21</sup> The TSWQS and IPs are used in reviewing permit applications.

The TSWQS require that proposed wastewater discharges undergo an antidegradation review. Antidegradation review is divided into two tiers. Tier 1 requires that “[e]xisting uses and water quality sufficient to protect those existing uses must be maintained.”<sup>22</sup> “Existing use” is defined as “[a] use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.”<sup>23</sup> Tier 2 is more stringent and generally prohibits the lowering of water quality by more than a de minimis amount for waters that exceed

---

<sup>21</sup> 30 Tex. Admin. Code § 307.2(e).

<sup>22</sup> 30 Tex. Admin. Code § 307.5(b)(1).

<sup>23</sup> 30 Tex. Admin. Code § 307.3(a)(27).

fishable/swimmable quality, unless it can be shown that lowering is necessary for important economic or social development.<sup>24</sup>

TCEQ has not adopted numeric criteria for nutrients in streams and rivers, so they are evaluated based on the general narrative criteria for nutrients and the antidegradation rules. Among those narrative criteria are the requirements that surface waters must not be toxic to humans or terrestrial or aquatic life.<sup>25</sup> The general criteria also require DO concentrations sufficient to support existing, designated, presumed, and attainable aquatic life uses.<sup>26</sup>

## **1. Protestants' Evidence and Argument**

Citizens, Ellis County, and Mr. Miller (collectively, Protestants) argue that the Draft Permit is not protective of surface water and does not comply with applicable standards. Protestants' arguments on water quality fall into three main categories: (1) uncertainty as to the discharge route means Applicant cannot show the Draft Permit is sufficiently protective of the receiving waters; (2) the ED's water modeling is inadequate to show the Draft Permit complies with applicable antidegradation requirements; and (3) the Draft Permit is not sufficiently protective of the receiving waters, including aquatic and animal life and the health of neighboring landowners.

---

<sup>24</sup> 30 Tex. Admin. Code § 307.5(b)(2).

<sup>25</sup> 30 Tex. Admin. Code § 307.4(d). The TSWQS go on to specify that waters with existing aquatic life uses must not be chronically toxic to aquatic life, and must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals. 30 Tex. Admin. Code § 307.6(b)(2), (4).

<sup>26</sup> 30 Tex. Admin. Code § 307.4(h).

## a) Citizens

Citizens presented testimony from two of its members, both landowners who anticipate negative impacts from the Facility. Ms. Williams and her husband own 36 acres of property directly adjacent to where Applicant intends to construct the Facility, including approximately six acres of wetlands.<sup>27</sup> They reside there, and also use the property for recreation and agriculture.<sup>28</sup> Ms. Williams explained that the area along Brushy Creek is heavily wooded with varied wildlife, and farmers along the creek have cattle, goats, sheep, and horses.<sup>29</sup> The ponds on the Williamses' property are stocked with fish they eat, provide habitat for other natural wildlife, and are a water source for neighbors' cows and sheep. The Williamses also swim in their larger pond.<sup>30</sup> Gregory Crow owns and resides on an acre of property located approximately 0.36 miles from the proposed Facility and near Brushy Creek, where he and his wife enjoy spending time outdoors.<sup>31</sup>

Citizens argue there is substantial uncertainty as to the discharge route for effluent from the Facility, and that uncertainty means Applicant cannot show what the receiving waters are, let alone that the Draft Permit is sufficiently protective of them.<sup>32</sup> The Draft Permit describes the discharge route as flowing from the Facility

---

<sup>27</sup> Ex. CRD-100 at 3, 6 (Williams Direct).

<sup>28</sup> Ex. CRD-100 at 6 (Williams Direct).

<sup>29</sup> Ex. CRD-100 at 6, 9-10 (Williams Direct).

<sup>30</sup> Ex. CRD-100 at 7 (Williams Direct).

<sup>31</sup> Ex. CRCD-200 at 3-4 (Crow Direct).

<sup>32</sup> Citizens Closing at 5-6.

“to a pond, thence to an unnamed tributary, thence to a second order unnamed tributary, thence to Brushy Creek, thence to Red Oak Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin.”<sup>33</sup> This differs from the discharge route described in the Application and the Notice of Receipt of Application and Intent to Obtain a Permit (NORI), neither of which mentioned the two unnamed tributaries between the pond and Brushy Creek, and both of which suggested that the effluent would travel by pipe to the creek.<sup>34</sup> According to Citizens, there is scant evidence to show why the ED changed the description during technical review.<sup>35</sup> ED witness Dr. Wallace addressed the technical review process, testifying that applications:

sometimes [are] turned in with one concept in mind, and then through [ ] the technical reviews and before the draft permit gets written, things evolve, waterbodies are found, discharge routes are filled in because of our diligent work that we do at the state. And we go back to the Applicant, and we’re like, well, you know, we see a pond we see a tributary. Is that what you intended? And they’ll just answer back, “yeah, yeah, that’s what I want” because they want a permit.<sup>36</sup>

Citizens argue that the process described by Dr. Wallace is at odds with the TCEQ Commissioners’ recent statements that “[i]t is TCEQ’s policy not to issue TPDES permits if a proposed discharge route has been identified incorrectly” and

---

<sup>33</sup> Admin. Record, Tab C at 0031.

<sup>34</sup> Admin. Record, Tab D at 0009 (Application provided “the plant will discharge treated effluent through an 18 [inch] pipe to the existing stock pond, which discharges to Brushy Creek, Red Oak Creek, then to the Trinity River, through Lake Livingston, and finally to Trinity Bay”); Admin. Record, Tab B at 0082 (NORI stated that “[t]he discharge route will be from the plant site via pipe to Brushy Creek; thence to Red Oak Creek; thence to Upper Trinity River.”).

<sup>35</sup> Citizens Closing at 6-7.

<sup>36</sup> Tr. at 99 (Wallace Cross).

that “[t]he ED’s policy is not to perform a technical review ... if a proposed discharge route in a TPDES permit application has been identified incorrectly.”<sup>37</sup>

Adding to the purported confusion, Citizens point out that Applicant answered “no” where the Application asked if the receiving waters change characteristics within three miles downstream of where effluent will be discharged into the pond,<sup>38</sup> which cannot be true since the different segments of the discharge route have their own assigned uses and associated criterion. And in completing the Receiving Water Assessment Form, ED witness Dr. Wallace described the discharge route only as “via pipe to Brushy Creek” without mentioning the stock pond and tributaries that connect the stock pond to Brushy Creek.<sup>39</sup> Some of the site illustrations in the Application also do not show how the effluent will move from the pond to Brushy Creek, Citizens argue.<sup>40</sup>

Citizens also contend that the Application shows effluent crossing the Williamses’ property in a manner that no watercourse actually follows, with the Application showing a purported path flowing south from their stock pond, straight down through one of the Williamses’ parcels, and into Brushy Creek.<sup>41</sup> Ms. Williams testified that effluent cannot enter Brushy Creek from the pond without crossing her

---

<sup>37</sup> Citizens Response at 6-7; *citing Application by HK Real Estate Development, LLC for New TPDES Permit No. WQ0016150001*, TCEQ Docket No. 2023-0385-MWD, SOAH Docket No. 582-23-21878, Final Order, Findings of Fact No. 80, 90 (May 7, 2025).

<sup>38</sup> Admin. Record, Tab D at 0054.

<sup>39</sup> Ex. ED-11 (Wallace Direct) at 6; Ex. ED-17.

<sup>40</sup> Citizens Closing at 8-11; Admin. Record, Tab D at 0069, 0110.

<sup>41</sup> Admin. Record, Tab D at 0100-01.

land, but there are no existing channels on her property that she recognizes as tributaries; rather, the effluent would just “spill out over my hayfield before making its way into Brushy Creek.”<sup>42</sup> Further, Citizens argue, because no representative of Applicant or the ED ever visited the Williamses’ property or personally observed this part of the purported discharge route, there is no evidence to refute Ms. Williams’s testimony that there is “no defined, existing tributary of any kind in that location.”<sup>43</sup> Citizens contend that without a tributary with beds and banks, there is no watercourse across the Williams’s property, and TCEQ lacks authority to permit wastewater discharge into waters that are not part of a watercourse.<sup>44</sup>

Citizens also argue that the Draft Permit will not be sufficiently protective of the water quality in the receiving waters. Ms. Williams believes that her hayfield would be frequently inundated by the discharge running below the pond, which would threaten access to portions of her land.<sup>45</sup> She explained that Brushy Creek sometimes spills its banks during heavy or sustained rains.<sup>46</sup> Similarly, the ponds on her property become inundated when the creek overflows, a problem she fears would be exacerbated by an additional 0.25 MGD of discharge from the facility.<sup>47</sup> She is concerned that discharge from the Facility would contaminate her land and the hay

---

<sup>42</sup> Ex. CRD-100 at 4 (Williams Direct).

<sup>43</sup> Citizens Closing at 21-22.

<sup>44</sup> Citizens Closing at 22-23; Tex. Water Code § 26.001(5) (defining “water” and “water in the state” to include “the beds and banks of all watercourses and bodies of surface water”).

<sup>45</sup> Ex. CRD-100 at 14-15 (Williams Direct). At the hearing, Ms. Williams specified that her hayfield had had been inundated three times so far in 2025, and five times the year before. Tr. at 20 (Williams Cross).

<sup>46</sup> Ex. CRD-100 at 10, 12 (Williams Direct).

