CAUSE NO. D-1-GN-15-005510

PATRICIA GRAHAM, TERRELL GRAHAM, MARGIE HASTINGS, ASA DUNN & GREATER EDWARDS AQUIFER ALLIANCE, Plaintiffs,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY TEXAS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Defendant.	§	53rd JUDICIAL DISTRICT

RESPONSE BRIEF OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

PRISCILLA HUBENAK
Chief, Environmental Protection Division

CYNTHIA WOELK
Assistant Attorney General
State Bar No. 21836525

NANCY ELIZABETH OLINGER
Assistant Attorney General
State Bar No. 15254230

Office of the Attorney General
Environmental Protection Division
P. O. Box 12548
Austin, TX 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

ATTORNEYS FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SEPTEMBER 30, 2016

TABLE OF CONTENTS

LIST OF ACRONYMS AND SHORTHAND TERMS

ALJ - Administrative Law Judge

APA - Administrative Procedure Act

AR - Administrative Record

DHJB - DHJB Development, LLC

EAPP - Edwards Aquifer Protection Plan

ED - Executive Director of the TCEQ

PFD - Proposal for Decision

SOAH - State Office of Administrative Hearings

TCEQ - Texas Commission on Environmental Quality

TLAP - Texas Land Application Permit

TPDES - Texas Pollutant Discharge Elimination System

TSWQS - Texas Surface Water Quality Standards

WPAP - Water Pollution Abatement Plan

INDEX OF AUTHORITIES

CASES **PAGE(S)**

CASES (cont) **PAGE(S)**

TEXAS STATUTES

Tex. Gov't Code

Tex. Water Code

PAGE(S)

TEXAS AGENCY RULES

30 Tex. Admin Code

TEXAS AGENCY RULES (cont) PAGES(S)

30 Tex. Admin Code

TO THE HONORABLE AMY CLARK MEACHUM:

STATEMENT OF THE CASE

This is a suit for judicial review of a final order of the Texas Commission on Environmental Quality (Commission or TCEQ) granting the application of DHJB Development, LLC (DHJB) to amend their existing permit to authorize the discharge of treated wastewater effluent into an unnamed tributary of Upper Cibolo Creek in the San Antonio River Basin. The agency issued the order after a contested case hearing in which plaintiffs participated as protestants against the application. Plaintiffs filed this suit to challenge the Commission's decision, and DHJB intervened to defend it.

STATEMENT OF FACTS

DHJB is a real estate development company that owns a master-planned residential subdvision, Johnson Ranch, in Comal County, Texas.[1] DHJB held a land application permit that authorized it to dispose of 75,000 gallons per day of treated wastewater (also referred to as "effluent") by subsurface drip irrigation directly onto land.[2] In 2012, DHJB applied for an amendment that would

---

1. 16 AR 104 (Final Order), Finding of Fact No. 26. A copy of the Final Order is in Appendix C.

2. Id., Finding of Fact No. 19.

The administrative record compiled at the TCEQ and SOAH is on file with the Court. It contains tabbed dividers. Citations to the record will be in the form "*xxx* A.R. *yyy*." The number preceding A.R. represents the volume of the record, and the number following A.R. represents the tab in the volume. Sometimes further information will be given, for example,

authorize it to convert its land application permit to an authorization to discharge up to 350,000 gallons per day of treated wastewater into water in the state.[3]

The Commission referred DHJB's application to the State Office of Administrative Hearings (SOAH) for a contested case hearing before an Administrative Law Judge (ALJ).[4] The ALJ conducted a live hearing on the merits from November 17 through 19, 2014.[5] On March 9, 2015, the ALJ issued a proposal for decision (PFD) which recommended that the permit amendment application be denied.[6] After oral presentations from the parties at its July 1, 2015 public meeting (called its "agenda meeting"),[7] the Commission discussed the matter and voted to reverse the ALJ and asked the attorney for DHJB to draft a final order. The final order was discussed further at the Commission's September 9, 2015 agenda meeting, at which the Commission voted to grant the permit.[8] This appeal followed.

---

a document's title or description or a reference to pages within a document.

