

TPDES Permit No. WQ0016436001

APPLICATION BY	§	BEFORE THE
THE OASIS OF TEXAS LP	§	TEXAS COMMISSION
FOR TPDES Permit No.	§	ON ENVIRONMENTAL
WQ0016436001	§	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 The Oasis of Texas LP (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016436001 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 Robert H. Miller, Penny Clarke Evans, Jerri Kay Boyd, Elizabeth Miller Grindstaff, Brian Lawson, and Amanda Lawson. This response addresses all timely public comments received, whether or not withdrawn.

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

The Applicant, The Oasis of Texas LP, submitted an application to the TCEQ for a new permit, TPDES Permit No. WQ0016436001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The Applicant proposes to operate The Oasis of Texas Wastewater Treatment Facility (WWTF), which will serve The Oasis of Texas Subdivision.

The Oasis of Texas WWTF will be an activated sludge process plant operated in the conventional aeration mode. Treatment units include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary, thence to Sand Creek, thence to Long King Creek, thence to the Trinity River Below Lake Livingston in Segment No. 0802 of the Trinity River Basin. The designated uses for Segment No. 0802 are primary contact recreation, public water supply, 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 are provided in Table 1. If this permit is issued, the proposed facility will be located at approximately 14625 U.S. Highway 59 North, in Polk County, Texas 75960.

Table 1. Outfall Coordinate Location

Outfall Number	Latitude	Longitude
001	30.898992 N	94.843108 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. Effluent Limitations: Outfall 001

Parameter/Pollutant	Daily Average		7-day Average	Daily Maximum	Single Grab	Monitoring Requirements
	mg/L	lbs/day	mg/L	mg/L	mg/L	
Flow	0.050		N/A	N/A	N/A	Continuous
Carbonaceous Biochemical Oxygen Demand, 5-day (CBOD ₅)	10	4.2	15	25	35	One/week
Total Suspended Solids (TSS)	15	6.3	25	40	60	One/week
Ammonia Nitrogen (NH ₃ -N)	3	1.3	6	10	15	One/week
<i>E. coli</i> (CFU or MPN/100 mL)	126	N/A	N/A	N/A	399	One/quarter

The daily average flow of effluent shall not exceed 0.050 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 139 gpm. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

B. Procedural Background

The permit application was received on October 27, 2023, and declared administratively complete on December 11, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on December 28, 2023, in the *Polk County Enterprise*. The Notice of Application and Preliminary Decision (NAPD) was published on July 4, 2024, in the *Polk County Enterprise*.

The public comment period ended on August 5, 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 SB 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: <https://www.ecfr.gov/current/title-40>; 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: Livingston Municipal Library, 707 North Tyler Avenue, Livingston, Texas.

II. COMMENTS AND RESPONSES

COMMENT 1:

Brian Lawson, Amanda Lawson, Penny Clarke Evans, and Robert H. Miller raised concerns about potential erosion to the creek bed as a result of the discharge from the proposed wastewater treatment facility.

RESPONSE 1:

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

COMMENT 2:

Brian Lawson, Amanda Lawson, and Elizabeth Miller Grindstaff raised concerns about the safety of the discharge from the wastewater treatment facility. They are concerned that the discharge will not be safe for cattle and wildlife, specifically the bald eagle and tricolored bat population in the area. They were also concerned about the impacts to uses for recreation and public water supply.

RESPONSE 2:

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

In this case, the designated uses for Segment No. 0802 are primary contact recreation, public water supply, and high aquatic life use. The Executive Director determined that these uses should be protected if the facility is operated and maintained as required by the proposed permit and regulations. Additionally, the treated effluent will be disinfected prior to discharge to protect human health.

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

TCEQ also submitted the draft permit to the U.S. Environmental Protection Agency (EPA) Region 6 for review. The EPA reviewed the draft permit and did not have any objections to the issuance of the draft permit.

The Texas Parks and Wildlife Department (TPWD) is the state agency that oversees and protects wildlife and their habitat. It can be contacted by calling 1-800-792-1112 or by mail at 4200 Smith School Road, Austin, Texas 78744. TPWD received notice of Applicant's permit application.

COMMENT 3

Brian Lawson commented that land application of the discharge on the Applicant's property would be a preferable disposal method than discharging to the creek.

RESPONSE 3:

TCEQ does not have the authority to mandate the method of disposal of treated effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309.

Treated effluent may be disposed of via land application. A Texas Land Application Permit (TLAP) authorizes the disposal of treated effluent by means of surface irrigation, subsurface irrigation, or evaporation. The effluent must be treated to the pollutant concentrations prescribed in 30 TAC § 309.4. If the Applicant changes the proposed method of disposal this would require further review by TCEQ and additional public notice.

COMMENT 4:

Amanda Lawson, Elizabeth Miller Grindstaff, and Jerri Kay Boyd commented with concerns about the proposed discharge route. They commented that the discharge from the wastewater facility will be routed through their property and that the proposed discharge route is incorrect.

RESPONSE 4:

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

The State is authorized to use the bed and banks to transport water, and since TCEQ has the authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit, the applicant for a TPDES permit does not need permission from downstream landowners to use the watercourse running through their property.

COMMENT 5:

Amanda Lawson commented raising concerns about property value in the area. She commented that the proposed facility may negatively affect property values and

the ability of landowners to lease their property for hunting.

RESPONSE 5:

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 property values or the ability to lease property.

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 6:

Elizabeth Miller Grindstaff raised concerns that the developer will not comply with the regulations necessary to discharge properly treated wastewater.

RESPONSE 6:

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

COMMENT 7:

Elizabeth Miller Grindstaff commented that the map location in the NORI was incorrect and the draft permit was not available for viewing at the location stated in the notice.

RESPONSE 7:

According to the Applicant, the permit application was available for viewing and copying at the Livingston Municipal Library, 707 North Tyler Avenue, Livingston,

Texas, prior to the date the first notice (NORI) was published in the newspaper. In addition, Executive Director's preliminary decision, and the draft permit were also available for viewing and copying at the same location following the publication of the second notice (NAPD). The facility location will be located at 14625 U.S. Highway 59 North, in Polk County, Texas 75960, and the exact location is here:

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-94.8375,30.892777&level=18>.

Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, the Hearing Requests, the Responses to Hearing Requests, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk located in Building F, 12100 Park 35 Circle, Austin, Texas.

COMMENT 8:

Penny Clarke Evans, Elizabeth Miller Grindstaff, and Jerri Kay Boyd requested a Public Meeting to address concerns for the proposed wastewater facility.

RESPONSE 8:

According to 30 TAC Section 55.154 (c), the ED or the Office of the Chief Clerk shall hold a public meeting if: (1) the ED determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held. The ED determined that this request did not meet the criteria to hold a public meeting.

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

The Executive Director made no changes to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

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