

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 23, 2024

TO: All interested persons.

RE: Clear Utilities, LLC
TPDES Permit No. WQ0016360001

Decision of the Executive Director.

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Mae S. Bruce Library, 13302 6th Street, Santa Fe, Texas.

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

How to Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



Laurie Gharis
Chief Clerk

LG/mb

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Clear Utilities, LLC
TPDES Permit No. WQ0016360001

The Executive Director has made the Response to Public Comment (RTC) for the application by Clear Utilities, LLC for TPDES Permit No. WQ0016360001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

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

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016360001) and click the "Search" button. The search results will display a link to the RTC.

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

Additional Information

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

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Mae S. Bruce Library, 13302 6th Street, Santa Fe, Texas.



COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

Protegiendo a Texas reduciendo y previniendo la contaminación

23 de agosto de 2024

TO: Todas las personas interesadas.

RE: Clear Utilities, LLC
TPDES Permiso No. WQ0016360001

Decisión del Director Ejecutivo.

El director ejecutivo ha tomado la decisión de que la solicitud de permiso mencionada anteriormente cumple con los requisitos de la ley aplicable. **Esta decisión no autoriza la construcción u operación de ninguna instalación propuesta.** Esta decisión será considerada por los comisionados en una reunión pública programada regularmente antes de que se tome cualquier medida sobre esta solicitud, a menos que todas las solicitudes de audiencia o reconsideración de casos impugnados hayan sido retiradas antes de esa reunión.

Se adjuntan a esta carta las instrucciones para ver en Internet la Respuesta del Director Ejecutivo al Comentario Público (RTC). Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov. Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios públicos, están disponibles para su revisión en la Oficina Central de TCEQ. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Mae S. Bruce Library, 13302 6th Street, Santa Fe, Texas.

Si no está de acuerdo con la decisión del director ejecutivo y cree que es una "persona afectada" como se define a continuación, puede solicitar una audiencia de caso impugnado. Además, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Los procedimientos para la evaluación de la comisión de las solicitudes de audiencia/solicitudes de reconsideración se encuentran en 30 Código Administrativo de Texas, Capítulo 55, Subcapítulo F. A continuación, se presenta una breve descripción de los procedimientos para estas dos solicitudes.

Cómo solicitar una audiencia de caso impugnado.

Es importante que su solicitud incluya toda la información que respalde su derecho a una audiencia de caso impugnado. Su solicitud de audiencia debe demostrar que cumple con los requisitos legales aplicables para que se le conceda su solicitud de audiencia. La consideración de la comisión de su solicitud se basará en la información que usted proporcione.

La solicitud debe incluir lo siguiente:

- (1) Su nombre, dirección, número de teléfono durante el día y, si es posible, un número de fax.
- (2) El nombre del solicitante, el número de permiso y otros números enumerados anteriormente para que su solicitud pueda procesarse adecuadamente.
- (3) Una declaración que exprese claramente que está solicitando una audiencia de caso impugnado. Por ejemplo, la siguiente declaración sería suficiente: "Solicito una audiencia de caso impugnado".
- (4) Si la solicitud es realizada por un grupo o asociación, la solicitud debe identificar:
 - (A) una persona por nombre, dirección, número de teléfono durante el día y, si es posible, el número de fax, de la persona que será responsable de recibir todas las comunicaciones y documentos para el grupo.;
 - (B) los comentarios sobre la solicitud presentada por el grupo que constituyen la base de la solicitud de audiencia; y
 - (C) por nombre y dirección física, uno o más miembros del grupo que de otro modo tendrían derecho a solicitar una audiencia por derecho propio. Los intereses que el grupo busca proteger deben estar relacionados con el propósito de la organización. Ni la reclamación alegada ni la reparación solicitada deben requerir la participación de los miembros individuales en el caso.