3. *Id.*, Finding of Fact Nos. 20 and 21.
4. *Id.*, Finding of Fact No. 11.
5. *Id.*, Finding of Fact No. 18.
6. 14 A.R. 83.
7. 17 A.R. 110.
8. *Id.*.

REGULATORY BACKGROUND

In Texas, the discharge of treated domestic wastewater[9] into or adjacent to the waters in the state must be authorized by the TCEQ.[10] A domestic facility that disposes of treated effluent by land application, e.g. surface irrigation, evaporation, drainfields or subsurface land application, is required to obtain a Texas Land Application Permit (TLAP). A domestic facility that disposes of treated effluent by discharging it directly into waters in the state is required to obtain a Texas Pollutant Discharge Elimination System (TPDES) permit.

Texas Surface Water Quality Standards[11]

The legal standards for the quality of surface water in Texas are described in 30 Texas Administrative Code, Chapter 307.[12] These standards are applied by the Commission when it issues permits that authorize the discharge of treated wastewater into water in the state. The Commission has developed a guidance

---

9. 30 Tex. Admin. Code § 217.2(23) defines domestic wastewater as "[w]astewater which originates primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks of a residential dwelling. Domestic wastewater may contain commercial or industrial wastewater contributions."

10. Tex. Water Code § 26.121.

11. Throughout this brief the Texas Surface Water Quality Standards will be referred to as "TSWQS" or "the water quality standards."

12. Attached to this brief as Appendix A are Texas statutes relied on. Appendix B contains administrative rules relied on, including Chapter 307.

document, "Procedures to Implement the Texas Surface Water Quality Standards" (Implementation Procedures),[13] that explains the procedures the Commission uses when applying the water quality standards to permit applications.

Determining Water Quality Uses and Criteria

Major surface waters are classified as segments for purposes of water quality management and designation of site-specific standards.[14] For example, here the treated wastewater will be discharged "to an unnamed tributary; thence to Upper Cibolo Creek in Segment 1908 of the San Antonio River Basin."[15] Appendix A of 30 Texas Administrative Code § 330.10 identifies the water uses and supporting numeric criteria for each of the state's classified segments.

Unclassified surface waters are smaller water bodies that are not designated as segments with specific uses and criteria in 30 Texas Administrative Code § 330.10. Section 307.4 sets forth general uses and criteria that apply to unclassified waters. The "unnamed tributary" into which DHJB's treated wastewater will be discharged is an unclassified surface water.[16]

13. 9 A.R. 53, Ex. ED-22.
14. 30 Tex. Admin. Code § 307.2(c).
15. Final Order, Finding of Fact No. 56.
16. *Id.*

Numeric versus Narrative Water Quality Standards

Most water-quality standards are objective, measurable, *numeric* criteria associated with certain designated uses of a body of water or a segment of a stream. For example, the specified uses for an unclassified intermittent stream or intermittent stream with perennial pools include contact recreation, limited aquatic life use, public drinking water supply, and aquifer protection.[17] The Commission's Implementation Procedures guidance states that numerical criteria may be applicable to individual water bodies for dissolved oxygen, total dissolved solids, sulfate, chloride, pH, temperature, bacterial indicators of recreational suitability, and toxic pollutants to protect aquatic life and human health.[18]

In contrast, *narrative* standards are more subjective, qualitative criteria that apply generally to all water bodies. The narrative standard for nutrients, for example, states: "Nutrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use."[19] The Implementation Procedures state that narrative criteria may be applicable to individual water bodies for radioactive materials, nutrients (phosphorus, nitrogen), temperature, salinity, dissolved

17. 30 Tex. Admin Code § 307.10(4), Appendix B.
18. 9 A.R. 53, Ex. ED-2.
19. 30 Tex. Admin. Code § 307.4(e).

oxygen necessary to protect aquatic life, habitat necessary to protect aquatic life, aquatic recreation, and toxic pollutants to protect aquatic life, human health, terrestrial wildlife, livestock, and domestic animals.

