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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 21, 2023

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RE: SOAH Docket Number 582-23-10368; TCEQ Docket No. 2022-1731-MWD; Application of R040062, LP for TPDES Permit No. WQ0016008001

Dear Parties:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. 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.

This matter has been designated TCEQ Docket No. 2022-1731-MWD; SOAH Docket No. 582-23-10368. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties 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 R040062, LP FOR
TPDES PERMIT NO. WQ0016008001**

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BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS

APPLICATION OF R040062, LP FOR
TPDES PERMIT NO. WQ0016008001

PROPOSAL FOR DECISION

R040063, LP (Applicant) filed an Application on June 11, 2021, with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016008001. Applicant seeks the permit to discharge up to 75,000 gallons of treated domestic wastewater per day during an interim phase, and a final volume of up to 200,000 gallons per day, from a proposed new wastewater treatment facility in Williamson County (Facility). Having considered the parties' evidence and arguments, the Administrative Law Judge (ALJ) recommends the Commission approve the Application and issue the Draft Permit without changes.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party contested notice, the Commission's jurisdiction to act on the Application, or jurisdiction for the State Office of Administrative Hearings (SOAH) to convene a hearing and prepare a Proposal for Decision (PFD). Therefore, these issues will be addressed only in the findings of fact and conclusions of law in the Proposed Order attached to this PFD.

The Application was filed on June 11, 2021, and TCEQ declared the Application administratively complete on August 24, 2021. Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in English in the *Williamson County Sun* on August 29, 2021, and in Spanish in *El Mundo* on September 2, 2021.

The Executive Director (ED) of TCEQ completed the technical review of the application on November 16, 2021, and prepared the Draft Permit which, if approved, would establish the conditions under which the Facility must operate. Applicant then published a Notice of Application and Preliminary Decision in English in the *Williamson County Sun* on May 18, 2022, and in Spanish in *El Mundo* on May 19, 2023. The public comment period closed on June 20, 2022, and the ED filed its Response to Public Comment on August 30, 2022.

On November 17, 2022, Applicant filed a request for direct referral to SOAH, and TCEQ docketed the case at SOAH on January 19, 2023. SOAH ALJ Holly Vandrovec convened the preliminary hearing on April 24, 2023, via Zoom videoconference. At the preliminary hearing, the administrative record was admitted

into evidence and the ALJ determined that SOAH had jurisdiction. In addition to the statutory parties (Applicant, the ED, and the Office of Public Interest Counsel (OPIC)), the ALJ named protestants Jonah Water Special Utility District (Jonah), Shawn Bischel, and Alex Cifuentes as parties.¹

The hearing on the merits was held on August 15-16, 2023, in the SOAH hybrid hearing room and via Zoom videoconference before ALJ Vandrovec. Applicant was represented by attorney Peter Gregg; the ED was represented by attorney Aubrey Pawelka; OPIC was represented by attorney Sheldon Wayne; and Jonah was represented by attorney Erin Selvera. Protestants Shawn Bichsel and Alex Cifuentes did not pre-file direct testimony or participate at the hearing on the merits.

At the hearing, Applicant presented testimony from David Tuckfield, and his prefiled direct testimony and associated exhibits were admitted as Applicant Exhibits 1-9. The ED presented testimony from Brittany Lee, whose direct testimony and related attachments were admitted as Exhibits ED-BL-1 to ED-BL-4; and Sonia Bhuiya, whose direct testimony and related attachment were admitted as Exhibits ED-SB-1 and ED-SB-2. Jonah presented testimony from William “Bill” Brown, whose direct testimony and related attachment were admitted as Exhibits JWSUD-1 and BB-1 (also marked as JWSUD-3); and Miles Whitney, whose direct testimony and related attachment were admitted as Exhibits JWSUD-2 and MW-1 (also marked as JWSUD-4). The record initially

¹ The City of Georgetown was also admitted as party but was later dismissed after reaching a settlement with Applicant and withdrawing its hearing request. *See* Order Granting Motion to Withdraw as Party (July 12, 2023).

closed on September 25, 2023, after the parties filed their written closing arguments and replies. The record was reopened when the ALJ learned that the transcript and exhibits had not been filed, then closed again on November 16, 2023, upon the filing of the complete hearing record.

II. BURDEN OF PROOF

The Application was filed after September 1, 2015, and TCEQ referred it to SOAH under Texas Water Code section 5.557, which governs direct referral of environmental permitting cases.² Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3),³ which provides:

- (i-1) In a contested case regarding a permit application referred under Section . . . 5.557 [of the] Water Code, the filing with [SOAH] of the 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:

² Tex. Water Code §§ 5.551(a), .557.

³ Acts 2015, 84th Leg., R.S., ch. 116 (S.B. 709), §§ 1 and 5, eff. Sept. 1, 2015.

- (1) relates to a matter referred under Section 5.557, 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. 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.⁴

In this case, the application, the Draft Permit, and the other materials listed in Texas Government Code § 2003.047(i-1), which are collectively referred to as the “Prima Facie Demonstration,” were offered and admitted into the record at the April 24, 2023 preliminary hearing.⁵

⁴ 30 Tex. Admin. Code § 80.17(a), (c).

⁵ Applicant Exs. A, B.

III. DISCUSSION AND ANALYSIS

A. DESCRIPTION OF THE PROPOSED FACILITY AND DISCHARGE

The Draft Permit would authorize the discharge of a daily interim-phase average flow of up to 75,000 gallons per day, and a final average flow of up to 200,000 gallons per day, of treated domestic wastewater from the Facility.⁶ The Facility will be located off the west end of Madison Drive, approximately 1,500 feet northwest of the intersection of Country Road 105 and Jacobs Way in Williamson County, Texas 78626.⁷ The Facility will be an activated sludge process plant operated in the extended aeration mode.⁸

The treated effluent will be discharged to an unnamed tributary of Mankins Branch, then to Mankins Branch, then to the San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and Mankins Branch (intermittent with perennial pools), and high aquatic life use for Mankins Branch (perennial). The designated uses for Segment No. 1248 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer. Portions of the discharge route are within the transition zone.⁹

⁶ Applicant Ex. A, Tab C at 002.

⁷ Applicant Ex. A, Tab C at 037.

⁸ Applicant Ex. A, Tab C at 037.

⁹ Applicant Ex. A, Tab C at 037.