Además, su solicitud debe demostrar que usted es una **"persona afectada"**. Una persona afectada es aquella que tiene un interés justiciable personal relacionado con un derecho, deber, privilegio, poder o interés económico legal afectado por la solicitud. Su solicitud debe describir cómo y por qué se vería afectado negativamente por la instalación o actividad propuesta de una manera que no sea común al público en general. Por ejemplo, en la medida en que su solicitud se base en estas preocupaciones, debe describir el impacto probable en su salud, seguridad o usos de su propiedad que puedan verse afectados negativamente por la instalación o las actividades propuestas. Para demostrar que tiene un interés personal justiciable, debe indicar, tan específicamente como pueda, su ubicación y la distancia entre su ubicación y la instalación o actividades propuestas.

Su solicitud debe plantear cuestiones de hecho controvertidas que sean relevantes y materiales para la decisión de la comisión sobre esta solicitud que fueron planteadas **por usted** durante el período de comentarios públicos. La solicitud no puede basarse únicamente en cuestiones planteadas en los comentarios que haya retirado.

Para facilitar la determinación por parte de la comisión del número y alcance de los asuntos que se remitirán a la audiencia, usted debe: 1) especificar cualquiera de las respuestas del director ejecutivo a **sus** comentarios que usted disputa; 2) la base fáctica de la disputa; y 3) enumerar cualquier cuestión de derecho en disputa.

Cómo solicitar la reconsideración de la decisión del Director Ejecutivo.

A diferencia de una solicitud de audiencia de caso impugnado, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Una solicitud de reconsideración debe contener su nombre, dirección, número de teléfono durante el día y, si

es posible, su número de fax. La solicitud debe indicar que está solicitando la reconsideración de la decisión del director ejecutivo, y debe explicar por qué cree que la decisión debe ser reconsiderada.

Fecha límite para la presentación de solicitudes.

La oficina del Secretario Oficial debe **recibir** una solicitud de audiencia de caso impugnado o reconsideración de la decisión del director ejecutivo a más tardar **30 días calendario** después de la fecha de esta carta. Puede enviar su solicitud electrónicamente a www.tceq.texas.gov/agency/decisions/cc/comments.html o por correo a la siguiente dirección:

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

Procesamiento de solicitudes.

Las solicitudes oportunas para una audiencia de caso impugnado o para la reconsideración de la decisión del director ejecutivo se remitirán al Programa de Resolución Alternativa de Disputas de TCEQ y se incluirán en la agenda de una de las reuniones programadas regularmente de la comisión. Las instrucciones adicionales que explican estos procedimientos se enviarán a la lista de correo adjunta cuando se haya programado esta reunión.

Cómo obtener información adicional.

Si tiene alguna pregunta o necesita información adicional sobre los procedimientos descritos en esta carta, llame al Programa de Educación Pública, al número gratuito, 1-800-687-4040.

Atentamente,



Laurie Gharis
Secretaria Oficial

LG/mb

Recinto

RESPUESTA DEL DIRECTOR EJECUTIVO AL COMENTARIO DEL PÚBLICO
para
Clear Utilities, LLC
TPDES Permiso No. WQ0016360001

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de Clear Utilities, LLC del permiso de TPDES Permiso No. WQ0016360001. Puede ver e imprimir el documento visitando la Base de Datos Integrada de los Comisionados de TCEQ en el siguiente enlace:

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

Para ver el RTC en el enlace anterior, ingrese el número de identificación TCEQ para esta solicitud (WQ0016360001) y haga clic en el botón "Buscar". Los resultados de la búsqueda mostrarán un enlace al RTC.

Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov.

Información adicional

Para obtener más información sobre el proceso de participación pública, puede comunicarse con la Oficina del Asesor de Interés Público al (512) 239-6363 o llamar al Programa de Educación Pública, al número gratuito, (800) 687-4040.

Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios, están disponibles para su revisión en la Oficina Central de TCEQ en Austin, Texas. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Mae S. Bruce Library, 13302 6th Street, Santa Fe, Texas.