Narrative criteria may also apply to aesthetic parameters such as such as taste and odor, suspended solids, turbidity, foam and froth and oil and grease.[20]

The Commission's Antidegradation Policy

The Commission rule at 30 Tex. Admin. Code § 307.5 is commonly referred to as the "antidegradation rule." The rule sets out three "tiers":

> (1) Tier 1. Existing uses and water quality sufficient to protect those existing uses must be maintained. Categories of existing uses are the same as for designated uses, as defined in § 307.7 of this title (relating to Site-Specific Uses and Criteria).
>
> (2) Tier 2. No activities subject to regulatory action that would cause degradation of waters that exceed fishable/swimmable quality are allowed unless it can be shown to the commission's satisfaction that the lowering of water quality is necessary for important economic or social development. *Degradation is defined as a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired*. Water quality sufficient to protect existing uses must be maintained. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in and on the water.
>
> (3) Tier 3. Outstanding national resource waters are defined as high quality waters within or adjacent to national parks and wildlife

20. 9 A.R.59, Ex. ED-11.

> refuges, state parks, wild and scenic rivers designated by law, and other designated areas of exceptional recreational or ecological significance. The quality of outstanding national resource waters must be maintained and protected.[21]

Tier 1 and Tier 2 antidegradation standards overlay one another to a certain extent. (The waters at issue in this case did not implicate the Tier 3 standard.) In general, the Tier 1 standards assume that if the applicable numerical and narrative criteria are met, an impairment of a specific surface water will not occur.

STANDARD OF REVIEW

Plaintiffs filed this suit for judicial review of the Commission's final order, citing Government Code § 2001.171, part of the Administrative Procedure Act (APA), as its jurisdictional basis. The suit is governed by the substantial evidence rule under which the issue for the reviewing court is "whether there is some reasonable basis in the record for the action taken by the agency."[22] Substantial evidence requires only "more than a mere scintilla . . . ."[23]

This appeal also concerns the Commission's interpretation of its statutes and rules. A reviewing court should give deference to the agency's construction of a statute it is charged with enforcing and generally uphold it, if the interpretation is

---

21. 30 Tex. Admin. Code § 307.5(b)(2) (emphasis added).

22. *R.R. Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995) (citing *City of El Paso v. Pub. Util. Comm'n*, 883 S.W.2d 179, 185 (Tex. 1994)).

23. *Id.*

reasonable and does not contradict the plain language of the statute — even if other reasonable interpretations exist.[24] An "agency's construction of its rule is controlling unless it is plainly erroneous or inconsistent" with the statute.[25]

Under Government Code § 2001.174, the Court must affirm the agency decision unless substantial rights of the appealing party are prejudiced because of an agency error.

ARGUMENT

I. The Commission properly considered the issues it had referred to SOAH. (In response to Plaintiffs' Issue No. 2)

Plaintiffs complain that the Commission's consideration of two of the issues referred to SOAH "redefined" the issues and, as a result, the Commission ignored relevant evidence. Plaintiffs are wrong. The Commission did not redefine the issues; rather, it considered and decided them within the parameters of its delegated authority and its statutes and rules.

---

24. *R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624-25 (Tex. 2011).

25. *See Phillips Petrol. Co. v. Tex. Comm'n on Envtl. Quality*, 121 S.W.3d 502, 507 (Tex. App.—Austin 2003, no pet.) (holding that an agency's interpretation of its own rules is entitled to great weight and deference; legislature intends for agency with centralized expertise in a regulatory area to be given latitude in methods it uses to carry out its responsibilities).

A. The Commission must act pursuant to its delegated authority and its statutes and rules.

In her hearing request, Plaintiff Patricia Graham identified herself as an adjacent landowner and expressed concerns about the effect of the proposed discharges on her and on the cattle she raised on her land.[26] When the Commission granted Mrs. Graham's hearing request and referred issues that she had raised in that request to SOAH, it framed the issues to reflect her concerns.[27] Issue A was "Whether the proposed permit will adversely impact use and enjoyment of adjacent and downstream property or create nuisance conditions" and Issue D was "Whether the treated effluent will adversely impact the cattle that currently graze in the area."

The Commission, created by statute, can only exercise the authority delegated to it by the Legislature. The Commission has general jurisdiction over "the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits . . ."[28] To carry out its responsibilities, the Commission has promulgated rules governing wastewater treatment.[29] It has also, as described in detail on pages 3- 7, above, developed a comprehensive program for

26. 2 A.R. 21 (Patricia Graham's hearing request, dated May 13, 2013).