<sup>47</sup> Ex. CRD-100 at 13, 14 (Williams Direct).

they cultivate, cause erosion, and generally pose a risk to the crops and animals on the Williamses' property.<sup>48</sup> Like Ms. Williams, Mr. Crow also fears discharge from the Facility would overwhelm Brushy Creek, which he testified has a record of flooding during big rain events.<sup>49</sup>

Ms. Williams also expressed concern that wastewater discharge from the Facility would harm her health. She has a progressive lung condition that has already caused her permanent lung damage and fears that effluent flowing across her property might contain aerosolized chemicals that would endanger her health.<sup>50</sup> She is also concerned that discharge from the Facility would contaminate the pond and make fish caught there unsafe to eat.<sup>51</sup> Likewise, Mr. Crow testified to his concern that discharge from the Facility could impact his and his wife's health, as well as the health of livestock and wildlife that drink from local ponds and Brushy Creek.<sup>52</sup>

Citizens also dispute whether the ED used the appropriate aquatic life use designation for Brushy Creek. The ED determined that Brushy Creek has limited aquatic life use,<sup>53</sup> while Citizens argues that Ms. Williams's testimony—where she described “richness of species” including perch, bass, frogs, and turtles in the

---

<sup>48</sup> Ex. CRD-100 at 9, 12-13,16 (Williams Direct).

<sup>49</sup> Ex. CRCD-200 at 4-5 (Crow Direct).

<sup>50</sup> Ex. CRD-100 at 16 (Williams Direct).

<sup>51</sup> Ex. CRD-100 at 16 (Williams Direct).

<sup>52</sup> Ex. CRCD-200 at 4, 6 (Crow Direct).

<sup>53</sup> Exs. ED-13, ED-14.

creek—shows that Brushy Creek should be designated as having intermediate aquatic life use, not limited.<sup>54</sup>

Finally, Citizens dispute whether the ED’s modeling in support of the Draft Permit was reliable and adequately conservative. Citizens’ arguments about water modeling echo those made by Ellis County, addressed below.

### **b) Ellis County**

Ellis County, joined by Citizens, contends that the ED’s water quality analysis is not accurate and therefore does not show that the Draft Permit is protective of water quality and existing uses in accordance with applicable regulations, including TSWQS.

Ellis County presented expert testimony from Peter Zamora, who conducted water quality modeling to assess the impact discharge from the Facility would have on DO concentration in the receiving waters. He explained that the receiving waters here are a pond; an unnamed tributary that drains from the pond (the first unnamed tributary); a second-order unnamed tributary that drains from the first tributary into Brushy Creek (the second unnamed tributary); then Brushy Creek, Red Oak Creek, and the Upper Trinity River.<sup>55</sup> TSWQS standards provide that to protect waters with limited aquatic life use—such as the pond, first unnamed tributary, and Brushy

---

<sup>54</sup> Citizens Closing at 29.

<sup>55</sup> Protestant Ex. 1 at 8 (Zamora Direct). Of these water bodies, only the Trinity River is listed as impaired by TCEQ. Ex. ED-3 at 9 (Lu Direct).

Creek—DO concentration must be maintained at a mean level of 3.0 mg/L.<sup>56</sup> Dr. Zamora had several criticisms of TCEQ's modeling, which he believes overstated DO levels in the pond and the two unnamed tributaries on the discharge route.

First, Dr. Zamora explained that TCEQ used a QUAL-TX model to evaluate DO concentration for this Application, but he considers a Continuously Stirred Tank Reactor (CSTR) model to be more conservative and appropriate for the pond at the start of the discharge route, given its hydrodynamics.<sup>57</sup> According to Dr. Zamora, QUAL-TX assumes that waters are flowing along a linear pathway, making it suitable for analyzing streams or narrow ponds. Here, however, the pond's geometry is triangular and wide.<sup>58</sup> In such a pond, waters do not flow on a direct path to a discharge point, but instead will mix and spread before flowing out, creating more opportunity for biochemical processes to occur than in a flowing stream.<sup>59</sup> The CSTR model prioritizes mixing, Dr. Zamora explained, rather than treating the pond as if it were a segment of a river, as QUAL-TX does.<sup>60</sup> Using a CSTR model, Dr. Zamora found the outflow from the pond would have a DO concentration of

---

<sup>56</sup> 30 Tex. Admin. Code § 307.7(b)(3)(A)(i).

<sup>57</sup> Protestant Ex. 1 at 8 (Zamora Direct).

<sup>58</sup> Protestant Ex. 1 at 10-11 (Zamora Direct); Tr. at 28-29 (Zamora Cross).

<sup>59</sup> Protestant Ex. 1 at 11 (Zamora Direct); Tr. at 29 (Zamora Cross).

<sup>60</sup> Protestant Ex. 1 at 11 (Zamora Direct); Tr. at 30 (Zamora Cross).

2.82 mg/L, a value lower than the 3.0 mg/L the TCEQ recommended for the ponded area in the Draft Permit.<sup>61</sup>

Second, Dr. Zamora felt that TCEQ's QUAL-TX modeling inaccurately relied on default hydraulic parameters that do not necessarily capture the actual hydraulic behavior—or how deep, wide, and fast water flows—of the receiving waters.<sup>62</sup> This resulted in higher predicted DO concentrations and higher rates of DO recovery along the two unnamed tributaries than Dr. Zamora calculated using his revised inputs.<sup>63</sup> When he modeled the Draft Permit's effluent limits with modified default parameters, Dr. Zamora arrived at a minimum DO concentration of 2.85 mg/L in the first unnamed tributary (compared to 2.93 mg/L calculated by TCEQ), and the value remained below 3.0 mg/L (the DO concentration provided in the Draft Permit) through the second unnamed tributary.<sup>64</sup>

Third, because default chemical kinetics parameters were used instead of site-specific information, TCEQ's modeling failed to consider how substrate and vegetation would influence sediment oxygen demand (SOD), an important parameter that can either increase or decrease the DO in the water, according to Dr. Zamora.<sup>65</sup> Organic material requires oxygen to decompose, so sediment

---

<sup>61</sup> Protestant Ex. 1 at 13 (Zamora Direct); Protestant Ex. 6. Dr. Zamora also acknowledged that TCEQ's guidance memos have an accepted tolerance of 0.2 mg/L for both CSTR and QUAL-TX models, and the 2.82 mg/L DO he calculated falls within that tolerance. Tr. at 43 (Zamora Cross).

<sup>62</sup> Protestant Ex. 1 at 10 (Zamora Direct).

<sup>63</sup> Protestant Ex. 1 at 12 (Zamora Direct).

<sup>64</sup> Protestant Ex. 1 at 13 (Zamora Direct); Protestant Ex. 7.

<sup>65</sup> Protestant Ex. 1 at 10-11 at (Zamora Direct); Tr. at 33 (Zamora Cross).

comprised of sand or bare rock would require little oxygen, but sediment with clay or silt would have more organic material and a much higher SOD value.<sup>66</sup> TCEQ's default value assumes sediment in the unnamed tributaries is sandy and has little organic material, assigning a default SOD value of 0.35 grams per square meter per day (g/m<sup>2</sup>d).<sup>67</sup> In his own analysis, Dr. Zamora used a value of 0.65 g/m<sup>2</sup>d, which he arrived at based on his review of field photographs and other references; these materials showed more vegetation density on the discharge route than the default value assumed, Dr. Zamora testified.<sup>68</sup> Using the higher value, Dr. Zamora's modeling showed a DO value in the first unnamed tributary of 2.72 mg/L, below the 3.0 mg/L the Draft Permit would require.<sup>69</sup>

Ellis County notes that TCEQ and Applicant could have collected site-specific data to better inform their modeling in February 2024, when they visited the site for the public meeting, but the ED's witnesses elected not to.<sup>70</sup> Mr. Rahim testified that he did not view any part of the discharge route while they were there, while Dr. Lu and Dr. Wallace said they viewed only the pond and the first unnamed tributary, but did not proceed further on the discharge route.<sup>71</sup> Instead of considering site-specific data, the ED relied on images from Google Earth and the United States Geological

---

<sup>66</sup> Tr. at 34 (Zamora Cross).

<sup>67</sup> Tr. at 33, 38 (Zamora Cross).

<sup>68</sup> Protestant Ex. 1 at 13 (Zamora Direct); Tr. At 37-38, 39-40 (Zamora Cross). Dr. Zamora explained that TCEQ guidance says that site-specific should be incorporated into the analysis if available, but default assumptions are used where there is "little to no" available data. Tr. at 32-33, 35 (Zamora Cross).

<sup>69</sup> Protestant Ex. 1 at 13 (Zamora Direct).

<sup>70</sup> Protestant Ellis County's Closing Argument (Ellis County Closing) at 4.

<sup>71</sup> Tr. at 60 (Rahim Cross), 80 (Lu Cross), 89-90 (Wallace Cross).

Survey's (USGS) geographical imaging system (GIS), and this undermined the reliability of their modeling assumptions, according to Ellis County.<sup>72</sup> The lack of site-specific data also undermined the ED's assumptions about what aquatic or terrestrial life exists in Brushy Creek, Ellis County argues. None of the ED's or Applicant's witnesses made any effort to determine what aquatic or terrestrial life actually existed on the discharge route, or how it would be affected by effluent from the Facility. Instead, their conclusions were based on presumed aquatic uses derived from the waters' default classifications. This demonstrates that the effect of the proposed discharge on aquatic and animal life has not been properly considered, Ellis County argues.<sup>73</sup>

**c) Mr. Miller**

Mr. Miller argues that, in approving the Draft Permit, the ED failed to examine several factors that should have been considered. For example, TSWQS section 307.1 establishes a policy to “maintain the quality of water in the state consistent with public health and enjoyment [and] propagation and protection of terrestrial and aquatic life,”<sup>74</sup> but Dr. Wallace's testimony suggests that the ED does not consider “propagation and protection of terrestrial and aquatic life” to be within the scope of its review of Applications like this one.<sup>75</sup> In fact, Dr. Wallace freely admitted that she

---

<sup>72</sup> Ellis County Closing at 4-5.

<sup>73</sup> Ellis County Closing at 6-7.

<sup>74</sup> 30 Tex. Admin. Code § 307.1.