MAILING LIST / LISTA DE CORREO
for / para
Clear Utilities, LLC
TPDES Permit No. WQ0016360001 / TPDES Permiso No. WQ0016360001

FOR THE APPLICANT /
PARA EL SOLICITANTE:

Steve Winslow
Clear Utilities, LLC
5451 Farm-to-Market Road 1488
Magnolia, Texas 77354

Lesley Reel, P.E.
L Squared Engineering
3307 West Davis Street, Suite 100
Conroe, Texas 77304

INTERESTED PERSONS /
PERSONAS INTERESADAS:

See Attached List

FOR THE EXECUTIVE DIRECTOR /
PARA EL DIRECTOR EJECUTIVO
via electronic mail /
por correo electrónico:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Shaun M. Speck, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL /
PARA ABOGADOS DE INTERÉS PÚBLICO
via electronic mail /
por correo electrónico:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK /
PARA EL SECRETARIO OFICIAL
via electronic mail
por correo electrónico:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

HARMAN , EMILY DIANE
13924 COUNTRY SIDE ST
SANTA FE TX 77517-3794

HICKS , TRAVIS
13804 COUNTRY SIDE ST
SANTA FE TX 77517-3700

HIGHTOWER , CHRIS & SARA
13816 COUNTRY SIDE ST
SANTA FE TX 77517-3700

JARED , MELISSA
ALLSOURCE
1203 GINGER ST
SANTA FE TX 77517-3815

MARTINEZ , MR ROBERT
1100 VERONICA ST
SANTA FE TX 77517-3798

MCCRARY , ROGER D
13913 COUNTRY SIDE ST
SANTA FE TX 77517-3701

MCNAMARA , SHANE ROBERT
BELLUM K9 INC
13820 COUNTRY SIDE ST
SANTA FE TX 77517-3700

MIDDLETON , THE HONORABLE MAYES STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 11
PO BOX 12068
AUSTIN TX 78711-2068

THOMPSON , CRAIG
14018 CIMARRON RD
SANTA FE TX 77517-3818

WEIR , CYNTHIA LYNNE
13928 DORIS ST
SANTA FE TX 77517-3832

TPDES Permit No. WQ0016360001

APPLICATION BY	§	BEFORE THE
CLEAR UTILITIES, LLC FOR	§	TEXAS COMMISSION
TPDES Permit NO.	§	ON ENVIRONMENTAL
WQ0016360001	§	QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Clear Utilities, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016360001 and the Executive Director’s preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, significant or relevant and material comments. The Office of the Chief Clerk received timely comments from Roger McCrary, Sara and Chris Hightower, Robert Martinez, Cynthia Weir, Emily Harman, Shane McNamara, Travis Hicks, Craig Thompson, Melissa Jared, and Senator Mayes Middleton.

This application is subject to the requirements in Senate Bill (SB) 709, effective September 1, 2015. SB 709 amended the requirements for comments and contested case hearings. One of the changes required by SB 709 is that the Commission may not find that a “hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.” Texas Water Code (TWC) § 5.115(a-1)(2)(B).

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at the following website:

www.tceq.texas.gov

I. BACKGROUND

A. Description Of Facility

Clear Utilities, LLC (Applicant) submitted an application to the TCEQ for a new permit, TPDES Permit No. WQ0016360001, to authorize the discharge of treated

domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The Applicant proposes to operate the Field Creek Crossing wastewater treatment plant (WWTP) to serve the proposed Field Creek Crossing mobile home development.

The Field Creek Crossing Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix mode. Treatment units will include a bar screen, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged via pipe to two man-made ponds, thence via pipe to a detention pond, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

Geographic coordinates of the outfall location in decimal degrees is provided in Table 1. If this permit is issued, the proposed facility will be located approximately 0.49 miles northwest of the intersection of Cemetery Road and Country Side Street, in Galveston County, Texas 77517.

Table 1. Outfall Coordinate Location

Outfall Number	Latitude	Longitude
001	29.426444 N	98.121611 W

The draft permit includes the following proposed effluent limitations and monitoring requirements. All flows, except the two-hour peak flow, are expressed in million gallons per day (MGD). The two-hour (2-hr) peak flow is expressed in gallons per minute (gpm). All pH values are expressed in standard units (SU). Concentration values are expressed in milligrams per liter (mg/L). Mass-based values are expressed as pounds per day (lbs/day). Bacteria values are expressed in colony-forming units (CFU) or most probable number (MPN) per 100 milliliters (CFU or MPN/100 mL).