B. BACKGROUND AND APPLICABLE LAW

The proposed Facility would provide wastewater and treatment disposal for Applicant's subdivision, the Indigo Development, which will consist of approximately 281 manufactured housing units in Williamson County.¹⁰ Jonah is a special utility district in that county, holding water Certificate of Convenience and Necessity (CCN) No. 10970, and provides water service for approximately 13,300 customers and 35,000 people in its service area.¹¹ The proposed Facility is located in the southwest portion of Jonah's service area and within both Jonah's district boundary and its water CCN territory.¹²

Jonah contends that Jonah, not Applicant, is the best utility to construct, own, and operate the Facility. Jonah argues that (a) Applicant failed to secure Jonah's consent to provide wastewater within its water CCN service area and district boundary, and (b) the Application did not address Texas regionalization policy or demonstrate that the goals of the policy would be served by allowing Applicant to construct the Facility, particularly because Applicant's lack of experience in constructing or operating a utility could lead to degradation of water quality conditions in the affected waters.¹³ For these reasons, Jonah contends that Applicant has not met its burden of showing that the Application meets all applicable requirements and will protect human health and safety and the environment.

¹⁰ Ex. JWSUD-1 at 5 (Brown Direct); Tr. Vol. 1 at 24-26 (Brown Direct at hearing).

¹¹ Ex. JWSUD-1 at 5 (Brown Direct); Tr. Vol. 1 at 24 (Brown Direct at hearing).

¹² Ex. JWSUD-1 at 5 (Brown Direct); Ex. JWSUD-2 at 5 (Whitney Direct); Ex. JWSUD-3 (Map, or Ex. BB-1).

¹³ Ex. JWSUD-1 at 6-7 (Brown Direct).

To support the claim that Jonah’s consent is required before Applicant can be granted a permit to build and operate the Facility, Jonah cites a provision in Texas Water Code chapter 13, a chapter that addresses the rates and services of retail public water utilities and gives the Texas Public Utility Commission (PUC) jurisdiction to regulate them.¹⁴ In that chapter, subchapter G addresses CCNs that are required to provide retail water or sewer utility service.¹⁵ Relevant to Jonah’s argument in this case, section 13.244(c) states:

Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the utility commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.¹⁶

Regarding regionalization concerns, Texas Water Code chapter 26, which addresses water quality control, states that it is state policy to “encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state, and to require the use of all reasonable methods to implement this policy.”¹⁷ The chapter also addresses consideration of other regional options for wastewater treatment:

¹⁴ Tex. Water Code §§ 13.001, .004(a), .041. Chapter 13 also provides that PUC’s authority ends if a water supply or sewer service corporation voluntarily converts to a special utility district. *Id.* § 13.004(b).

¹⁵ Tex. Water Code §§ 13.241-.258.

¹⁶ Tex. Water Code § 13.244(c).

¹⁷ Tex. Water Code § 26.003.

Sec. 26.0282. CONSIDERATION OF NEED AND REGIONAL TREATMENT OPTIONS. In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.¹⁸

In support of its regionalization arguments, Jonah looks to chapter 49 of the Texas Water Code, which sets out certain provisions applicable to, *inter alia*, special utility districts like Jonah.¹⁹ Specifically, Jonah relies on the following:

Sec. 49.230. AREA-WIDE WASTEWATER TREATMENT. The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever economically feasible and competitive to do so, it being an objective of the policy to avoid the economic burden to the people and the impact on the quality of the water in the state that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided.²⁰

¹⁸ Tex. Water Code § 26.0282.

¹⁹ Tex. Water Code § 49.002.

²⁰ Tex. Water Code § 49.230.

According to Jonah, TCEQ would run afoul of the state’s policy of encouraging “the development and use of integrated area-wide wastewater collection, treatment, and disposal system” if it grants the Application.

C. ISSUES RELATED TO CONSENT

1. Protestant’s Position

Jonah contends that because it has not consented to Applicant’s plans to build and operate the proposed Facility, the Application must be denied. Jonah witness William Brown, who is Jonah’s General Manager,²¹ testified that Applicant did not seek Jonah’s consent and that Jonah, in fact, does not consent to Applicant providing wastewater service in Jonah’s CCN service area.²² Without that consent, Jonah believes Applicant would be “legally barred from providing service.”²³ Meanwhile, Jonah would agree to construct, operate, and maintain a wastewater facility to service Applicant.²⁴

Jonah argues that special utility districts, like cities, may provide wastewater service within their territorial boundaries without a wastewater CCN, and that their authority to do so “also comes with the authority [to require] consent before another

²¹ Ex. JWSUD-1 at 3 (Brown Direct). Mr. Brown has over thirty years’ experience in operating and managing water and wastewater systems, both large and small. *Id.*

²² Ex. JWSUD-1 at 4 (Brown Direct).

²³ Jonah’s Closing Brief at 3, *citing* Tex. Water Code § 13.244(c).

²⁴ Ex. JWSUD-1 at 4 (Brown Direct).

provider provides service within those boundaries.”²⁵ Because the Draft Permit would allow Applicant to provide wastewater service within Jonah’s water CCN service area and district boundaries, Jonah argues, Applicant was required to comply with Texas Water Code section 13.244(c), which requires an applicant for a certificate or an amendment to file “evidence required by the [PUC] to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.” To meet this requirement, according to Jonah, Applicant had to obtain consent from Jonah and include evidence of that consent in the Application,²⁶ and the evidence is uncontested that it did not do so.

The absence of evidence on consent is due in part to what Jonah identifies as a deficiency with TCEQ’s form application. In the section for addressing the “justification for permit,” the form asks the applicant several questions under the heading of “regionalization of facilities.” First, it asks if the proposed service area is located in an incorporated city, and if so, whether “consent to provide service is available from city,” among other information. Second, if the proposed service area is located within another utility’s CCN area, the form requires an applicant to provide “a justification for the proposed facility and a cost analysis of expenditures that includes the cost of connecting to the CCN facilities versus the cost of the proposed facility or expansion.” Finally, the form asks whether there are other “permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility.”²⁷ The form does not address or solicit

²⁵ Jonah’s Closing Brief at 4.

²⁶ Jonah’s Closing Brief at 3.

²⁷ Applicant Ex. A, Tab C at 46-47, 185-85.

information on whether an affected special utility district or water CCN holder consents, and Jonah insists this information must be considered.

“Regardless of whether it is TCEQ’s failure to include the question in the application or the Applicant’s failure to address the issue, omission of this analysis is a fatal flaw,” Jonah argues.²⁸ Because Jonah’s consent is required, and because neither Applicant nor the ED provided evidence refuting Jonah’s evidence that its consent was required and not obtained, Applicant has not met its burden of proving the Application meets “all state and federal legal and technical requirements,” according to Jonah.²⁹

2. Applicant’s Position

Applicant disputes that it needs Jonah’s consent for the Draft Permit. Applicant presented testimony from David Tuckfield, an attorney with 33 years of experience in environmental law, including over a decade focused primarily on wastewater issues and permitting.³⁰ He emphasized that Jonah holds a water CCN, not a wastewater CCN, and while the proposed Facility is located in Jonah’s water CCN area, the Facility would not be in the service area of any wastewater CCN.³¹ The distinction is important, Mr. Tuckfield testified, because Jonah’s water CCN

²⁸ Jonah’s Reply Closing Brief at 3.