<sup>75</sup> Tr. at 109-10 (Wallace Cross).

did not do any analysis of how the Draft Permit would impact terrestrial life, dismissing such considerations as “out of scope” for her review.<sup>76</sup>

Additionally, TSWQS section 307.4 provides that in surface waters with waste discharges, the DO concentration must be sufficient “to support existing, designated, presumed, and attainable aquatic life uses.”<sup>77</sup> In concluding that the Draft Permit was sufficiently protective to meet this standard, Dr. Wallace said she considered only the presumed uses of the receiving waters, as determined by tables in the TCEQ’s IPs.<sup>78</sup> No one from the ED ever visited the site to determine the “existing” uses of the receiving waters,<sup>79</sup> and Dr. Wallace affirmed that she did not review any evidence of existing aquatic or terrestrial animal life.<sup>80</sup> Dr. Wallace also dismissed “attainable” aquatic life uses as a “pie in the sky” standard.<sup>81</sup> According to Mr. Miller, by relying solely on presumed aquatic life uses, the ED “completely ignore[d]” the existing, designated, and attainable aquatic life uses, which should also have been considered under section 307.4(h).<sup>82</sup>

TSWQS section 307.4(i) requires that “[v]egetative and physical components of the aquatic environment must be maintained or mitigated to protect aquatic life

---

<sup>76</sup> Tr. at 119-20 (Wallace Cross).

<sup>77</sup> 30 Tex. Admin. Code § 307.4(h)(1).

<sup>78</sup> Tr. at 110-11, 15 (Wallace Cross).

<sup>79</sup> Tr. at 60 (Rahim Cross), 80 (Lu Cross), 89-90 (Wallace Cross).

<sup>80</sup> Tr. at 114 (Wallace Cross).

<sup>81</sup> Tr. at 119 (Wallace Cross).

<sup>82</sup> Closing Arguments of Protestant David Miller (Miller Closing) at 3.

uses.” Dr. Wallace testified that this standard was not directly addressed in the Draft Permit.<sup>83</sup> Further, wetlands are waters that the TSWQS are supposed to protect from degradation,<sup>84</sup> and even though Dr. Wallace acknowledged there are wetlands along Brushy Creek, she indicated the permitting process did not consider the effect the proposed discharge would have on those wetlands.<sup>85</sup> Dr. Wallace also acknowledged that US Fish and Wildlife Service (USFW) maps show eight different endangered species are found in the Brushy Creek Area, but she said that data was not considered when preparing the Draft Permit, which concludes the discharge will have no impact endangered species.<sup>86</sup>

Citing to Dr. Wallace’s testimony that the ED is understaffed,<sup>87</sup> Mr. Miller argues that the ED is stretched too thin to perform adequate reviews. Dr. Wallace estimated that she has reviewed between 1000 to 1500 TPDES applications in the last decade, a pace that Mr. Miller calculates would mean she completes a review every one to two workdays.<sup>88</sup> Mr. Miller argues that the scrutiny required by the TSWQS cannot be provided at that pace. Given Dr. Wallace’s testimony about how fast and cursory the reviews are, Mr. Miller argues that the most the ED can say “we did not find any problems [with the Application] because we did not look.”<sup>89</sup> But if

---

<sup>83</sup> Tr. at 131 (Wallace Cross).

<sup>84</sup> 30 Tex. Admin. Code § 307.2(b).

<sup>85</sup> Tr. at 116, 122 (Wallace Cross).

<sup>86</sup> Tr at 121-22 (Wallace Cross).

<sup>87</sup> Tr. at 124 (Wallace Cross).

<sup>88</sup> Tr. at 123-24 (Wallace Cross); Miller Closing at 8.

<sup>89</sup> Miller Closing at 7.

factors in the TSWQS were not even investigated, the Draft Permit cannot contain findings related to those issues.<sup>90</sup> This is not enough to show that the Draft Permit is protective of water quality, he argues.

## 2. ED's Evidence and Argument

The ED presented testimony from three witnesses: Dr. Wallace, an aquatic scientist; Dr. Lu, a water modeler; and Mr. Rahim, the permit writer. Dr. Wallace performed the water quality standards technical review for the Application, following TSWQS and TCEQ's IPs.<sup>91</sup> Dr. Wallace said that at the start of her review, in December 2022, she verified the discharge route between the pond and Brushy Creek by comparing what was described in the Application against USGS maps. This is when she identified the two unnamed tributaries on the discharge route and listed them on her Water Assessment Form.<sup>92</sup> This was before the technical review, she testified, and before the Application had been deemed administratively complete.<sup>93</sup> In her direct testimony, Dr. Wallace asserted that there had been no "variations in the description of the proposed discharge route" from the Application.<sup>94</sup> When questioned about this at the hearing, Dr. Wallace could not recall why the Application referred to the discharge going via pipe, but suggested that her peer reviewer might have caught the discrepancy between what was in the Application and what the maps

---

<sup>90</sup> Reply of Protestant David A. Miller to Closing Arguments at 3.

<sup>91</sup> Ex. ED-11 at 3-4 (Wallace Direct).

<sup>92</sup> Ex. ED-11 at 6 (Wallace Direct); Tr. at 85 (Wallace Cross).

<sup>93</sup> Ex. ED-11 at 6 (Wallace Direct); Tr. at 85 (Wallace Cross).

<sup>94</sup> Ex. ED-11 at 7 (Wallace Direct).

showed, and the two of them would have identified the correct waterbodies.<sup>95</sup> She added that the description of the discharge route has not changed since the worksheet was prepared in December 2022.<sup>96</sup>

After the water bodies were identified, Dr. Wallace then determined the uses for each of the receiving waters, based on their flow and after referring to USGS maps, GIS layers, and aerial images.<sup>97</sup> The pond, the two unnamed tributaries, Brushy Creek, and Red Oak Creek are all unclassified water bodies.<sup>98</sup> Pursuant to the IPs, the pond, the first unnamed tributary, and Brushy Creek were characterized as intermittent streams with perennial pools and assigned a “limited” aquatic life use. The second unnamed tributary was characterized as an intermittent stream with “minimal” aquatic life use, while Red Oak Creek was considered a perennial stream with a “high” aquatic life use designation.<sup>99</sup> Other than following the designations specified in the IPs, Dr. Wallace did not visit the site or undertake other research to determine what aquatic or terrestrial life was present.<sup>100</sup>

---

<sup>95</sup> Tr. at 86-88 (Wallace Cross).

<sup>96</sup> Ex. ED-11 at 6 (Wallace Direct); Ex. ED-17 (Receiving Water Assessment Form).

<sup>97</sup> Tr. at 106 (Wallace Cross).

<sup>98</sup> Ex. ED-11 at 4, 7 (Wallace Direct). There is sufficient information about classified water bodies to assign them an aquatic life and associated DO criterion, but unclassified water bodies are assigned presumed aquatic life uses and DO criteria based on their flow characteristics and other available data. Ex. ED-15 at 14.

<sup>99</sup> Ex. ED-11 at 7 (Wallace Direct).

<sup>100</sup> Tr. at 111 (Wallace Cross). The IPs are derived from historical studies and national data collected by EPA and TCEQ. Tr. at 113 (Wallace Cross).

With those designations, Dr. Wallace performed Tier 1 and Tier 2 antidegradation reviews to ensure that the designated uses would be maintained if the Facility was operating.<sup>101</sup> With the standard provisions included in all TPDES permits, the Draft Permit met Tier 1 review, Dr. Wallace testified, because those provisions ensure that existing uses and water quality sufficient to protect existing uses are maintained.<sup>102</sup> Her Tier 2 review, which is intended to ensure the permit would not cause degradation of waters that exceed fishable or swimmable quality, determined that existing uses would be maintained and protected in the Red Oak Creek and Upper Trinity River portions of the discharge route (those portions with high aquatic life uses).<sup>103</sup>

Dr. Wallace also performed a nutrient screen, which did not indicate that nutrient limits were needed. She determined that screenings of total dissolved solids, temperature, and pH were not needed.<sup>104</sup> To determine whether there is critical habitat for endangered or threatened aquatic or aquatic-dependent species in the vicinity of the discharge, Dr. Wallace referenced the USFW's 1998 biological opinion on the State of Texas TPDES authorization.<sup>105</sup> She also considered the wetlands on the discharge route. Dr. Wallace testified that the wetlands are presumed to have

---

<sup>101</sup> Ex. ED-11 at 7-8 (Wallace Direct).

<sup>102</sup> Ex. ED-11 at 8 (Wallace Direct).

<sup>103</sup> Ex. ED-11 at 8-9 (Wallace Direct); Ex. ED-13 (Water Quality Standards Memo).

<sup>104</sup> Ex. ED-11 at 9 (Wallace Direct); Tr. at 106-07 (Wallace Cross).

<sup>105</sup> Ex. ED-11 at 4-5 (Wallace Direct).

aquatic-dependent species as reflected by the “incidental fisheries” classification assigned to the pond, first tributary, and Brushy Creek.<sup>106</sup>

Dr. Wallace confirmed that her review was based on assigned classifications and presumed uses, not on personal observations of the site. She recalled making the site visit in February 2024, in connection with the public meeting, when the ED’s witnesses observed the pond and the first unnamed tributary.<sup>107</sup> And while her memory was “a little vague,” she thought they had walked far enough to see where the first unnamed tributary joined the second, though she did not think they had continued onto the Williamses’ property to follow the second tributary to Brushy Creek.<sup>108</sup> Still, these observations were not factored into her technical review. Dr. Wallace indicated that her responsibilities were limited to examining how presumed aquatic life (as assigned by the IPs for each water body) would be impacted by the proposed discharge. To the extent that TSWQS generally require permits to be protective of aquatic *and* terrestrial life, and of “existing, designated, presumed *and* attainable aquatic life uses,” consideration of anything other than presumed aquatic life is “not really in the scope of the permitting process,” according to Dr. Wallace, and would be beyond the scope of her review.<sup>109</sup>

ED witness Dr. Lu works for the Water Quality Assessment Team in the ED’s Water Quality Division. She performed DO water modeling for this Application,

---

<sup>106</sup> Tr. at 115-16.

