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ADMINISTRATIVE HEARINGS
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SOAH Docket No. 582-23-10368
TCEQ Docket No. 2022-1731-MWD

Application By R040062, LP	§	Before the State Office of
for new TPDES Permit	§	
No. WQ0016008001	§	Administrative Hearings

Executive Director's Response to Closing Arguments

I. Introduction

This reply provides information needed to complete the administrative record and support the Executive Director (ED) of the Texas Commission on Environmental Quality's (TCEQ's or Commission's) position in this case based on the ED's review of the other parties' closing arguments.¹ Although the ED's recommendation as detailed in its closing argument has not changed, the ED offers the discussion below to address the other parties' arguments.

II. ED's Response to Jonah's Regionalization Claims

i. Jonah's Claim that the Applicant failed to obtain Jonah's consent

Jonah argues that the permit should be denied because Applicant failed to seek and secure Jonah's consent to provide service within its district boundary in accordance with TWC § 13.044(c).² Jonah cites additionally to TWC § 13.244(c), which the ED believes is the basis of their claim as TWC § 13.044(c) does not exist. However, TWC § 13.244(c) is not relevant to the ED's review of regionalization. This statute pertains to the requirements for applying for a Certificate of Public Convenience and Necessity (CCN) from the Public Utility Commission and does not apply to TCEQ's TPDES permit application process.

As discussed in the record, the Applicant provided information and responses for all entities within a three-mile radius that could provide wastewater service.³ The Applicant was not required to contact Jonah because Jonah only has a water CCN.⁴ Applicant is not required to contact CCN holders with only a water CCN, as the

¹ See 30 TEX. ADMIN. CODE § 80.108 (West 2021) (stating the ED's role in a contested case hearing is to complete the administrative record and support the ED's position).

² Protestants' Closing Arg. at 3.

³ ED-SB-1 at 0315:29-31.

⁴ ED-SB-1 at 0313: 18-23.

application is for wastewater discharge and, therefore, would take into consideration holders of a sewer CCN.⁵ Further, Applicant is only required to provide a cost analysis with the application if the proposed facility is within an existing sewer CCN.⁶ There is no TCEQ requirement that would compel Applicant to obtain Jonah's consent.

ii. Jonah's Claim Regarding Applicant's Regionalization Demonstration Remaining Incomplete

Jonah also argues that Applicant and the ED failed to conduct an analysis of whether an integrated area-wide wastewater, treatment, and disposal system for the area can be reasonably provided as reflected in the State's regionalization policy in TWC § 49.230.⁷ However, this provision adds nothing new to the ED's regionalization review, rather, it states that districts must comply with TCEQ's regionalization policy. TWC § 49.230 states that regionalization is "encouraged... whenever economically feasible and competitive to do so." This statute reiterates the State's policy on regionalization, which does not require TCEQ to automatically deny an application or to compel an Applicant to connect to an existing facility.⁸

Neither of the statutes raised by Jonah demonstrate that the draft permit fails to comply with all statutory and regulatory requirements. The ED respectfully requests that the ALJ find that the draft permit meets the requirements for regionalization.

III. Conclusion

The ED maintains the position that the draft permit complies with all applicable statutory and regulatory requirements. Through its closing argument and this response, the ED has demonstrated that the issues raised by Jonah should be resolved in favor of granting R040062's application. R040062 sufficiently demonstrated that the draft permit will be protective of water quality and complies with TCEQ's regionalization policy. Therefore, the ED continues to recommend granting R040062's application and issuing the draft permit without changes.

⁵ ED-SB-1 at 0315:31-32 - 0316:1-2.

⁶ ED-SB-1 at 0313: 25-27.

⁷ Protestants' Closing Arg. at 5.

⁸ ED-SB-1 at 0314:4-8.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
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REPRESENTING THE EXECUTIVE DIRECTOR
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CERTIFICATE OF SERVICE

I certify that on the 25th of September 2023, the Executive Director's Response to Closing Arguments for TPDES Permit No. WQ0016008001 was served electronically to:



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