²⁹ See Tex. Gov’t Code § 2003.047(i-1), (i-3).

³⁰ Applicant Ex. 1 at 2 (Tuckfield Direct).

³¹ Applicant Ex. 1 at 20 (Tuckfield Direct); Applicant Ex. A, Tab D at 046-47.

creates an exclusive service area only for water, not wastewater.³² Whether Applicant's development is within a utility's water CCN is irrelevant for purposes of considering wastewater regionalization, particularly when that water utility, like Jonah, has no existing wastewater facilities or wastewater systems.³³

Mr. Tuckfield further explained that, as it pertains to consent, TCEQ's rules require only that an applicant send inquiries to wastewater facilities or systems within three miles of the proposed system. Consent from Jonah was not required because there is no dispute that Jonah presently has no such facility.³⁴ It also does not matter that Jonah says it is willing and able to build a wastewater facility because regionalization concerns only existing facilities and systems, not potential, future ones.³⁵ Jonah presented evidence that it would be willing and able to construct a facility in the future and that other applications are pending to permit potential future wastewater treatment plants, but there is no evidence that there are currently any suitable facilities existing within three miles of the proposed Facility.³⁶

³² Applicant Ex. 1 at 20 (Tuckfield Direct).

³³ Applicant Ex. 1 at 20 (Tuckfield Direct). On cross-examination, Mr. Brown, Protestant's witness, conceded that no rule requires a TPDES applicant to get consent from the water CCN holder to obtain a wastewater permit. Tr. Vol. 1 at 29 (Brown Cross).

³⁴ Applicant Ex. 1 at 22 (Tuckfield Direct); Applicant Ex. 4 (TCEQ Regionalization Webpage). The only wastewater facility within three miles of the proposed Facility is the City of Georgetown's Dove Springs facility. Applicant Ex. 1 at 13 (Tuckfield Direct). Georgetown would only provide service to Applicant's proposed subdivision if the development complied with various City requirements. After evaluating the cost of connecting to the Dove Springs facility, Applicant determined it would cost less to build its own. *Id.* at 18; Applicant Ex. A, Tab D at 087-89, 100-02. As noted above, Georgetown reached an agreement with Applicant and withdrew its protest.

³⁵ Applicant Ex. 1 at 22 (Tuckfield Direct).

³⁶ Applicant's Closing Brief at 2-3.

That the Proposed Facility would be within Jonah's district boundaries is also irrelevant and not a factor the TCEQ considers, according to Mr. Tuckfield, particularly because the district boundary does not guarantee or require service.³⁷

In sum, Applicant argues that there is no legal support for Jonah's argument that the Draft Permit is defective because Applicant failed to obtain Jonah's consent.³⁸

3. ED and OPIC's Position

The ED also disputes that Jonah's consent is required. First, the ED argues that Jonah's reliance on Texas Water Code 13.244(c) is inapt because that statute pertains to requirements for seeking a CCN from the PUC; the statute has no relevance to the ED's permit application process.³⁹

The ED also presented testimony from Sonia Bhuiya, a Permit Coordinator in the Municipal Wastewater Permitting Section of TCEQ's Water Quality Division. She has worked for TCEQ for sixteen years.⁴⁰ Ms. Bhuiya disagrees that the Application is somehow incomplete or inadequate for failing to show Jonah's consent.

³⁷ Applicant Ex. 1 at 22 (Tuckfield Direct).

³⁸ Applicant's Reply Closing Brief at 4.

³⁹ ED's Reply Closing Brief at 1.

⁴⁰ Ex. ED-SB-1 at 2.

Ms. Bhuiya explained that, where an applicant is seeking wastewater authorization, the review process does not consider holders of water CCNs.⁴¹ If Jonah had a wastewater CCN, then Applicant would have been required to provide a cost analysis comparing the costs of using their collection system versus constructing its own, but even then, the absence of Jonah's consent would not require automatic denial of the Application.⁴² Likewise, if Jonah had a wastewater collection system within three miles of the proposed Facility, then Applicant would have been required to provide information about whether Jonah had capacity or consented to provide wastewater for Applicant's development. But because there is no dispute that Jonah does not have such a facility,⁴³ there was no need to consider Jonah as a potential alternative for wastewater service, let alone prove its consent to the proposed Facility.⁴⁴

OPIC argued that Jonah presented no evidence that there was any technical or legal requirement for Applicant to obtain consent from Jonah and therefore, Jonah failed to rebut the Prima Facie Demonstration that the Application and Draft Permit meet all applicable requirements.

⁴¹ Ex. ED-SB-1 at 6.

⁴² Ex. ED-SB-1 at 6-7.

⁴³ At the hearing, Mr. Whitney explained that by saying Jonah was "able" to provide wastewater service to Applicant, he meant only that Jonah is capable of constructing wastewater facilities and eventually providing wastewater treatment and collection for residents in the service area. He admitted Jonah does not presently have any treatment facilities and has to contract with other wastewater service providers. Jonah does not presently have any ability to treat Applicant's wastewater. Tr. Vol. 1 at 17 (Whitney Direct at hearing).

⁴⁴ Ex. ED-SB-1 at 6.

4. ALJ's Analysis

The ALJ agrees with Applicant, ED, and OPIC that there simply is no legal requirement that an applicant for a TPDES permit obtain consent from (1) a *water* CCN holder, (2) a special utility district within which the proposed wastewater treatment facility is located, or (3) an entity that does not have a wastewater treatment facility within three miles of a proposed facility in order to receive the permit. Jonah's citation to Water Code section 13.244(c) is misplaced. Though this section does require some form of consent⁴⁵—the consent is related to a CCN application to the PUC, not a TPDES application to TCEQ.⁴⁶ Although, generally speaking, a wastewater service provider must have both a TPDES permit (or other authorization from TCEQ) and a wastewater CCN to serve a particular area, there is no requirement that one authorization or the other be applied for or granted first. Jonah is free to make its consent argument before the PUC if and when Applicant files for a wastewater CCN there, but it has no bearing on Applicant's TPDES Application.

D. ISSUES RELATED TO REGIONALIZATION

1. Protestant's Position and Evidence

Related to its argument that Jonah's consent is required, Jonah argues that the state's regionalization policy required TCEQ to prioritize consolidating Applicant's

⁴⁵ The ALJ makes no finding on whether this section of the Water Code would require consent from Jonah in the event Applicant filed a wastewater CCN application with the PUC.