<sup>107</sup> Tr. at 89 (Wallace Direct).

<sup>108</sup> Tr. at 89, 104.

<sup>109</sup> Tr. at 110, 113-16, 118-19.

following TCEQ's standard operating procedures (SOPs).<sup>110</sup> She testified that QUAL-TX modeling is widely used for reviewing TPDES permits and is approved by the EPA, and the model is appropriate for freshwater streams and rivers, some tidal water bodies, and small ponds or pools.<sup>111</sup> While conceding that CSTR models can also be used for modeling small ponds or pools, Dr. Lu identified three reasons she considered it more appropriate to use QUAL-TX for the pond on the Draft Permit's discharge route: (1) because the CSTR model has a size limitation guidance when the discharge is directly to the impounded water body, and the necessary data about the size of initial cells is lacking; (2) it is more efficient to use QUAL-TX for the pond when the QUAL-TX model has to be used for the rest of the discharge route, as well; and (3) QUAL-TX is theoretically a more realistic depiction of the minor dispersion that is occurring in the pond, while CSTR does not include any dispersion at all, which may be overly conservative.<sup>112</sup>

Dr. Lu explained that DO is a primary indicator of a water body's general biologic health and is essential for the survival of many forms of aquatic life, and DO modeling is used to develop effluent limits sufficient to maintain the applicable DO criteria for the receiving waters.<sup>113</sup> A DO model gives a mathematical prediction of water quality conditions that would occur under a given set of discharge and ambient

---

<sup>110</sup> Ex. ED-3 at 4, 13 (Lu Direct). The parties refer to two SOPs in this case: TCEQ's Methods for Analyzing Dissolved Oxygen in Freshwater Streams Using an Uncalibrated QUAL-TX Model (QUAL-TX SOP) and TCEQ's General Guidance for Modeling Review of Wastewater Permit Applications (Modeling Review SOP). *See* Exs. ED-8, ED-9.

<sup>111</sup> Ex. ED-3 at 6-7, 11-12 (Lu Direct). Dr. Lu also testified that there is no specific size for determining whether a pond is "small" or not, and the determination is in the water modeler's best judgment. Tr. at 71 (Lu Cross).

<sup>112</sup> Ex. ED-3 at 12, 16 (Lu Direct); Tr. at 71 (Lu Cross).

<sup>113</sup> Ex. ED-3 at 9-10 (Lu Direct).

environmental conditions, and modeling is a standard analytical tool for evaluating how wastewater discharge impacts water quality.<sup>114</sup> Here, based on Dr. Wallace's determination of the receiving waters' assigned uses, the assigned DO criteria are as follows: 3.0 mg/L for the pond and the first unnamed tributary; 2.0 mg/L for the second unnamed tributary; 3.0 mg/L for Brushy Creek; and 5.0 mg/L for Red Oak Creek.<sup>115</sup>

The water modeling analysis was designed to be protective, using conservative assumptions calculated to represent conditions when DO is typically at its minimum; actual stream conditions are likely to have a higher DO level than what the model predicts.<sup>116</sup> Dr. Lu said, consistent with the IPs and SOPs, she used standardized default hydraulic coefficients and generalized hydraulic equations in her modeling. These default values were developed by TCEQ using data collected during studies performed throughout the state.<sup>117</sup> To use non-default coefficients, the QUAL-TX SOP requires sufficient field-measured data on the water depths, stream width, velocity, and flow at different locations. Such data is rarely available for intermittent streams, and none was provided here.<sup>118</sup>

---

<sup>114</sup> Ex. ED-3 at 10 (Lu Direct).

<sup>115</sup> Ex. ED-3 at 10 (Lu Direct).

<sup>116</sup> Ex. ED-3 at 13, 16 (Lu Direct).

<sup>117</sup> Ex. ED-3 at 14, 17 (Lu Direct); Tr. at 74 (Lu Cross).

<sup>118</sup> Ex. ED-3 at 14 (Lu Direct); Tr. at 75, 77 (Lu Cross).

For the pond, Dr. Lu used GIS software and/or Google Earth to calculate the area and average water depth.<sup>119</sup> The QUAL-TX SOP provides that “it is acceptable to consider a model predicted [DO] that is up to a 0.20 mg/L below the criteria as being consistent with the criteria.”<sup>120</sup> Because Dr. Lu’s modeling predicted, for each phase, DO values within 0.20 mg/L of the 3.0 mg/L DO criterion assigned to the pond, the model predicts compliance with the 3.0 mg/L standard, meaning the Draft Permit will be protective to aquatic life use of the pond, she testified.<sup>121</sup>

Dr. Lu also disagreed with Dr. Zamora’s assumptions about the SOD in the first unnamed tributary. She used a value of 0.35 g/m<sup>2</sup>d, which is the value specified in the QUAL-TX SOP, and the SOP provides that the value should be modified only “if data is available for comprehensive calibration of the model.”<sup>122</sup> Dr. Lu asserted that here, there is no data for calibration so the SOD value should not be changed to 0.65 g/m<sup>2</sup>d as Dr. Zamora contended.<sup>123</sup> The ED also notes that, while Protestants seemingly fault Dr. Lu for not gathering site-specific data, Dr. Zamora also did not collect or apply any site-specific data in his DO modeling, other than two zoomed-in, vaguely identified photos of foliage that were included with the Application.<sup>124</sup> Dr. Zamora’s water modeling was no more precise or reliable than the ED’s, and both models yielded results for the pond showing DO levels within the threshold

---

<sup>119</sup> Ex. ED-3 at 15 (Lu Direct); Tr. at 77 (Lu Cross).

<sup>120</sup> Ex. ED-9 at 01100.

<sup>121</sup> Ex. ED-3 at 15 (Lu Direct).

<sup>122</sup> Ex. ED-3 at 17 (Lu Direct); Ex. ED-9 at 01098.

<sup>123</sup> Ex. ED-3 at 17018 (Lu Direct).

<sup>124</sup> ED Reply at 8; Admin. Record, Tab D at 00111-12.

established in the SOPs. This shows that Dr. Lu's water modeling was sufficiently conservative and reliable, the ED argues.<sup>125</sup>

Ultimately, all three ED witnesses believe that the Draft Permit is protective of water quality and complied with antidegradation requirements. Dr. Wallace asserted that her review correctly verified the proposed discharge point, correctly identified all of the receiving waters from the discharge point to the first classified segment, and correctly identified the designated uses and presumptive aquatic life uses for those receiving waters.<sup>126</sup> Therefore, she believes that the effluent limits in the Draft Permit complied with the applicable antidegradation requirements, and the effluent limits are protective of water quality.<sup>127</sup> Dr. Lu opined that, if Applicant operates the Facility according to the terms of the Draft Permit, the Draft Permit's DO limits will be sufficiently protective of water quality and the existing uses of the receiving waters.<sup>128</sup> She also said the Draft Permit will protect aquatic life but had no opinion on other wildlife.<sup>129</sup> Mr. Rahim also testified that he believes the Draft Permit contains provisions that are adequately protective of water quality, including all animal life (aquatic and terrestrial) and landowners' families' health; that the Draft Permit complies with the TCEQ's antidegradation requirements; and that the

---

<sup>125</sup> ED Reply at 8.

<sup>126</sup> Ex. ED-11 at 10-11 (Wallace Direct).

<sup>127</sup> Ex. ED-11 at 11 (Wallace Direct).

<sup>128</sup> Ex. ED-3 at 18 (Lu Direct).

<sup>129</sup> Ex. ED-3 at 18 (Lu Direct).

effluent limits in the Draft Permit will protect the uses and quality of the waters on the discharge route.<sup>130</sup>

The ED concedes that TSWQS require discharges to receiving waters to be nontoxic to all forms of life, and result in no impairments of existing, attainable, or designated uses. However, the ED argues that it has shown compliance with these standards by proving that the IPs—the regulatory guidance written specifically for permits to comply with TSWQS—were followed in reviewing the Application and drafting the Draft Permit.<sup>131</sup>

### **3. Applicant’s Rebuttal and Argument**

Applicant presented rebuttal testimony from Ernest To, who reviewed the water modeling performed by the ED’s and Ellis County’s witnesses and concluded that the Draft Permit was prepared in compliance with TCEQ’s modeling SOPs, complies with the TSWQS, and is adequately protective of surface water quality and the uses of the receiving waters.<sup>132</sup> He agreed with the ED’s modeling and disagreed with Dr. Zamora’s critique of that modeling.<sup>133</sup> Specifically, he disagreed with Dr. Zamora’s view that a CSTR model should have been used for the pond, arguing that for small impoundments, such as ponds with a clear flow direction, QUAL-TX

---

<sup>130</sup> Ex. ED-1 at 9-10 (Rahim Direct).

<sup>131</sup> Executive Director’s Closing Argument (ED’s Closing) at 5.

<sup>132</sup> Applicant Ex. 1 at 3 (To Rebuttal).

<sup>133</sup> Applicant Ex. 1 at 3-4 (To Rebuttal).

and CSTR models yield comparable, equally reliable results.<sup>134</sup> He considers it more practical and efficient to use the QUAL-TX model for the discharge route and opined that using CSTR for the pond and QUAL-TX for the free-flowing sections would add unnecessary complexity to the modeling process.<sup>135</sup> Dr. To also observed that the DO concentration Dr. Zamora calculated with the CSTR model (2.82 mg/L) is within the 0.20 mg/L tolerance listed in the TCEQ's SOPs for both CSTR and QUAL-TX models. Therefore, he disagreed with Dr. Zamora's opinion that the 2.82 mg/L is below the 3.0 mg/L the TCEQ recommended for the ponded area in the Draft Permit.<sup>136</sup>

Dr. To also opined that it would be inconsistent with the SOPs to use a SOD value of 0.65 g/m<sup>2</sup>d for the first unnamed tributary, as suggested by Dr. Zamora. According to Dr. To, the SOPs specify an SOD of 0.35 g/m<sup>2</sup>d for free-flowing reaches and allow modification only with comprehensive calibration data that Dr. Zamora did not have.<sup>137</sup> Although Dr. To admits that he prefers to rely on site-specific data in principle, he did not agree with the assumptions Dr. Zamora drew from field photographs, which he described as “two unlocated photographs without

---

<sup>134</sup> Applicant Ex. 1 at 5 (To Rebuttal). At the hearing, he explained that “underneath the hood,” the QUAL-TX model essentially treats each segment along a stream or river as a CSTR, so when there is a definite direction of flow, “it’s equally valid to use the QUAL-TX and CSTR model because the underlying mathematical foundation is the same.” Tr. at 51-52 (To Cross).