27. 3 A.R. 37 (Commission's Interim Order, dated April 21, 2014).

28. Tex. Water Code § 5.013(a)(3).

29. 30 Tex. Admin. Code, Chapter 309 (entitled "Domestic Wastewater Effluent Limitations and Plant Siting").

regulation of wastewater discharges and promulgated rules (30 Texas Administrative Code Chapter 307) to implement that program.

The Commission's regulatory scheme was developed to protect health and safety, including minimizing the possibility that wastewater treatment and discharges will adversely impact adjacent landowners. For example, the rule setting out location standards for wastewater treatment facilities states that:

> The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities or the substantial change of an existing unit on selection of a site that minimizes possible contamination of ground and surface waters; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics.[30]

Similarly, the water quality standards in Chapter 307 were promulgated in order to:

> *maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life*, operation of existing industries, and taking into consideration economic development of the state, to encourage and promote development and use of regional and area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs

30. 30 Tex. Admin. Code § 309.10(b).

> of the citizens of the state, and to require the use of all reasonable methods to implement this policy.[31]

The Commission evaluates a permit application to determine if it has complied with all applicable statutory and regulatory requirements. It assumes that, if the permit application complies with all requirements, the permit will be protective. The Commission does not, however, have the authority to make determinations regarding nuisance, trespass or other property rights issues.[32]

B. The water quality rules give the Commission limited authority over erosion, stormwater, access along the discharge route, or cattle.

The water quality standards provide a general standard for settleable solids in surface waters in the "aesthetic parameters,"[33] however, the standards are limited to the proposed discharge under the proposed permit and do not include stormwater runoff. The TCEQ's executive director offered evidence on the application's compliance with the general standard, as did DHJB.

---

31. 30 Tex. Admin. Code § 307.1 (emphasis added).

32. *Manchester Terminal Corp. v. Tex. TX TX Marine Transp., Inc*, 781 S.W.2d 646 (Tex. App. — Houston [1st Dist.] 1989, writ. denied.) (holding that an action for nuisance is "inherently judicial in nature"). See also *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 SW.3d 192, 199 (Tex. 2012) ("[W]hen an action is inherently judicial in nature, the courts retain jurisdiction to determine the controversy unless the legislature by valid statute has expressly granted exclusive jurisdiction to the administrative body." (quoting *Amarillo Oil Co. v. Energy–Agri Prods., Inc*., 794 S.W.2d 20, 26 (Tex.1990))).

33. See discussion on the water quality standards on pages 3-7, above.

Flooding and erosion are not addressed in the water quality standards. Therefore, in making the determination of whether the application meets TCEQ rules, there is no rule related to erosion or flooding with which an applicant can comply or fail to comply. Moreover, flooding and erosion onto neighboring properties would fall within the common-law torts of nuisance and trespass, over which the Commission has no jurisdiction, as discussed more fully below.

Finally, the Commission does not have specific water quality based effluent limitations for water consumed by livestock. However, the water quality standards provide that water "must be maintained to preclude toxic effects on aquatic life, terrestrial live, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three."[34] The Commission determined that the application complied with this standard.

C. The Commission is not authorized to make nuisance or other inherently judicial determinations.

Plaintiffs claim that two TCEQ rules, 30 Texas Administrative Code §§ 305.122(d) and 309.10, impose requirements on the Commission to consider nuisance.[35] Plaintiffs misinterpret these rules. Section 309.10 — which is quoted at length above on page 10 — is entitled "Purpose, Scope and Applicability." The

34. 30 Tex. Admin. Code § 307.6(b)(4).

35. Plaintiffs' Initial Brief at 21-22.

portion of the rule cited by Plaintiffs sets out the purpose of the rule, which establishes "standards for the location of domestic wastewater treatment facilities."[36] The statement of purpose does not give the Commissioners the authority to require more than is set out in the water quality standards.