Table 2. Interim Phase I Effluent Limitations: Outfall 001

Parameter/Pollutant	Daily Average		7-day Average	Daily Maximum	Single Grab
	lbs/day	mg/L	mg/L	mg/L	mg/L
Flow, MGD	0.075				
Carbonaceous Biochemical Oxygen Demand, 5-day (CBOD ₅)	6.3	10	15	25	35
Total Suspended Solids (TSS)	9.4	15	25	40	60
Ammonia Nitrogen (NH ₃ -N)	1.9	3	6	10	15
<i>E. coli</i> (CFU or MPN/100 mL)	63		N/A	N/A	200
pH, SU	6.0-9.0				

B. Procedural Background

The permit application was received on June 26, 2023, and declared administratively complete on August 9, 2023. The first Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 22, 2023, in the *Galveston County Daily News*. The combined NORI and Notice of Application and Preliminary Decision (NAPD) was published on April 19, 2024, in the *Galveston County Daily News* and was published in *La Prensa De Houston* on April 28, 2024.

The public comment period ended on May 28, 2024. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

C. Access to Rules, Laws, and Records

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

- Secretary of State website: www.sos.state.tx.us;
 - TCEQ rules in 30 TAC: www.sos.state.tx.us/tac;
 - Texas statutes: www.statutes.legis.state.tx.us;
 - TCEQ downloadable rules: www.tceq.texas.gov/rules/indxpdf.html;
 - Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov;
- and

- Federal environmental laws: www.epa.gov/lawsregs.

Commission records for this application are available for viewing and copying and are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the following location: at Mae S. Bruce Library, 13302 6th Street, Santa Fe, Texas.

II. COMMENTS AND RESPONSES

COMMENT 1:

Cynthia Weir and Craig Thompson express general opposition to the draft permit.

RESPONSE 1:

The ED acknowledges the comments.

COMMENT 2:

Robert Martinez expressed concern about the potential contamination of drinking water from nearby water wells due to spillage from the proposed wastewater treatment facility. Senator Mayes Middleton also made comments expressing concern for the risk to drinking water from nearby wells.

RESPONSE 2:

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater not be degraded. This goal of non-degradation does not mean zero-contaminant discharge."¹ Chapter 26 of the Texas Water Code further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard."²

The Executive Director has determined that the draft permit's effluent limitations are consistent with the Texas Surface Water Quality Standards and are therefore protective of surface water quality, human health, and the environment. This

¹ Texas Water Code § 26.401(b).

² Texas Water Code § 26.401(c)(2).

level of surface water protection would also ensure protection of groundwater quality and its known uses.

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

The Groundwater Rule does not address private drinking water wells as they are not under the jurisdiction of the Safe Drinking Water Act and are not subject to TCEQ regulation. TCEQ recommends that well owners periodically test their water for microbial and chemical contaminants and properly maintain their well. Private well owners should take steps to have their water quality tested routinely tested. Wells should be tested more often if under the influence of nearby surface water or if contamination is suspected. For more information on testing private water wells, please see the National Ground Water Association website at wellowner.org/resources/water-quality/water-testing. If your well tests positive for fecal coliform bacteria, please see the Texas A&M AgriLife Extension publication titled or the TCEQ publication titled [Disinfecting Your Private Well](#) (GI-432).

COMMENT 3:

Sara and Chris Hightower, Roger McCrary, and Senator Mayes Middleton expressed concern about the impact of the discharge on Dickinson Bayou.