<sup>135</sup> Applicant Ex. 1 at 5 (To Rebuttal). Dr. To added that QUAL-TX is not appropriate for large reservoirs—typically those exceeding 10 acres with open water and unclear patterns—but the pond here is well below that threshold. Applicant Ex. 1 at 5 (To Rebuttal); Tr. at 49-50 (To Cross).

<sup>136</sup> Applicant Ex. 1 at 6 (To Rebuttal).

<sup>137</sup> Applicant Ex. 1 at 6-7 (To Rebuttal).

measurements” that depict pre-discharge conditions.<sup>138</sup> These photographs do not establish that Dr. Zamora’s model is more reliable than TCEQ’s, and without site-specific data, TCEQ staff followed the SOPs in using default hydraulic parameters.<sup>139</sup>

Applicant argues that Dr. To’s testimony, taken together with the testimony of the ED’s witnesses summarized above, confirms that QUAL-TX was an appropriate model to use for the pond, and that the ED’s modeling appropriately relied on default parameters.<sup>140</sup> Applicant also asserts that Ms. Williams and Mr. Crow’s generalized concerns that the Facility could impact water quality, or Ms. Williams’s health, is insufficient to overcome the prima facie demonstration that the Draft Permit is sufficiently protective of their health and complies with applicable antidegradation requirements.<sup>141</sup>

#### **4. OPIC’s Argument<sup>142</sup>**

OPIC expressed some discomfort with the QUAL-TX model’s reliance on default hydraulic parameters, but ultimately felt that using QUAL-TX was consistent with TCEQ’s Modeling Review SOP, which provides that small in-channel ponds

---

<sup>138</sup> Applicant Ex. 1 at 7 (To Rebuttal).

<sup>139</sup> Applicant Ex. 1 at 7 (To Rebuttal).

<sup>140</sup> Clear Utilities, LLC’s Closing Argument (Applicant Closing) at 3-6.

<sup>141</sup> Applicant Closing at 6; Applicant Reply at 6.

<sup>142</sup> OPIC’s closing argument addressed only whether the Draft Permit is adequately protective of water quality and did not address the other Referred Issues or party arguments, though it asserts Applicant has met its burden on all issues. Office of Public Interest Counsel’s Closing Argument (OPIC Closing) at 4.

might be amenable to QUAL-TX model analyses while “[s]ignificant ponds, lakes, reservoirs and portions of larger open water bodies” are better suited to the CSTR model.<sup>143</sup> After reviewing the testimony and images in the record, OPIC concluded that no pond along the discharge route should be considered “significant.”<sup>144</sup> Therefore, OPIC disagreed with Dr. Zamora’s opinion that CSTR should have been used instead of QUAL-TX for modeling the DO concentration of the pond.

OPIC also pointed out that Dr. Zamora had conceded the lower DO concentrations calculated by his CSTR model were still within the 0.2 mg/L tolerance allowable under both the CSTR and QUAL-TX standard operating procedures.<sup>145</sup> Therefore, OPIC concluded that a preponderance of the evidence shows that the DO modeling was appropriate, and the Draft Permit will be adequately protective of water quality.<sup>146</sup>

## **5. ALJ’s Analysis**

### **d) Certainty of Discharge Route Description**

Citizens argues that there is too much “uncertainty” regarding the path of the discharge route to conclude that the Draft Permit will be adequately protective of the receiving waters.

---

<sup>143</sup> Ex. ED-8 at 4. TCEQ’s Methods for Analyzing Dissolved Oxygen in Freshwater Streams Using an Uncalibrated QUAL-TX Model (QUAL-TX SOP) also instructs that site-specific measurements should be scrutinized for consistency, precision, and quantity before they are used over default parameters. Ex. ED-9 at 3.

<sup>144</sup> OPIC Closing at 8-9.

<sup>145</sup> Tr. at 42-45 (Zamora Cross).

<sup>146</sup> OPIC Closing at 9.

While the Application described a different route and method than is stated in the Draft Permit, it does not follow that there remains any uncertainty regarding the discharge route. Dr. Wallace described how, prior to the technical review, she consulted USGS maps, GIS layers, and aerial images to identify the water bodies on the discharge route and refine the route described in the Application. Consistent with her determination, the Draft Permit states that effluent from the Facility will flow from the pond to an unnamed tributary, then to a second unnamed tributary, then to Brushy Creek and Red Oak Creek, and finally to the Upper Trinity River. Ms. Williams offered her layperson opinion that the second tributary may not exist, but the fact that she does not recognize any tributary where water runs through her hayfield is not sufficient to overcome the ED’s evidence of a second-order unnamed tributary there.

Citizens also suggests that the discharge route in the Draft Permit should be disregarded because it differs from the route described in the Application (“through an 18” pipe to the existing stock pond, which discharges to Brushy Creek...”).<sup>147</sup> In support, Citizens points to the Commission’s order denying an application by HK Real Estate Development for a TPDES permit.<sup>148</sup> In that case, the applicant had revised the proposed discharge route *during the hearing*, and the revised route had not been reviewed by Commission Staff. In the order, the Commission explained that “[i]t is TCEQ’s policy not to issue TPDES permits if a proposed discharge route has

---

<sup>147</sup> Admin. Record, Tab D at 00009.

<sup>148</sup> *Order Denying the Application by HK Real Estate Development, LLC for New Texas Pollutant Discharge Elimination System Permit No. WQ0016150001*, SOAH Docket No. 582-23-21878, TCEQ Docket No. 2023-0385-MWD (May 7, 2025).

been identified incorrectly,” and that “the ED’s policy is not to perform a technical review, including water quality analysis, if a proposed discharge route in a TPDES permit application has been identified incorrectly.”<sup>149</sup> The Commission also stated that “if an applicant has identified the proposed discharge route incorrectly ... after technical review has been performed,” then the ED’s policy would require the applicant to revise the application before another technical review is undertaken.<sup>150</sup>

Citizens’ reliance on *HK Real Estate* is inapt because here, the discharge route was identified and more precisely defined *prior to* the technical review and before the water quality analysis. In other words, unlike *HK Real Estate*, the discharge route in the Draft Permit is the same discharge route that has been analyzed by the ED’s witnesses and Protestant’s. The evidence does not support Citizens’ suggestion that there is room for confusion about what the receiving waters are or whether they were examined during technical review. Citizens has not rebutted the presumption that the discharge route is correctly described in the Draft Permit.

### e) **Water Modeling**

The Protestants argue that the ED’s water modeling was insufficiently conservative and does not show that the Draft Permit will meet TSWQS and antidegradation requirements and be protective of water quality.

---

<sup>149</sup> *Order Denying the Application by HK Real Estate Development, LLC for New Texas Pollutant Discharge Elimination System Permit No. WQ0016150001*, Findings of Fact (FOFs) 75, 78-80, 90.

<sup>150</sup> *Order Denying the Application by HK Real Estate Development, LLC for New Texas Pollutant Discharge Elimination System Permit No. WQ0016150001*, FOF 91.

First, Ellis County and Citizens contend that the ED's QUAL-TX model was not sufficiently conservative and a CSTR model should have been used for modeling the pond instead. However, the evidence shows that the ED followed TCEQ's SOPs and IPs in using the QUAL-TX model. Moreover, Dr. Lu testified to several reasons she considers the QUAL-TX model to be just as appropriate, if not more so, than CSTR, and Dr. To testified that the two models would yield comparable, equally reliable results for the pond. Indeed, when the accepted 0.20 mg/L tolerance is taken into consideration, both the CSTR and QUAL-TX models predicted compliance with the 3.0 mg/L DO criterion, meaning the Draft Permit will be protective to aquatic life use of the pond.

Protestants also fault the ED for using default hydraulic parameters in modeling for the two unnamed tributaries, arguing that site-specific data should have been collected and used. The QUAL-TX SOPs instruct that, “[t]o the extent that site-specific information is readily available, it should be incorporated into the analysis to improve the predictive ability of the model,”<sup>151</sup> but otherwise, the IPs and SOPs provide that default parameters should be used. The IPs and SOPs do not impose an affirmative requirement for the ED's technical reviewers to search for and collect site-specific data, and none was provided by Applicant, save for two photographs of some unidentified vegetation. Accordingly, it was appropriate for Dr. Lu to rely on default hydraulic coefficients and generalized hydraulic equations in her modeling.

---

<sup>151</sup> Ex. ED-9 at 1095 (emphasis added).

Finally, Protestants challenge the SOD value that Dr. Lu used, citing the opinion of Ellis County's expert, Dr. Zamora, that the photos show the unnamed tributaries have more vegetation density than reflected in the default value, which supports a higher SOD value. Using a SOD value of 0.65 g/m<sup>2</sup>d instead of the 0.35 g/m<sup>2</sup>d Dr. Lu used, Dr. Zamora's model calculated a DO outside the tolerance range for the 3.0 mg/L the Draft Permit would require. However, Dr. Lu and Dr. To both explained that the default value of 0.35 g/m<sup>2</sup>d is set out in the QUAL-TX SOP, which also states that the default should be modified only if there is comprehensive data available to calibrate the model. The ALJ finds that the photographs Dr. Zamora looked at are not sufficiently detailed to support calibration or deviation from the default.