⁴⁶ Tex. Water Code § 13.244(a).

proposed wastewater facilities with its own water system. According to Mr. Brown, “regionalization” refers to the consolidation of the operations and/or physical systems of two or more existing or proposed water or domestic wastewater systems.⁴⁷ Jonah also presented testimony from Miles Whitney, a licensed civil engineer who works for Jonah on planning, design, permitting, and management.⁴⁸ He asserted that TCEQ’s regionalization policy favors combining wastewater systems for purposes of improved planning, operation, or management.⁴⁹

For example, Mr. Whitney testified that regionalization goals might be furthered by expanding or combining treatment facilities to operate under a single operator with a strong background in good management, rather than operators of smaller facilities who may lack experience in operation quality, pollution management, or expertise.⁵⁰ Mr. Whitney expressed concern that Applicant may be an example of an entity lacking in the requisite expertise—it is a single-purpose entity that apparently does not own or operate any other wastewater treatment plants.⁵¹ Mr. Brown testified that TCEQ favors regionalization unless it is not feasible—for example, if no other systems are reasonably close to a planned system, or if a utility or provider can prove that there should be an exception based on costs,

⁴⁷ Ex. JWSUD-1 at 6 (Brown Direct).

⁴⁸ Ex. JWSUD-2 at 3 (Whitney Direct).

⁴⁹ Ex. JWSUD-2 at 6 (Whitney Direct).

⁵⁰ Ex. JWSUD-2 at 6 (Whitney Direct).

⁵¹ Ex. JWSUD-2 at 6 (Whitney Direct). Mr. Brown and Mr. Whitney both agreed there is no rule that says an applicant must have previously owned or operated a wastewater treatment plant in order to obtain a new permit. Tr. Vol 1 at 20 (Whitney Cross), 30 (Brown Cross).

affordable rates, and financial, managerial, and technical capabilities of the existing system.⁵² None of those conditions are present here, according to Jonah.

The population in Jonah's service area, and Williamson County at large, is growing rapidly, which will lead to significant increases in water and wastewater capacity demands.⁵³ The Application at issue in this case is just one of ten pending wastewater applications within or near Jonah's district boundary and water CCN area, including three other pending wastewater treatment permits within 3.3 miles of the proposed Facility.⁵⁴ Jonah argues that TCEQ's regionalization policy favors consolidation of wastewater treatment with water supply, and when this policy is properly considered, it shows that Jonah, as the existing water utility, is the best party of construct, operate, and maintain the Facility.⁵⁵

Echoing Mr. Brown, Mr. Whitney testified that Jonah is ready, willing, and able to provide wastewater service to Applicant for its future residential customers in the proposed service area, and that Jonah would be the best regional service provider for the area.⁵⁶ Jonah's construction and operation of the Facility would

⁵² Ex. JWSUD-1 at 6-7 (Brown Direct).

⁵³ Ex. JWSUD-1 at 7 (Brown Direct); Ex. JWSUD-2 at 5 (Whitney Direct).

⁵⁴ Ex. JWSUD-2 at 5-6 (Whitney Direct); Ex. JWSUD-4 (also marked as Ex. MW-1).

⁵⁵ Mr. Whitney testified that Jonah has not been authorized by the District's board to construct a wastewater facility, nor does it have a TCEQ permit authorizing it to do so. Mr. Whitney said that if Jonah is deemed to be the best choice to build the Facility, it would have to negotiate with the Applicant to transfer a permit over. He could not explain how Applicant could transfer a permit if Jonah succeeds in this proceeding to deny the Application, other than to suggest that Jonah might later file for its own permit. Tr. Vol. 1 at 17, 21 (Whitney Direct at hearing).

⁵⁶ Ex. JWSUD-2 at 5 (Whitney Direct).

comply with Texas' regionalization policy by combining water and wastewater service in the area to a single provider with "a history of exceptional operations."⁵⁷

Finally, Jonah argues that Texas Water Code section 49.230 must be given equal weight to the regionalization statutes that the ED relied on (Texas Water Code sections 26.003 and .0282). At the hearing, ED Witness and Permit Coordinator Sonia Bhuiya testified that she did not consider water Code chapter 49 at all when she reviewed the Application,⁵⁸ and Mr. Tuckfield likewise did not address it in his prefiled direct testimony for Applicant.⁵⁹ Jonah argues this shows the ED failed entirely to consider the policy stated in Texas Water Code section 49.230 to "encourage the development and use of integrated area-wide wastewater collection, treatment and disposal systems" and to avoid having multiple small wastewater facilities "when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided."⁶⁰ Likewise, with no evidence from Applicant's witnesses or in the Application that addresses whether the Draft Permit satisfies regionalization goals expressed in section 49.230, Jonah argues, it follows that the Application is deficient and should be denied.⁶¹

⁵⁷ Ex. JWSUD-2 at 8 (Whitney Direct).

⁵⁸ Tr. Vol. 1 at 47 (Bhuiya Cross).

⁵⁹ Tr. Vol. 2 at 19 (Tuckfield Cross). Mr. Tuckfield added that he considered chapter 49 to be "simply not relevant." *Id.* at 20.

⁶⁰ Tex. Water Code § 49.230.

⁶¹ Jonah's Closing Brief at 6-7.

2. Applicant's Position

Applicant disputes that the regionalization policy demands that its proposed wastewater facility be consolidated with Jonah's water system. Applicant's witness, Mr. Tuckfield, acknowledged that "[e]very permit submitted to TCEQ, of course, implicates regionalization."⁶² Based on his experience in this area of law, he explained that the state's regionalization policy was first expressed in 1977, when Texas Water Code section 26.003 was enacted and expressed a policy "to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state."⁶³ Twelve years later, the legislature followed up by enacting Texas Water Code section 26.0282, which spoke to a need to consider "need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems" when evaluating whether to grant a wastewater discharge permit.⁶⁴ These are the regionalization statutes that apply to this case, according to Mr. Tuckfield.

While regionalization is important, Mr. Tuckfield testified, it "should not be used as a tool for a utility to hold developers or applicants hostage" by requiring them to wait until the utility actually has facilities, to connect at any cost, or be subjected to any additional non-wastewater requirements the utility might impose.⁶⁵ He

⁶² Applicant Ex. 1 at 3.

⁶³ Applicant Ex. 1 at 4-5 (Tuckfield Direct), *citing* Tex. Water Code § 26.003.

⁶⁴ Applicant Ex. 1 at 4-5 (Tuckfield Direct), *citing* Tex. Water Code § 26.0282.

