

ACCEPTED
582-23-10368
12/11/2023 9:46:08 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
582-23-10368
12/11/2023 9:44 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

**SOAH DOCKET NO. 582-23-10368
TCEQ DOCKET NO. 2022-1731-MWD**

APPLICATION OF	§	BEFORE THE STATE OFFICE
R040062, LP	§	
FOR TPDES PERMIT	§	OF
NO. WQ0016008001	§	
	§	ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S
PROPOSAL FOR DECISION**

I. OVERVIEW

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) submits her Exception to the Proposal for Decision. The Executive Director supports the Administrative Law Judge's (ALJs) conclusions that R040062, LP has met its burden of proof on the agreed issues related to consent¹, regionalization², and water quality³, and the draft permit be issued without changes.⁴ The Executive Director is providing a suggested change to the Findings of Fact.

II. EXCEPTION to the PROPOSAL for DECISION

A. Executive Director's Recommended Change to Findings of Fact

The Executive Director recommends the following change to the ALJ's Findings of Fact:

1. Finding of Fact #16 (Correction/Clarification)

Finding of Fact #16 indicates that the ED completed the technical review of the Application on November 6, 2021. The Executive Director notes that TCEQ records and the record⁵ for this case indicate that the technical review of the application was completed on November 16, 2021.

¹ 582-23-10368 PFD at 16.

² 582-23-10368 PFD at 26.

³ 582-23-10368 PFD at 31.

⁴ 582-23-10368 PFD at 32.

⁵ 582-23-10368 Administrative Record, Tab A, at Page 3, Bates Stamp 00009.

III. Conclusion

The Executive Director maintains her position that the draft permit meets all applicable statutory and regulatory requirements. The ED supports the ALJ's position that the application be granted and the draft permit be issued without changes. The ED respectfully recommends the Administrative Law Judge issue a Revised Proposal for Decision reflecting the ED's correction to the Findings of Fact.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Interim Executive Director

Erin Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division



Aubrey Pawelka, Staff Attorney
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
Phone (512) 239-0622
Fax (512) 239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery, and/or facsimile at the addresses listed below on this 11th day of December 2023.



Aubrey Pawelka, Staff Attorney
Environmental Law Division

FOR APPLICANT:

Peter Gregg
pgregg@gregglawpc.com

FOR PUBLIC INTEREST COUNSEL:

Sheldon Wayne
Sheldon.wayne@tceq.texas.gov

FOR PROTESTANTS:

For Jonah Water Special Utility District
Erin Selvera Erin@carltonlawaustin.com

For Shawn Bischsel
Shawn Bischsel sbichsel@gmail.com

For Alex Cifuentes
Alex Cifuentes alex@interiorhomesolutions.com

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Kouri on behalf of Aubrey Pawelka

Bar No. 24121770

brenda.kouri@tceq.texas.gov

Envelope ID: 82425731

Filing Code Description: Exceptions to PFD

Filing Description: Executive Directors Exception To The Administrative Law Judges Proposal For Decision

Status as of 12/11/2023 9:47 AM CST

Associated Case Party: Executive Director

Name	BarNumber	Email	TimestampSubmitted	Status
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	12/11/2023 9:44:54 AM	SENT

Associated Case Party: Public Interest Counsel

Name	BarNumber	Email	TimestampSubmitted	Status
SHELDON WAYNE		sheldon.wayne@tceq.texas.gov	12/11/2023 9:44:54 AM	SENT

Associated Case Party: R040062, LP

Name	BarNumber	Email	TimestampSubmitted	Status
Peter Gregg		pgregg@gregglawpc.com	12/11/2023 9:44:54 AM	SENT
ERIN SELVERA		erin@carltonlawaustin.com	12/11/2023 9:44:54 AM	SENT

Associated Case Party: Jonah Water Special Utility District

Name	BarNumber	Email	TimestampSubmitted	Status
Katy Hennings		katy@carltonlawaustin.com	12/11/2023 9:44:54 AM	SENT
John Carlton		john@carltonlawaustin.com	12/11/2023 9:44:54 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
John Joseph Carlton	3817600	john@carltonlawaustin.com	12/11/2023 9:44:54 AM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Kouri on behalf of Aubrey Pawelka

Bar No. 24121770

brenda.kouri@tceq.texas.gov

Envelope ID: 82425731

Filing Code Description: Exceptions to PFD

Filing Description: Executive Directors Exception To The Administrative Law Judges Proposal For Decision

Status as of 12/11/2023 9:47 AM CST

Case Contacts

John Joseph Carlton	3817600	john@carltonlawaustin.com	12/11/2023 9:44:54 AM	SENT
OLS Legal Support		TCEQsoah@tceq.texas.gov	12/11/2023 9:44:54 AM	SENT
SHAWN BICHSEL		sbichsel@gmail.com	12/11/2023 9:44:54 AM	SENT
ALEX CIFUENTES		alex@interiorhomesolutions.com	12/11/2023 9:44:54 AM	SENT