#### **f) Protectiveness of Receiving Waters**

Finally, Protestants dispute whether the Draft Permit is protective of the receiving waters, aquatic and animal life, and the health of the people who live near the discharge route.

Ms. Williams and Mr. Crow expressed fears that the effluent will pollute their ponds and land, posing a risk to their animals and crops and impeding their recreational enjoyment of the properties. Ms. Williams also expressed concern that "aerosolized chemicals" from the effluent could aggravate her lung condition. Ms. Williams's and Mr. Crow's generalized concerns that the Facility could impact water quality or Ms. Williams's health are insufficient to overcome the prima facie demonstration that the Draft Permit is sufficiently protective of their health and complies with applicable antidegradation requirements.

Ms. Williams also believes that her observations of the animals in or near Brushy Creek—including bass, perch, minnows, turtles, snakes, frogs, and migratory birds—believe the ED’s designation of Brushy Creek having limited aquatic life. Protestants fault the ED for relying on presumed aquatic life use (which is “limited”) instead of visiting the site or otherwise researching actual, existing aquatic life uses. However, the ED followed the IPs in assigning presumed aquatic life uses for the unclassified waters.

Relatedly, Mr. Miller argues that the ED’s technical review failed to examine a number of factors and policies that should have been considered in accordance with TSWQS. For example, he cites to the TSWQS requirement to maintain DO concentrations sufficient to support “existing, designated, presumed, and attainable aquatic life uses,”<sup>152</sup> and argues that the ED’s reliance on default parameters and presumed uses ignores existing and attainable aquatic life uses, which should also have been evaluated.<sup>153</sup> Even if the ALJ agreed that the ED is not addressing all pertinent TSWQS in its review of TPDES applications, it does not follow that the Application must be denied. That is because the Legislature has specified that the Draft Permit is entitled to a prima facie presumption that it meets all applicable legal and technical requirements and will be adequately protective of public health and the environment.<sup>154</sup> It is not enough for Protestants to say that the presumption is unfounded; instead, the statute requires them to rebut the prima facie presumption with evidence that demonstrates one or more provisions in the Draft Permit violate

---

<sup>152</sup> 30 Tex. Admin. Code § 307.3(h).

<sup>153</sup> Miller Closing at 3-5.

<sup>154</sup> Tex. Gov’t Code § 2003.047(i-1).

a specifically applicable state or federal requirement.<sup>155</sup> In layman’s terms, Protestants cannot just say “the ED should have looked at this,” they must offer evidence showing “here is what the ED missed.” Protestants’ general concerns with the cursory nature of the technical review are not sufficient to rebut the prima facie demonstration.

For the foregoing reasons, the ALJ concludes that on referred issues A and B, Protestants did not present evidence sufficient to rebut the prima facie demonstration that the Draft Permit is protective of water quality in accordance with applicable regulations including the TSWQS, and that it complies with applicable antidegradation requirements.

## **B. NUISANCE ODORS**

TCEQ’s siting rule provides three alternative ways to meet the requirement to abate and control nuisance odor “prior to construction.” The three methods are buffer zones from the nearest property line (500 feet for lagoons with anaerobic activity, 150 feet for all other wastewater treatment plant units); a nuisance odor prevention request in the form of an engineering report containing specific elements; or evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant.<sup>156</sup> The rule provides that a nuisance odor

---

<sup>155</sup> Tex. Gov’t Code § 2003.047(i-2).

<sup>156</sup> 30 Tex. Admin. Code § 309.13(e).

prevention plan may be submitted either with a permit application or “submitted for [ED] approval after the permitting process is completed.”<sup>157</sup>

### **1. Citizens’ Evidence and Argument<sup>158</sup>**

Both of Citizens’ witnesses testified to concerns about odors. Mr. Crow described “odor conditions” as his greatest concern with the Facility because strong prevailing winds will blow from the Facility towards his home, and sewage odors might impact his health and limit his and his wife’s ability to use and enjoy their property.<sup>159</sup> Ms. Williams also fears odors from the Facility could impact her enjoyment of her property and her health. She testified that her lung condition means she is particularly affected by strong odors, which cause her to cough and have trouble breathing.<sup>160</sup>

Citizens argue that the record is “unclear on the details” for how Applicant will comply with the buffer-zone requirement.<sup>161</sup> The Application states the Facility will have a restrictive easement in the buffer zone<sup>162</sup> while the ED’s Technical Summary said odors will be controlled through Applicant’s ownership of the required buffer zone.<sup>163</sup> And the ED’s Response to Comments said odors would be

---

<sup>157</sup> 30 Tex. Admin. Code § 309.13(e)(2).

<sup>158</sup> Protestants Ellis County and Mr. Miller did not contest this issue.

<sup>159</sup> Ex. CRCD-200 at 4, 5-6 (Crow Direct).

<sup>160</sup> Ex. CRD-100 at 16-17 (Williams Direct).

<sup>161</sup> Citizens Closing at 2.

<sup>162</sup> Admin. Record, Tab. D at 0017.

<sup>163</sup> Admin. Record, Tab C at 0028.

controlled through a chlorine disinfection method which “can eliminate certain noxious odors during disinfection,<sup>164</sup> but those plans are “stated only briefly and slightly differently in elements of the administrative record.”<sup>165</sup> Citizens contend that these representations are inadequate to meet Applicant’s burden of showing odors will be adequately controlled.<sup>166</sup>

## **2. ED’s Evidence and Argument**

ED witness Mr. Rahim testified that the Facility will comply with buffer zone requirements through ownership, and will use chemical disinfection with chlorine in all phases of the Draft Permit.<sup>167</sup> According to Mr. Rahim, chlorine is one of the most practical and effective means of disinfection available and can eliminate certain noxious odors during disinfection. In his opinion, these measures are sufficient to ensure the Draft Permit adequately addresses nuisance odor.<sup>168</sup> The ED argues that Citizens presented no credible testimony to the contrary.<sup>169</sup>

## **3. Applicant’s Rebuttal and Argument**

Applicant argues that the general concerns about odors expressed by Ms. Williams and Mr. Crow are insufficient to rebut the prima facie demonstration

---

<sup>164</sup> Admin. Record, Tab C at 0094.

<sup>165</sup> Citizens Closing at 37.

<sup>166</sup> Citizens Closing at 35-37; Citizens Response at 13-14.

<sup>167</sup> Ex. ED-1 at 10 (Rahim Direct).

<sup>168</sup> Ex. ED-1 at 10 (Rahim Direct).

<sup>169</sup> ED Closing at 6.

that the Draft Permit adequately addresses nuisance odor.<sup>170</sup> Applicant also disputes that the nuisance odor plan is insufficiently detailed, arguing that slight differences in how the plan is described do not demonstrate the plan is inadequate.<sup>171</sup> Applicant points to the testimony of ED Witness Mr. Rahim—who opined that the Draft Permit will adequately control nuisance odors through ownership of the buffer zone, and through chemical disinfection using chlorine in all phases of the Draft Permit—and argues that none of the Protestants’ witnesses have called his opinion into doubt.<sup>172</sup>

#### 4. ALJ’s Analysis

The referred issue asks whether the Draft Permit complies with the odor abatement and control requirements set out in 30 Texas Administrative Code section 309.13. That rule expressly provides that an applicant will comply with the requirement to abate and control nuisance odors if it holds “legal title ... to a contiguous tract of land necessary to meet” the buffer zone requirements.<sup>173</sup> The Draft Permit provides that Applicant will own the buffer zone area, and Citizens has not presented any evidence to the contrary.

Ms. Williams and Mr. Crow expressed concern about nuisance odors, but they presented no expert testimony or any other evidence about odors. And while Citizens suggest there is insufficient detail to determine whether Applicant’s plans for

---

<sup>170</sup> Applicant Closing at 7-8.

<sup>171</sup> Clear Utilities, LLC’s Reply to Protestants’ Closing Arguments (Applicant Reply) at 6-7.

<sup>172</sup> Applicant Closing at 8; Applicant Reply at 7; Ex. ED-1 at 10-11 (Rahim Direct).

<sup>173</sup> 30 Tex. Admin. Code § 309.13(e)(1).

chlorine disinfection will sufficiently control odors, section 309.13(e)(2) does not require more detail at this juncture. The rule allows Applicant to wait until “after the permitting process is completed” to submit a nuisance odor prevention request to the ED for approval.<sup>174</sup> On Referred Issue C, the ALJ concludes that Citizens has not presented any basis to rebut the prima facie presumption that the Draft Permit adequately addresses nuisance odor in accordance with 30 Texas Administrative Code section 309.13.

### C. NOTICE

When an application for a wastewater permit has been filed and deemed administratively complete, TCEQ must give notice of the application to any person who may be affected by the granting of the permit.<sup>175</sup> TCEQ rules provide that notice must be given when the ED issues both the NORI and the Notice of Application and Preliminary Decision (NAPD), and the rules specify how those notices must be mailed and published.<sup>176</sup>

Among other details, public notice of the NORI and the NAPD are each required to include a “brief description of the location and nature of the proposed activity,” along with contact information for where an interested person can obtain

---

<sup>174</sup> 30 Tex. Admin. Code § 309.13(e)(2).

<sup>175</sup> Tex. Water Code §§ 5.115(b), 26.028.

<sup>176</sup> 30 Tex. Admin. Code §§ 39.418, .419, .551.

further information about the application.<sup>177</sup> Notice may be combined to satisfy more than one applicable notice requirement.<sup>178</sup>

## 1. Citizens' and Miller's Evidence and Argument<sup>179</sup>

Citizens and Mr. Miller argue that notice was insufficient in this case because the Application and initial public notice described a different discharge route than is stated in the Draft Permit. The Application and NORI both indicated the discharge would flow from the Facility to Brushy Creek by pipe, with no mention of the two unnamed tributaries in between.<sup>180</sup> This language was echoed in the notices published in English in *The Ellis County Press* on March 9, 2023, and in Spanish in *Al Día*, on March 22, 2023, informing the public that the Application had been filed.<sup>181</sup>

It was only during technical review that ED staff changed the description of the discharge route to reference the two unnamed tributaries, and to omit reference to a pipe, and the Application was never amended to reflect or explain this change. Ms. Williams testified that the notices “have been confusing with respect to the

---

<sup>177</sup> 30 Tex. Admin. Code § 39.411(b)(1)-(3), (c)(1), (d)(1).