⁶⁵ Applicant Ex. 1 at 6 (Tuckfield Direct). According to Mr. Whitney, Jonah will not impose requirements on potential customers, while Applicant might. Ex. JWSUD-2 at 8 (Whitney Direct).

pointed to a recent Proposal for Decision in a case referred to as *Crystal Clear*, where the ALJ explained “[t]he purpose of regionalization review is to encourage Applicants to explore and give serious consideration to connection to [other] utilities—not to provide neighboring utilities leverage and means to require such connection.”⁶⁶ The TCEQ’s Order granting the permit at issue in *Crystal Clear* included the following Conclusion of Law:

13. Texas Water Code § 26.0282 does not require the Commission to reach specific conclusions before issuing a permit. Nor does it require the Commission to deny a permit even if the Commission concludes that an alternative system is available in the region. Instead, section 26.0282 gives the Commission several options that it may exercise in a permit case to encourage and promote regionalization based on the evidence presented concerning the need for the permit and other systems, existing and proposed, in the geographical area.⁶⁷

While TCEQ has not adopted any rules to implement the state’s regionalization policy, this Order prompted the TCEQ to develop a guidance entitled “TCEQ Regionalization Policy for Wastewater Treatment” that has been posted on the TCEQ’s website since July 30, 2021 (the Regionalization Webpage).⁶⁸ Though not a rule or binding policy, this guidance, along with the *Crystal Clear*

⁶⁶ Applicant Ex. 1 at 6 (Tuckfield Direct), citing *Application by Crystal Clear Special Utility District and MCLB Land LLC*, SOAH Docket No. 582-20-4141, TCEQ Docket No. 2020-0411-MD, Proposal for Decision at 33 (March 22, 2021) (admitted as Applicant Ex. 3).

⁶⁷ *Order Granting The Application by Crystal Clear Special Utility District and MCLB Land, LLC for TPDES Permit No. WQ0015266002 In Hays County, Texas*; TCEQ Docket No. 2020-0411-MWD; SOAH Docket No. 582-20-4141 (June 9, 2021).

⁶⁸ Applicant Ex. 1 at 6-7 (Tuckfield Direct); Applicant Ex. 4 (TCEQ Regionalization Webpage).

Order, reflects what the ED considers relevant when considering issues of regionalization or need, Mr. Tuckfield asserted.⁶⁹

Among other things, the Regionalization Webpage provides that a wastewater permit applicant must address justification of permit need, then points to the questions on the application for wastewater permit applications where “justification of permit need” and “regionalization of facilities” are addressed.⁷⁰ The questions on that application section primarily ask whether “there are any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility,” and if so, directs the applicant to contact the existing facility owner to determine whether it has capacity or is willing to accept the wastewater from the proposed development.⁷¹ Even if there is another, existing facility within three miles that could serve the proposed development, then the costs of connecting to that facility versus the costs of constructing a new one are examined.⁷² The TCEQ encourages and promotes regionalization by asking these questions and considering whether connecting to other facilities is reasonable, but the regionalization policy does not compel TCEQ to grant or deny any application—it is just information to consider in exercising the TCEQ’s permissive discretion in implementing the State’s regionalization policy.⁷³

⁶⁹ Applicant Ex. 1 at 7-9 (Tuckfield Direct). The guidance was published *after* the Application in this case was filed. *Id.*

⁷⁰ Applicant Ex. 1 at 9-10 (Tuckfield Direct). This section of the application is titled Domestic Technical Report 1.1. *See* Applicant Ex. A, Tab D at 185.

⁷¹ Applicant Ex. 1 at 10 (Tuckfield Direct); Applicant Ex. 4 at 2-4 (TCEQ Regionalization Webpage).

⁷² Applicant Ex. 1 at 10 (Tuckfield Direct); Applicant Ex. 4 at 2-4 (TCEQ Regionalization Webpage).

⁷³ Applicant Ex. 1 at 11 (Tuckfield Direct).

Ultimately, Applicant contends that the Application sufficiently addressed the regionalization policy expressed in Texas Water Code sections 26.003 and .0282, and that section 49.230 has no relevance to regionalization.

3. ED and OPIC's Position

The ED maintains that the Draft Permit would comply with the state's regionalization policy. TCEQ has discretion to require regionalization if and when the circumstances demonstrate that regionalization would be reasonable, the ED argues. Regionalization is considered as part of the permitting analysis, but it is not an automatic basis to deny an application or compel an applicant to connect to existing facilities.

Testifying for the ED, Ms. Bhuiya described "regionalization" as the administrative or physical combination of two or more community wastewater systems.⁷⁴ In her experience reviewing over 300 applications over the last 16 years, Ms. Bhuiya has never seen any application denied solely on regionalization grounds.⁷⁵ She explained that the regionalization policy expressed in Texas Water Code section 26.081 only directs TCEQ to "encourage or promote" regional wastewater systems; it does not require TCEQ to deny an application on the basis that there is already a facility or collection located within three miles of a proposed

⁷⁴ Ex. ED-SB-1 at 3.

⁷⁵ Ex. ED-SB-1 at 8.

facility.⁷⁶ Likewise, the ED argues that Texas Water Code section 26.0282 provides that TCEQ “may” deny or alter the terms of a proposed permit; the term “may” conveys a discretionary authority, not a compulsory requirement to deny a TPDES application if there are existing or proposed areawide wastewater systems in the area. Texas Water Code section 49.230 adds nothing new to the regionalization review, the ED argues; like the other statutes, it is discretionary and not compulsory, stating only that regionalization is “encouraged . . . whenever economically feasible and competitive do to so.” This language reiterates the regionalization policy that TCEQ already includes in its review pursuant to Texas Water Code sections 26.081 and .230.⁷⁷

To determine whether an application complies with regionalization policy, TCEQ asks TPDES permit applicants to review the area surrounding their proposed facility to determine: (1) whether any portion of the proposed service area is within an incorporated city; (2) whether any portion is within another utility’s CCN area; and (3) whether there are already any domestic permitted wastewater treatment facilities or collection systems within three miles.⁷⁸ If there are existing facilities within three miles, then the applicant has to explore whether the existing facility has capacity and could feasibly provide the service instead of the facility proposed in the application. Even if there is an existing, nearby facility, regionalization would still not demand automatic denial of the application.⁷⁹

⁷⁶ Ex. ED-SB-1 at 7.

⁷⁷ ED’s Reply Closing Brief at 2.

⁷⁸ Ex. ED-SB-1 at 4.

⁷⁹ Ex. ED-SB-1 at 4-5.