RESPONSE 3:

TCEQ is responsible for the protection of water quality with federal regulatory authority over discharges of pollutants to Texas surface water, with specific exceptions for oil and gas exploration and development activities. The TCEQ has a legislative responsibility to protect water quality in the State of Texas and to authorize wastewater discharge TPDES permits under Texas Water Code (TWC) Chapter 26, and 30 TAC Chapters 305, 307 and 309, including specific statues regarding wastewater treatment systems under 30 TAC Chapters 217 and 309.

The proposed draft permit was developed in accordance with the Texas Surface Water Quality Standards to be protective of water quality, provided that the Applicant

operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements. The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards* (IPs; June 2010) is designed to ensure compliance with the TSWQS (30 TAC Chapter 307).

Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health.

As part of the application process, TCEQ staff must perform a rigorous technical review that includes determining the uses and setting effluent limits. In order to achieve the goal of maintaining a level of water quality sufficient to protect existing water body uses, the proposed permit contains several water quality specific parameter requirements that limit the potential impact of the discharge on the receiving waters.

In accordance with 30 TAC § 307.5 and the IPs, an antidegradation review of the receiving waters was performed. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Dickinson Bayou Tidal, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations in the draft permit for the conventional effluent parameters (i.e. CBOD₅, Ammonia-Nitrogen, and minimum DO) are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan (WQMP).

COMMENT 4:

Robert Martinez expressed concern about the smell of raw sewage in the existing residential neighborhood. He additionally made comments about the potential for hazardous gases creating a pungent smell.

RESPONSE 4:

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

According to its application, the Applicant intends to comply with the requirement to abate and control nuisance of odor by legal restrictions prohibiting the construction of residences within the buffer zone.⁴ This requirement is incorporated in the draft permit.⁵ These legal restrictions will be in accordance with 30 TAC § 309.13(e)(3). Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

Furthermore, TCEQ is the agency responsible for enforcing air pollution laws. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health and the environment will be protected. According to TCEQ rules in 30 TAC § 106.532, wastewater treatment plants have undergone this review and are permitted by rule, provided the wastewater treatment plant only performs the functions listed in the rule. In its application, the Applicant indicated that the treatment process of the proposed wastewater treatment facility would use the

³ 30 TEX. ADMIN. CODE § 309.13(e).

⁴ Clear Utilities, LLC Permit Application, Administrative Report, 1.1, Item No. 2(b), page 2.

⁵ Clear Utilities, LLC Draft Permit, Other Requirements, Item No.3, page 34.

activated sludge process. This treatment process will not make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code's (THSC) Texas Clean Air Act § 382.057 and § 382.05196 and is therefore permitted by rule.

COMMENT 5:

Roger McCrary and Robert Martinez expressed concern about the mailing list associated with the permit applications and proper notification of the area's residents. Roger McCrary asked why there was no mailing list for this permit.

RESPONSE 5:

There are two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). The TCEQ's notice rules in 30 TAC Chapter 39 require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located ... if the facility is located or proposed to be located in a municipality, the applicant must publish notice in any newspaper of general circulation in the municipality." After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge."

TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk. The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. The landowner map provided by Applicant did not indicate Roger McCrary as being an adjacent landowner. Therefore, they were not included on the mailing list. Any persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that

permit action. Persons who wish to be added on the mailing list for this facility or the subject application may do so by sending a written request to the Chief Clerks Office.

COMMENT 6:

Roger McCrary stated that whenever he tries to pull up the location of this WWTP using the coordinates provided on the Permit Application it brings up a map of Austin Jr. College which is nowhere near the proposed facility location. Roger McCrary additionally expresses frustration regarding his attempt to obtain information from the Applicant's engineering firm.

RESPONSE 6:

The discharge point for the proposed facility is located at the coordinates 29.426444 ° N, 95.121611 ° W. The treated effluent will be discharged via pipe to two man-made ponds, thence via pipe to a detention pond, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are limited aquatic life use for the two man-made ponds and detention pond. The discharge location has not changed from what was submitted in the application.

The TCEQ acknowledges the comment regarding Mr. McCrary's attempt to contact the engineering firm.

COMMENT 7:

Senator Mayes Middleton encourages the exploration of options that have a lesser impact on the environment, specifically the use of existing treatment facilities already operating via various water and sewage districts.