<sup>178</sup> 30 Tex Admin. Code § 39.405(d).

<sup>179</sup> Ellis County did not challenge notice.

<sup>180</sup> Admin. Record, Tab B at 0082, Tab D at 0009. Citizens argues a further ambiguity in these descriptions, noting that the Application referred to discharge flowing by pipe to “the existing stock pond, which discharges to Brushy Creek,” while the NORI described the discharge route as running from “the plant site via pipe to Brushy Creek.” Citizens suggests the differing descriptions could have created confusion about whether the pond was part of the route and, if so, where it was located. Citizens Closing at 38.

<sup>181</sup> Admin. Record, Tab at 0075-78.

discharge route.”<sup>182</sup> Citizens argue that “confusing and different descriptions” of the discharge route render notice substantially defective.<sup>183</sup> Mr. Miller asserts that the conflicting descriptions could have caused a “chilling effect” on public participation.<sup>184</sup>

## 2. ED’s Evidence and Argument

The ED presented testimony of Mr. Rahim, the permit writer who prepared the Draft Permit. Mr. Rahim testified that he believes Applicant substantially complied with applicable public notice requirements, pointing to Applicant’s publication of the NORI in March 2023, the NAPD in July 2023, and the Notice of Public Meeting (NOPM) in January 2024.<sup>185</sup> The ED received robust comments and correspondence from the public regarding the Application, and the public meeting held in February 2024 was “well attended,” which Mr. Rahim suggests is evidence that notice was adequate.<sup>186</sup>

At the hearing, Mr. Rahim testified that he was familiar with the NORI, and that he believed the description of the discharge route in the NORI—which provided that the discharge route would be “from the plant site via pipe to Brushy Creek”—

---

<sup>182</sup> Citizens Ex. 1 at 4 (Williams Direct).

<sup>183</sup> Citizens Closing at 37.

<sup>184</sup> Miller Closing at 9.

<sup>185</sup> Ex. ED-1 at 11-12 (Rahim Direct). The NAPD is found in the Administrative Record at Tab B, pages 0061-66, and the NOPM is found at pages 0029-32. In his direct testimony, Mr. Rahim incorrectly stated the page numbers for both documents. Ex. ED-1 at 11-12 (Rahim Direct).

<sup>186</sup> Ex. ED-1 at 12 (Rahim Direct).

was accurate.<sup>187</sup> However, he also testified that Dr. Lu was responsible for evaluating the discharge route and declined to opine on how a discharge route on the ground, and not through a pipe, might impact the Draft Permit.<sup>188</sup>

Mr. Rahim explained that it is not uncommon to have a discharge route description change between the NORI and the NAPD, and when that happens, a “combined notice” is issued and published.<sup>189</sup> The second notice “will be a combined NORI and NAPD together,” giving the public notice of the updated discharge route.<sup>190</sup> The ED believes that Applicant substantially complied with applicable notice requirements and Protestants presented no credible evidence to the contrary.<sup>191</sup>

### **3. Applicant’s Rebuttal and Argument**

Applicant argues that, while Ms. Williams testified that notice had been “confusing,” she never challenged the adequacy of the notices or their compliance with TCEQ requirements.<sup>192</sup> And ED witness Mr. Rahim testified that he believed Applicant had satisfied applicable public notice requirements, noting the large amount of correspondence received from the public regarding the Application.<sup>193</sup>

---

<sup>187</sup> Tr. at 60-61 (Rahim Cross).

<sup>188</sup> Tr. at 63-64 (Rahim Cross).

<sup>189</sup> Tr. at 65-66 (Rahim Cross).

<sup>190</sup> Tr. at 66-67 (Rahim Cross).

<sup>191</sup> ED Closing at 6.

<sup>192</sup> Applicant Closing at 9.

<sup>193</sup> Applicant Closing at 10; Ex. ED-1 at 12 (Rahim Direct).

Though the discharge route was adjusted after the NORI was published in March 2023, the discharge route included in the Draft Permit was published in the subsequent NAPD, which was published in *The Ellis County Press* (in English) on July 27, 2023, and in *Al Día* (in Spanish) on July 19, 2023.<sup>194</sup> The NAPD was also placed in the Ferris Public Library for public viewing on July 27, 2023.<sup>195</sup> Then, in January 2024, the ED issued the NOPM, which also contained the discharge route as it is described in the Draft Permit.<sup>196</sup> The NOPM was published in *The Ellis County Press* on January 11, 2024,<sup>197</sup> and the public meeting held on February 15, 2024, was well-attended, according to Mr. Rahim.<sup>198</sup> Applicant argues this record establishes substantial compliance with applicable notice requirements.

#### 4. ALJ's Analysis

The referred issue asks whether Applicant “substantially complied” with applicable notice requirements. It is not clear from the record why Applicant failed to include the two unnamed tributaries in the Application’s description of the receiving waters, or why the NORI additionally omitted reference to the pond. It is also not clear how or why the early references to having the discharge flow by pipe to Brushy Creek were abandoned. However, the description of the discharge route was refined or corrected during the ED’s review, and the public received proper notice

---

<sup>194</sup> Admin. Record, Tab B at 0047-50.

<sup>195</sup> Admin. Record, Tab B at 0051.

<sup>196</sup> Admin. Record, Tab B at 0029-32.

<sup>197</sup> Admin. Record, Tab B at 0024-25

<sup>198</sup> Ex. ED-1 at 12 (Rahim Direct).

of the updated route via in the NAPD and the NOPM, both of which were published in accordance with TCEQ notice requirements.<sup>199</sup> Mr. Rahim testified that for purposes of giving notice of the updated discharge route, the NAPD functioned as a combined NORI and NAPD, and TCEQ rules allow such combined notices.<sup>200</sup> On Referred Issue D, the record shows Applicant substantially complied with notice requirements, and Protestants have not rebutted that presumption.

## V. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, relevant to this proceeding, must consider the following factors:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits to the various parties of having a transcript; and
- any other factor which is relevant to a just and reasonable assessment of costs.<sup>201</sup>

---

<sup>199</sup> Admin. Record, Tabs B and D.

<sup>200</sup> 30 Tex. Admin. Code § 39.405(d).

<sup>201</sup> 30 Tex. Admin. Code § 80.23(d)(1).

Additionally, the Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.<sup>202</sup>

Citizens argue that Applicant should bear all transcript costs, urging that they (along with Mr. Miller) are private individuals who have already had to incur legal expenses in this matter trying to maintain the status quo, while Applicant stands to gain economic benefit from the proceeding. Citizens also urge that Ellis County should not bear any costs because they would ultimately be borne by taxpayers.<sup>203</sup> No other party addressed the allocation of transcript costs in their arguments.

Considering the Commission's factors, the ALJ finds that the transcript was ordered by the ALJ, not requested by any party, and that no party has claimed a financial inability to pay transcript costs. The parties all participated in the hearing and all benefitted equally from having the transcript. Given that, the ALJ finds that it is appropriate to divide the transcript costs so that 55% are borne by Applicant, and Citizens (including Ms. Williams, who is a member of Citizens as well as an individual Protestant), Mr. Miller, and Ellis County shall each pay 15%.

---

<sup>202</sup> 30 Tex. Admin. Code § 80.23(d)(2); *see* Tex. Water Code §§ 5.228, .273, .275, .356.


<sup>203</sup> Citizens Closing at 40-41.

## VI. CONCLUSION

For the reasons stated above, the ALJ recommends that the Application should be granted. In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated with the accompanying proposed Order of the Commission.

**Signed August 21, 2025**

ALJ Signature:

\_\_\_\_\_

Sarah Starnes

Presiding Administrative Law Judge

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## AN ORDER GRANTING THE APPLICATION OF CLEAR UTILITIES, LLC FOR NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016273001

SOAH DOCKET NO. 582-25-10508, TCEQ DOCKET NO. 2024-1582-MWD

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Clear Utilities, LLC (Applicant) for New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016273001 in Ellis County, Texas. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Sarah Starnes with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on May 28, 2025.

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

### I. FINDINGS OF FACT

#### *Application and Draft Permit*

1. Applicant filed its application (Application) for a TPDES permit with the Commission on December 12, 2022.
2. The Application requested authorization to discharge treated domestic wastewater from a wastewater treatment facility (Facility) that will serve the

Risinger Ridge Development in Ellis County, and will be located approximately 0.95 miles southwest of the intersection of Risinger Road and Interstate Highway 45.

3. The Application requests authorization to discharge treated domestic wastewater at a daily average flow not to exceed 0.125 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.1875 MGD in the Interim II phase, and a daily average flow not to exceed 0.25 MGD in the Final phase.
4. The proposed discharge route is to a pond at the Facility, and then through an unnamed tributary, a second-order unnamed tributary, Brushy Creek, and Red Oak Creek, ending in the Upper Trinity River in Segment 0805 of the Trinity River Basin.
5. The Executive Director (ED) of TCEQ declared the application administratively complete on February 23, 2023.
6. On June 7, 2023, the ED completed its technical review and prepared a draft permit (Draft Permit). The Draft Permit was made available for public review and comment.
7. The Draft Permit provides for three phases: Interim phase I, Interim phase II, and the Final phase.
8. The Facility will be an activated sludge process plant operated in the complete mix mode with single staged nitrification. Treatment units in the Interim I phase will include a bar screen, an aeration basin, two final clarifiers, an aerobic sludge digester, and a chlorine contact chamber. A second aeration basin and a second aerobic sludge digester will be included in the Interim II phase. Treatment units in the Final phase will include a bar screen, four aeration basins, two final clarifiers, four aerobic sludge digesters, and a chlorine contact chamber.
9. The Draft Permit set effluent limitations, based on a thirty-day average, for five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS), ammonia-nitrogen (NH<sub>3</sub>-N), colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*), minimum dissolved

oxygen (DO), and total chlorine residual (after a 20-minute detention time and based on peak flow) as follows:

	<b>Interim I Phase</b>	<b>Interim II Phase</b>	<b>Final Phase</b>
CBOD <sub>5</sub>	10 milligrams per liter (mg/L)	10 mg/L	10 mg/L
TSS	15 mg/L	15 mg/L	15 mg/L
NH <sub>3</sub> -N	3.0 mg/L	2.0 mg/L	2.0 mg/L
<i>E. coli</i>	126 CFU or MPN per 100 milliliters (ml)	126 CFU or MPN/100 ml	126 CFU or MPN/100 ml
Minimum DO	5.0 mg/L	4.0 mg/L	5.0 mg/L
Total chlorine residual	1.0 mg/L min., 4.0 mg/L max.	1.0 mg/L min., 4.0 mg/L max.	1.0 mg/L min., 4.0 mg/L max.