Ms. Bhuiya said she followed TCEQ's standard procedures for reviewing the Application and considering regionalization policy.⁸⁰ Applicant established the need for its proposed Facility to supply wastewater service for the residences in its Indigo Development. Applicant also satisfied the requirement to list nearby collection systems and wastewater treatment facilities in the Application and analyzed the expenditures.⁸¹ According to Ms. Bhuiya, Applicant was not required to prove that no one else could build the proposed Facility or to contact water CCN holders to see if they might also be able and willing to construct facilities for wastewater service.⁸² ED argues that Jonah has not provided any evidence to rebut the Prima Facie Demonstration that the Draft Permit complies with the regionalization policy.

OPIC agrees with ED that the evidence supports a conclusion that the Draft Permit is consistent with Texas's regionalization policy and that Applicant has demonstrated a need for the proposed Facility. Applicant was required to reach out only to existing facilities within three miles of the proposed facility and provide a cost analysis that justified construction of the proposed Facility, OPIC argues, and Applicant's evidence has justified the need for this Facility to serve its Indigo Development.⁸³ OPIC also agrees with Applicant and the ED that Jonah's water CCN is irrelevant to the issue of regionalization, pointing out that the statutes

⁸⁰ Ex. ED-SB-1 at 5.

⁸¹ Ex. ED-SB-1 at 6.

⁸² Ex. ED-SB-1 at 8-9. On cross-examination, Mr. Brown and Mr. Whitney both conceded that no TCEQ rules require an applicant to address regionalization, let alone establish that the applicant, and not some other utility, is the best party to serve the goals of regionalization. Tr. Vol 1 at 20 (Whitney Cross), 30 (Brown Cross).

⁸³ OPIC's Closing Brief at 12.

addressing regionalization are confined only to the consideration of wastewater systems and do not include water systems.⁸⁴ Finally, even assuming that proposed, future facilities could be properly considered, there was no evidence that any of the pending permit applications cited by Jonah would result in a facility that would have capacity or be willing to accept Applicant's wastewater.⁸⁵ Further, Jonah's own aspiration to construct wastewater facilities "are too uncertain to rely on for regionalization purposes."⁸⁶

4. ALJ's Analysis

The ALJ agrees with the Applicant, ED, and OPIC that the state's regionalization policy presents no basis to deny the Application—the primary reason being that Jonah has nothing to "regionalize." Jonah has no wastewater facilities whatsoever,⁸⁷ has no TCEQ permit or even a permit application on file that would authorize them a means to provide such services, no authorization from Jonah's own board to provide such services, and no wastewater CCN from the PUC that would authorize them to provide wastewater services. Even if other wastewater treatment facilities exist within a three-mile radius of a proposed facility, that fact alone would not necessitate a denial of an application because Texas Water Code section 26.0282 uses the permissive "may" rather than "shall." Further, the ALJ concludes that Texas Water Code section 49.230 is inapplicable to this proceeding. That section of

⁸⁴ OPIC's Closing Brief at 12.

⁸⁵ OPIC's Closing Brief at 12.

⁸⁶ OPIC's Closing Brief at 12.

⁸⁷ This fact undercuts Jonah's argument regarding Applicant's lack of experience in running a wastewater treatment plant.

the code has to do with the powers and duties of districts, not with whether a TPDES permit should be granted. The ALJ will not repeat the arguments of the Applicant, ED, and OPIC already summarized in this PFD, but agrees with the reasoning laid out above.

E. ISSUES RELATED TO WATER QUALITY

1. Protestant's Position

Though not addressed at the hearing or in Jonah's post-hearing briefs, the ALJ will address a subsidiary issue raised by Protestant's prefiled testimony: that Applicant's inexperience with constructing or operating wastewater treatment facilities might impair its ability to ensure that the Draft Permit will "protect human health and safety, the environment, and physical property."⁸⁸

One purpose of regionalization, according to Mr. Brown, is to safeguard water quality in the state.⁸⁹ Jonah's witnesses testified that the Facility's discharge would ultimately flow to the San Gabriel/North Fork San Gabriel River, and that the water Jonah provides to its customers includes water drawn from sources that are also on the San Gabriel River.⁹⁰ Mr. Whitney testified that a "high quality" facility is necessary to maintain the surface water quality for all discharges above Lake Granger, as Lake Granger serves as a major water supply source for Jonah through

⁸⁸ Tex. Gov't Code § 2003.047(i-2).

⁸⁹ Ex. JWSUD-1 at 6 (Brown Direct).

⁹⁰ Ex. JWSUD-1 at 8 (Brown Direct); Ex. JWSUD-2 at 7 (Whitney Direct).

its wholesale contracts with the Brazos River.⁹¹ Mr. Brown and Mr. Whitney both expressed “concern” that, if poorly constructed or operated by Applicant, the Facility could degrade water quality conditions on the discharge route.⁹² Jonah is also “concerned” about the potential contamination of ground water in the area if the Facility is not properly maintained or discharge is not in compliance with the required water quality standards.⁹³

Jonah argues that Applicant has little or no experience constructing or operating a utility, and that inexperience could lead to pollution or damage to areas in Jonah’s water CCN area. By contrast, Jonah has the staff and experience to construct and operate the Facility at the highest standard.⁹⁴ Mr. Whitney testified that, in his opinion, Jonah is the superior choice to construct and operate the Facility because Jonah will ensure that the Facility is built and maintained to operate at the highest quality standards to safeguard surface-water quality in the region.⁹⁵

2. Applicant’s Position

Applicant argues that Jonah failed to present any evidence that the Application is deficient as it relates to the protection on water quality. Mr. Brown and Mr. Whitney merely speculated that water quality might be compromised if the

⁹¹ Ex. JWSUD-2 at 7.

⁹² Ex. JWSUD-1 at 8 (Brown Direct); Ex. JWSUD-2 at 7 (Whitney Direct).

⁹³ Ex. JWSUD-2 at 7-8 (Whitney Direct).

⁹⁴ Ex. JWSUD-1 at 9 (Brown Direct); Ex. JWSUD-2 at 7 (Whitney Direct).

⁹⁵ Ex. JWSUD-2 at 8 (Whitney Direct).

facility was poorly constructed or operated. Their vague and unsupported concerns are insufficient to rebut the prima facie case that the Draft Permit is protective of water quality.⁹⁶

3. ED and OPIC's Position

The ED presented testimony from Brittany Lee, an Aquatic Scientist IV on the Standards Implementation Team in the Water Quality Assessment Section of TCEQ's Water Quality Division. She is responsible for conducting water quality standards reviews and biomonitoring reviews for TPDES permit applications like this one, and has worked on or reviewed approximately 1,600 permit applications in her 16 years employed by TCEQ.⁹⁷ In her testimony, she described the review process and the steps involved in conducting the technical review, including antidegradation review.⁹⁸ She testified that, based on her review, she had no concerns about antidegradation with the Draft Permit and believes the permit would protect the existing uses of the receiving waters.⁹⁹ Appropriate limits were implemented into the Draft Permit to maintain and protect the water quality within the immediate receiving streams and up to three miles downstream, which will preclude degradation to the segment and Lake Granger as well.¹⁰⁰

⁹⁶ Applicant's Closing Brief at 3-4.