RESPONSE 7:

Texas Water Code § 26.081 enumerates the state's regionalization policy. Section 26.081 states that the policy should "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In furtherance of that policy TWC § 26.0282 authorizes TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based

on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems.

Domestic Technical Report 1.1 of the application requires information concerning regionalization of wastewater treatment plants.⁶ Applicants requesting a new permit or certain major amendments are required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can utilize. Applicants are required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility has the capacity and is willing to accept the proposed wastewater, the applicant must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion. Finally, applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding regionalization with their system.

There is one existing collection system within a three-mile radius of the proposed facility site location. The applicant has demonstrated that connecting to an existing wastewater collection system would be cost prohibitive compared to the proposed facility.

COMMENT 8:

Roger McCrary asks what is K8H Ventures that is listed on Attachment A-buffer zone map.

RESPONSE 8:

According to the Applicant, K8H Ventures LLC is the name of the developer of the tract and Clear Utilities will be the owner of the WWTP and responsible party for the discharge permit compliance.

COMMENT 9:

Roger McCrary asks if the Applicant has obtained legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee.

⁶ Domestic Technical Report 1.1 (TCEQ Form 10054), Section 1, Item B, page 21.

RESPONSE 9:

The Applicant has not yet submitted legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee. Other Requirement No.4 states, "Prior to construction of the treatment facility, the permittee shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3).⁷ The evidence of legal restrictions shall be submitted to the Executive Director in care of the TCEQ Wastewater Permitting Section (MC 148). The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d)." Therefore, the Applicant cannot begin construction of the facility until the legal restrictions are received by the TCEQ.

COMMENT 10:

Roger McCrary inquired about requirements for a backup electrical generation system. Robert Martinez expressed concern about the adequacy of the maintenance plans for the facility.

RESPONSE 10:

The operational requirements in the draft permit require that the permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

COMMENT 11:

Roger McCrary made comments inquiring what would happen in the event of the permittee filing for bankruptcy.

RESPONSE 11:

Post-permit bankruptcy issues are not considered in the review process of an application for a wastewater discharge permit. However, the draft permit does require the permittee to notify the Executive Director, in writing, immediately following the

⁷ Clear Utilities, LLC Draft Permit, Other Requirements, Item No.3, page 34.

filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 Bankruptcy of the United States Code (11 USC).⁸

COMMENT 12:

Sara and Chris Hightower expressed concern regarding increased traffic to the area due to the new development.

RESPONSE 12:

TCEQ does not have the authority to address these types of issues as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize TCEQ to consider issues such as traffic.

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

COMMENT 13:

Senator Mayes Middleton expressed concern regarding property values being negatively impacted by the proposed development.

RESPONSE 13:

TCEQ does not have the authority to address issues like property values as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize the TCEQ to consider issues such as property values.

COMMENT 14:

Shane McNamara, Travis Hicks, Melissa Jared, Emily Harman, and Sara and Chris Hightower expressed concern about the facility being in an area prone to flooding. Shane McNamara and Melissa Jared noted in their comments that the area was flooded during a hurricane. Shane McNamara, Melissa Jared, and Travis Hicks comment on the risk to property owners and the unsuitability of the site for residential development. Emily Harman expressed concern for the high-density neighborhoods downstream of

⁸ Clear Utilities, LLC Draft Permit, Permit Conditions, Item 11, page 13.

the facility. Emily Harman also stated that the location of the retention pond is in a high risk designated flood zone.

RESPONSE 14:

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

According to the application, the proposed facility is located above the 100-year flood plain. For additional protection, the proposed permit includes Other Requirement No.4, which requires the permittee to provide protection for the facility from a 100-year flood.⁹

III. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENTS:

In response to Public Comments, the Executive Director has not made any changes to the draft permit.

⁹ Clear Utilities, Draft Permit, Other Requirements, Item No. 3, page 34.

Respectfully submitted,

Texas Commission on Environmental Quality

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