***Notice and Jurisdiction***

10. Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in *The Ellis County Press* on March 9, 2023, and in Spanish in *Al Día*, on March 22, 2023.
11. Applicant published the Notice of Application and Preliminary Decision (NAPD) in English in *The Ellis County Press* on July 27, 2023, and in Spanish in *Al Día* on July 19, 2023.
12. The NAPD was placed in the Ferris Public Library for public viewing on July 27, 2023.
13. Applicant published the Notice of Public Meeting (NOPM) in English in *The Ellis County Press* on January 11, 2024.
14. The comment period for the application was extended until the close of a public meeting held on February 15, 2024.
15. The Chief Clerk mailed the ED’s Decision and Response to Comments on August 12, 2024.

16. On November 6, 2024, the Commissioners voted to refer this matter to the State Office of Administrative Hearings (SOAH).
17. On November 11, 2024, the Commission issued an Initial Order and referred four issues to SOAH for a contested case hearing.
18. This matter was docketed with SOAH on January 16, 2025.
19. The SOAH preliminary hearing was held on March 4, 2025, via Zoom videoconference. Clear Utilities, the ED, the Office of Public Interest Counsel (OPIC), Protestant Ellis County, Protestants Citizens for Responsible County Development and Glenda Williams (jointly, Citizens), and Protestant David Miller were named as parties.
20. At the preliminary hearing, the administrative record was admitted into evidence.
21. The hearing on the merits was held at SOAH's Austin, Texas hearing facilities on May 28, 2025, before ALJ Sarah Starnes. Clear Utilities was represented by attorney Peter T. Gregg; the ED was represented by attorney Michael T. Parr; OPIC was represented by attorney Josiah T. Mercer; Ellis County was represented by attorneys Stefanie Albright and Sara Labashosky; Citizens were represented by attorney Vic McWherter; and Protestant Miller appeared and represented himself.
22. The record closed on July 3, 2025, following the filing of the parties' post-hearing briefs and responses.

### ***Identification and Notice of Discharge Route***

23. In the Application, Applicant stated that "the plant will discharge treated effluent through an 18" pipe to the existing stock pond, which discharges to Brushy Creek, Red Oak Creek, then to the Trinity River, through Lake Livingston, and finally to Trinity Bay."
24. The NORI stated that "[t]he discharge route will be from the plant site via pipe to Brushy Creek; thence to Red Oak Creek; thence to Upper Trinity River."

25. Before the Application was deemed administratively complete and prior to the technical review, the ED's staff researched and identified the two unnamed tributaries on the discharge route between the pond and Brushy Creek.
26. During the ED's review, it was determined that the discharge would not flow by pipe.
27. The Draft Permit, NAPD, and NOPM all contained the same description of the discharge route.
28. The discharge route is not uncertain.
29. The NAPD functioned as a combined amended NORI and NAPD.
30. The public received proper notice of the updated route via the NAPD and the NOPM, both of which were published in accordance with TCEQ notice requirements.

### ***Water Quality and Antidegradation***

31. The ED's aquatic scientist, Mary Anne Wallace, PhD, followed the ED's implementation procedures (IPs) in determining the presumed aquatic life uses for the waters on the discharge route.
32. The pond, the two unnamed tributaries, Brushy Creek, and Red Oak Creek are all unclassified water bodies that are assigned presumed aquatic life uses.
33. The pond, first unnamed tributary, and Brushy Creek are characterized as intermittent streams with perennial pools and assigned a "limited" aquatic life use. The second unnamed tributary is characterized as an intermittent stream with "minimal" aquatic life use, while Red Oak Creek is considered a perennial stream with a "high" aquatic life use designation.
34. Under the IPs, it was appropriate to rely on presumed aquatic life uses in the technical review.
35. Dr. Wallace performed Tier 1 and Tier 2 antidegradation reviews and a nutrient screen as part of the technical review.

36. The Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by discharge pursuant to the Draft Permit.
37. The Tier 2 antidegradation review preliminarily determined that no significant degradation of water quality is expected in the Red Oak Creek and Upper Trinity River portions of the discharge route, those portions with high aquatic life uses.
38. The nutrient screen preliminarily determined that nutrient limits were not needed in the Draft Permit.
39. The ED's water modeler, Xing Lu, PhD, performed DO water modeling for this Application, using a QUAL-TX model and following TCEQ's standard operating procedures (SOPs) and IPs.
40. QUAL-TX modeling is widely used for reviewing TPDES permits and is approved by the United States Environmental Protection Agency.
41. The QUAL-TX model is appropriate for small ponds or pools like the pond on the discharge route for this Application.
42. The IPs provide that for DO modeling, based on the receiving waters' presumed uses, the assigned DO criteria are as follows: 3.0 mg/L for the pond and the first unnamed tributary; 2.0 mg/L for the second unnamed tributary; 3.0 mg/L for Brushy Creek; and 5.0 mg/L for Red Oak Creek.
43. Under the IPs, the use of default hydraulic coefficients and generalized hydraulic equations was appropriate. There was insufficient site-specific data available to use non-default coefficients.
44. ED staff and Applicant are not required to gather or generate site-specific data that might refute the defaults provided in the IPs and SOPs.
45. Pre-discharge photographs of foliage purportedly in one of the unnamed tributaries do not establish that the IPs' default sediment oxygen demand (SOD) value is too low.

46. TCEQ's water modeling was appropriately performed and demonstrates that the effluent limits in the Draft Permit will maintain the DO levels above the assigned criteria for the receiving waters.
47. Protestants' generalized concerns about pollution, odors, and aerosolized chemicals are insufficient to overcome the prima facie demonstration that the Draft Permit is sufficiently protective of the receiving waters and their health.
48. The effluent limits in the Draft Permit are protective to aquatic life use of the receiving waters.
49. A discharge in compliance with the Draft Permit will be protective of water quality, including the protection of existing uses in the receiving waters, aquatic life, animal life, and the requesters' and their families' health, in accordance with applicable regulations including Texas State Water Quality Standards.
50. The Draft Permit complies with applicable antidegradation requirements.

### ***Nuisance Odors***

51. Applicant will own a contiguous tract of land necessary to meet the buffer zone requirements.
52. Applicant will use chemical disinfection with chlorine in all phases of the Draft Permit. Chlorine can eliminate certain noxious odors.
53. The Draft Permit adequately protects against nuisance odors.

### ***Transcript Costs***

54. The ALJ required that the hearing on the merits be transcribed.
55. No party has claimed a financial inability to pay transcription costs.
56. All parties participated in the hearing on the merits.
57. All parties benefited equally from having the transcript.

58. The transcript costs should be divided so that 55% are borne by Applicant, and Citizens, Mr. Miller, and Ellis County shall each pay 15%.

## **II. CONCLUSIONS OF LAW**

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.
2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code section 2003.047.
3. Notice may be combined to satisfy more than one applicable notice requirement. 30 Tex Admin. Code § 39.405(d).
4. Notice was provided in accordance with Texas Water Code sections 5.115 and 26.028; Texas Government Code sections 2001.051 and .052; and 30 Texas Administrative Code sections 39.405 and .551.
5. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).
6. Applicant's filing of the Administrative Record established a prima facie demonstration that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .117(c)(1), .127(h).
7. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to one of the Referred Issues; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).
8. If a party rebuts the prima facie demonstration, the Applicant and the ED may present additional evidence to support the Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).

9. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).
10. The burden of proof is by preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
11. Under the Draft Permit, DO concentrations will be sufficient to support existing, designated, presumed and attainable aquatic life uses, as required by 30 Texas Administrative Code section 307.4(h)(1).
12. The Draft Permit is protective of water quality, including the protection of existing uses in the receiving waters, aquatic life, animal life, and the requester's and their families' health, in accordance with applicable regulations including the Texas Surface Water Quality Standards in 30 Texas Administrative Code chapter 307.
13. The Draft Permit complies with applicable antidegradation requirements. 30 Tex. Admin. Code § 307.5(b).
14. The Draft Permit adequately addresses nuisance odor in accordance with 30 Texas Administrative Code § 309.13.
15. Applicant substantially complied with applicable public notice requirements. Tex. Water Code §§ 5.115, 26.028; 30 Tex. Admin. Code §§ 39.405, .551.
16. No transcript costs may be assessed against the ED or OPIC because TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).
17. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

18. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), a reasonable assessment of hearing transcript costs is that Applicant should pay 55% of the transcription costs, and Protestants Citizens, Ellis County, and Miller shall each pay 15% of the transcription costs.

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

1. The Application of Clear Utilities, LLC for new Texas Pollutant Discharge Elimination System Permit No. WQ0016273001 is granted.
2. Applicant must pay 55% of the transcription costs, and Protestants Citizens, Ellis County, and Miller shall each pay 15% of the transcription costs.
3. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117(f).
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.
6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

---

**Brooke Paup, Chair for the Commission**