⁹⁷ Ex. ED-BL-1 at 2 (Lee Direct).

⁹⁸ Ex. ED-BL-1 at 5-8 (Lee Direct).

⁹⁹ Ex. ED-BL-1 at 12, 14 (Lee Direct).

¹⁰⁰ Ex. ED-BL-1 at 12, 14 (Lee Direct).

Ms. Lee said she was aware of concerns expressed by Mr. Brown and Mr. Whitney about whether Applicant could build and maintain the Facility. Though she is not qualified to opine on issues related to a construction and operational standards, she testified that their concerns did not change her opinion that the Draft Permit is sufficiently protective of water quality.¹⁰¹ Ms. Bhuiya agreed with Ms. Lee, testifying that the Draft Permit was developed in compliance with applicable water quality standards and that Applicant has demonstrated that it has the requisite experience to operate and maintain this wastewater treatment plan.¹⁰²

OPIC agrees with the ED that Ms. Lee's testimony supports a conclusion that if the discharge meets the effluent limits in the Draft Permit, the applicable water quality criteria should be met and the uses of the receiving waters should be protected.¹⁰³ Jonah's concerns about water quality assume that the Facility will be poorly constructed or operated, but those concerns were so general in nature that they did not rebut the Prima Facie Demonstration afforded to the Applicant by Texas Government Code section 2003.047(i-1).

4. ALJ's Analysis

The ALJ concludes that Jonah's speculative concerns about how the Facility would be constructed or operated are not enough to show that the Draft Permit would not be protective of human health and safety, the environment, and physical

¹⁰¹ Ex. ED-BL-1 at 15-17 (Lee Direct).

¹⁰² Ex. ED-SB-1 at 9-10 (Bhuiya Direct).

¹⁰³ OPIC's Closing Argument at 7.

property. The question here is not whether Applicant or Jonah would be the better provider of wastewater service. In fact, as previously noted, the ALJ could have some of the same concerns with Jonah providing wastewater service as it has never done so either. The question is whether the Draft Permit's terms (including the effluent limits) are protective of human health and the environment. Jonah provided no evidence that the Draft Permit's limits and other terms would fail to do so. The ALJ concludes that the Draft Permit is protective of human health and the environment.

IV. TRANSCRIPTION COSTS

The Commission's rules require transcription costs to be assessed after consideration of the following factors:

- (A) the party who requested the transcript;
- (B) the financial ability of the party to pay the costs;
- (C) the extent to which the party participated in the hearing;
- (D) the relative benefits to the various parties of having a transcript;
- (E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;
- (F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
- (G) any other factor which is relevant to a just and reasonable assessment of costs.

Here, no party has presented evidence on the amount of costs incurred, nor any argument on how those costs should be assessed. Though no party requested that the hearing be transcribed (this was required by the ALJ), all parties participated in the hearing and benefitted equally from having a copy of transcript. Neither OPIC

nor the ED may be assessed transcript costs.¹⁰⁴ Therefore, the ALJ recommends that Applicant and Jonah each bear their own transcript costs.

V. CONCLUSION AND RECOMMENDATION

Based on the analysis above, the ALJ concludes that Applicant met its burden of proving that the Application complies with all applicable legal and technical requirements. Applicant has sufficiently demonstrated that the Draft Permit complies with TCEQ's regionalization policy and will be protective of water quality. Accordingly, the ALJ recommends that the Commission adopt the attached Proposed Order containing Findings of Fact and Conclusions of Law and issue the Draft Permit to Applicant without changes.

Signed November 21, 2023



Holly Vandrovec
Administrative Law Judge

¹⁰⁴ 30 Tex. Admin. Code § 80.23(d)(2).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION BY R040062, LP FOR TPDES PERMIT NO. WQ0016008001 IN WILLIAMSON COUNTY, TEXAS; SOAH DOCKET NO. 582-23-10368; TCEQ DOCKET NO. 2022-1731-MWD

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of R040062, LP (Applicant), for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016008001 in Williamson County, Texas. A Proposal for Decision (PFD) was presented by Holly Vandrovec, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the application on August 15-16, 2023, in a hybrid hearing held in Austin, Texas and via Zoom videoconference.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Application

1. Applicant filed its application (Application) for a new TPDES permit with the TCEQ on June 11, 2021.
2. The Application requested authorization to discharge treated domestic wastewater from a proposed new wastewater treatment facility (Facility)

located off the west end of Madison Drive, approximately 1,500 feet northwest of the intersection of Country Road 105 and Jacobs Way in Williamson County, Texas 78626.

3. The Facility will be an activated sludge process plant operated in the extended aeration mode.
4. The proposed discharge route is to an unnamed tributary of Mankins Branch, then to Mankins Branch, then to the San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin.
5. The Application requests authorization to treat and discharge treated domestic wastewater from the proposed facility at a daily average flow not to exceed 75,000 gallons per day (GPD) in the interim phase and 200,000 GPD in the final phase.
6. The Executive Director (ED) of the TCEQ declared the Application administratively complete on August 24, 2021.
7. The ED completed the technical review of the Application, prepared a draft permit (Draft Permit) and made it available for public review and comment.
8. The Draft Permit provides for two phases, an interim phase and a final phase. During the interim phase, which extends through completion of the expansion to the 0.2 million gallons per day (MGD) facility, the daily average flow of effluent shall not exceed .0075 MGD, and average discharge during any two-hour period may not exceed 208 gallons per minute.

9. The Draft Permit contains the following effluent limits for the interim phase:

Effluent Characteristic	Daily Avg. Limit	7-day Average mg/L	Dail Max mg/L	Single Grab mg/L
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (6.3)	15	25	35
Total Suspended Solids	15 (9.4)	25	40	60
Ammonia Nitrogen	3 (1.9)	6	10	15
Total Phosphorus	0.5 (0.31)	1	2	3
<i>E. coli</i>	126	N /A	N/A	399

10. The Draft Permit contains the following effluent limits for the final phase:

Effluent Characteristic	Daily Avg. Limit	7-day Average mg/L	Dail Max mg/L	Single Grab mg/L
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (17)	15	25	35
Total Suspended Solids	15 (25)	25	40	60
Ammonia Nitrogen	3 (5.0)	6	10	15
Total Phosphorus	0.5 (0.83)	1	2	3
<i>E. coli</i>	126	N /A	N/A	399

11. In both phases, the effluent shall contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes.

12. For both the interim and final phases, the pH must be in the range of 6.0 to 9.0 standard units.
13. For both the interim and final phases, the effluent shall contain a minimum dissolved oxygen of 4.0 mg/L and shall be monitored once per week by grab sample.
14. The Draft Permit is protective of human health and safety, the environment, and physical property.

Notice and Jurisdiction

15. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on August 29, 2021, in the *Williamson County Sun* and in Spanish on September 2, 2021, in *El Mundo*.
16. The ED completed the technical review of the Application on November 6, 2021, and prepared the Draft Permit on December 26, 2022.
17. The Notice of Application and Preliminary Decision was published in English on May 18, 2022, in the *Williamson County Sun* and in Spanish on May 19, 2023, in *El Mundo*.
18. The public comment period closed on June 20, 2022.
19. The ED filed its Response to Public Comment on August 30, 2022.
20. On November 17, 2022, Applicant filed a request for direct referral to SOAH.
21. TCEQ docketed the case at SOAH on January 19, 2023
22. On March 22, 2023, notice of the preliminary hearing was published in English in *The Williamson County Sun*. The notice included the time, date, and place of the preliminary hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

Proceedings at SOAH

23. On April 24, 2023, a preliminary hearing was convened in this case via Zoom videoconference by SOAH ALJ Holly Vandrovec. Applicant, the ED, the Office of Public Interest Counsel (OPIC), and protestants Jonah Water

Special Utility District (Jonah), Shawn Bischel, and Alex Cifuentes were admitted as parties.

24. The City of Georgetown was also admitted as a party but was subsequently dismissed after settling with Applicant and filing a motion to withdraw.
25. At the preliminary hearing, the ALJ admitted the Administrative Record into evidence and noted jurisdiction.
26. The hearing on the merits was held on August 15-16, 2023, in the SOAH hybrid hearing room and via Zoom videoconference before ALJ Vandrovec. Applicant was represented by attorney Peter Gregg; the ED was represented by attorney Aubrey Pawelka; OPIC was represented by attorney Sheldon Wayne; and Jonah was represented by attorney Erin Selvera. Protestants Shawn Bichsel and Alex Cifuentes did not pre-file direct testimony or participate at the hearing on the merits.
27. The record initially closed on September 25, 2023, after the parties filed their written closing arguments and replies. The record was re-opened when the ALJ learned that the transcript and exhibits had not been filed, and then closed on November 16, 2023, upon the filing of the complete hearing record.

Consent

28. Jonah is a special utility district with a water certificate of convenience and necessity (CCN) authorization from the Texas Public Utility Commission (PUC) to provide water service in the area in which the Facility will be located.
29. Jonah does not have a wastewater CCN authorization from the PUC.
30. Jonah has no wastewater treatment facilities.
31. Jonah has no TPDES permit or other authorization from TCEQ that would allow it to treat wastewater and no application on file with the TCEQ that would allow it to do so.
32. Jonah's district board has not authorized it to provide wastewater treatment services.
33. There is no legal requirement that an applicant for a TPDES permit obtain consent from a water CCN holder or a special utility district within which the

proposed wastewater treatment facility is located in order to receive the permit.

34. Applicant was not required to obtain consent from Jonah as a condition to having its Draft Permit issued.

Regionalization

35. In order to effectuate its policy of encouraging regionalization of wastewater services, TCEQ requires applicants to provide certain information to allow TCEQ to conduct a regionalization analysis of the application.
36. To determine whether an application complies with regionalization policy, TCEQ asks TPDES permit applicants to review the area surrounding their proposed facility to determine: (1) whether any portion of the proposed service area is within an incorporated city; (2) whether any portion is within another utility's CCN area; and (3) whether there are already any domestic permitted wastewater treatment facilities or collection systems within three miles.
37. The Facility is not within an incorporated city, is not within another utility's wastewater CCN area, and there is one permitted wastewater treatment facility within three miles of the Facility.
38. Regionalization was properly considered when the Application was reviewed and the Draft Permit was prepared.
39. The policy of regionalization does not provide a basis for denying the Application in this matter.

Transcription Costs

40. Reporting and transcription of the hearing on the merits was warranted.
41. All parties fully participated in the hearing by presenting witnesses and cross-examining witnesses.
42. All parties benefitted from preparation of a transcript.
43. There was no evidence that any party subject to allocation of costs is financially unable to pay a share of the costs.

44. Transcript costs cannot be assessed against the ED or OPIC because they are statutory parties who are precluded from appealing the decision of the Commission.
45. Applicant and Jonah should bear their own transcript costs.

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 § 2003.047.
3. Notice was provided in accordance with Texas Water Code §§ 5.114, 26.028; Texas Government Code §§ 2001.051-.052, and 30 Texas Administrative Code §§ 39.405 and .551.
4. 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).
5. Applicant's filing of the Administrative Record established a prima facie case 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).
6. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to the matter directly referred; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. See Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).
7. 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).
8. 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).

9. Texas Water Code section 26.0282 requires the TCEQ to consider regionalization and allows the TCEQ the option of denying a permit or altering its terms “based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems.”
10. Texas Water Code section 13.244(c) applies to CCN applications, not TPDES applications.
11. No transcript costs may be assessed against the ED or OPIC because the 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. 30 Tex. Admin. Code § 80.23(d)(2).
12. 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; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
13. Considering the factors in 30 Texas Administrative Code § 80.23(d)(1), a reasonable assessment of hearing transcript costs is for each party to bear its own 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 R040063, LP for Texas Pollutant Discharge Elimination System Permit No. No. WQ0016008001 is granted as set forth in the Draft Permit.
2. The parties are to bear their own transcription costs.
3. The Commission adopts the ED’s Response to Public Comment in accordance with 30 Texas Administrative Code § 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 § 2001.144 and 30 Texas Administrative Code § 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

Jon Niermann, Chairman, For the Commission

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Status as of 11/21/2023 10:27 AM CST

Associated Case Party: Executive Director

Name	BarNumber	Email	TimestampSubmitted	Status
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	11/21/2023 10:24:20 AM	SENT

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Associated Case Party: R040062, LP

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Associated Case Party: Jonah Water Special Utility District

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John Carlton		john@carltonlawaustin.com	11/21/2023 10:24:20 AM	SENT

Associated Case Party: Public Interest Counsel

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Associated Case Party: Public Interest Counsel

Name	BarNumber	Email	TimestampSubmitted	Status
SHELDON WAYNE		sheldon.wayne@tceq.texas.gov	11/21/2023 10:24:20 AM	SENT