Plaintiffs' reliance on 30 Texas Administrative Code § 305.122(d)[37] is also misplaced. That rule provides:

> The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

The Texas Supreme Court construed this rule in *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*[38] In that case, the holder of an injection well permit argued that its regulatory permit absolved it from a claim of trespass due to subsurface migration of injected wastewater.[39] The Supreme Court held that "[a]s a general rule, a permit granted by an agency does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit." Quoting from *Berkley v. R.R. Commission*,[40] the court explained that

---

36. 30 Tex. Admin. Code § 309.10(a).

37. The current 30 Tex. Admin. Code § 305.122(d) was renumbered since the *FML Farming* opinion; at the time of the opinion it was § 305.122(c).

38. 351 S.W.3d 306 (Tex. 2011).

39. *Id.* at 307.

40. 282 S.W.3d 240, 243 (Tex. App. — Amarillo 2009, no pet.)(mem.op.).

"obtaining a permit simply means that the government's concerns and interests, at the time, have been addressed: so, it, as a regulatory body, will not stop the applicant from proceeding under the conditions imposed, if any."[41]

The Court wrote that the rule "specifically states that a permit does not authorize invasion of property rights so that, while a permit holder "may have permission from the TCEQ to inject authorized wastewater . . . the consequences of acting under the permit have not been immunized."[42] In other words, the rule is not meant to require the Commission to decide private property matters such as nuisance; rather, it clarifies that a permit is not a shield that a permittee can used to defend itself against such an action brought in court.

II. The Commission's determination that the wastewater discharge would be in to water in the state was proper and supported by substantial evidence. (In response to Plaintiffs' Issue No. 3)

Plaintiffs' third point of error concerns the ALJ's erroneous proposed findings and conclusions regarding whether the wastewater discharge will be into water in the state — proposed findings and conclusions which were properly changed by the Commission.

41. 351 S.W.3d at 311.

42. *Id.* at 312.

The Water Code defines "water in the state" to include "the beds and banks of all water courses and bodies of surface water."[43]

In their explanation of changes, the Commission wrote the following on this issue:

> Having reviewed the ALJ's Proposal for Decision, the record, the pleadings from the parties, and the applicable regulations, it is evident that the ALJ misapplied or misinterpreted the law, Commission Rules, and longstanding TCEQ policies. . . . The record further establishes that the unclassified receiving waters are properly designated as being an intermittent watercourse with perennial pools in accordance with TCEQ rules found in Chapter 307. . . .
>
> The fact that the unclassified receiving waters are often dry is not unusual, and is inherent in the designation of the receiving waters as intermittent with perennial pools. . . .
>
> Further, the Applicant met its burden to prove by a preponderance of the evidence that the characterization of the discharge route is correct as being water in the state. In looking at the applicable case law, specifically the *Hoefs*, *Big Lake* and *Domel* decisions, as well as the evidence and testimony presented in the hearing, the ALJ incorretly held that the discharge route was improperly characterized. *See Hoefs v.*

---

43. Tex. Water Code § 26.001(5). The definition of "water in the state" in its entirety is as follows:

> "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Short, 273 S.W.785, 786 (Tex. 1925); *Turner v. Big Lake Oil Co.*, 62 S.W.2d 491 (Tex. Civ. App. — El Paso 1933), aff'd, 96 S.W.2d 221 (Tex. 1936); *Domel v. Georgetown,* 6 S.W.3d 349, 358-59 (Tex. App. — Austin 1999, pet. denied). This evidence includes the testimony of the Executive Director's expert witness, Ms. Lee, who originally characterized the discharge route as an intermittent watercourse with perennial pools and confirmed her characterization through a ground inspection of the discharge route by walking the watercourse. The discharge route is more than a wide valley or mere surface drainage and similar conditions will produce a flow of water that will recur with some degree of regularity consistent with the applicable law. [44]

A. The case law supports the Commission's determination.

The Commission agrees with plaintiffs that *Hoefs* and *Domel* contain significant discussions regarding the determination of a natural water course. However, Plaintiffs quote too selectively from those opinions and fail to discuss the factual contexts of the cases. The holdings are not as clear-cut as Plaintiffs represent; it is apparent from the courts' extensive discussions of the facts of each case that these kinds of determinations must be made on a case-by-case basis.

In *Hoefs v. Short*,[45] the court analyzed whether Barilla Creek, which ran only after rainfall, was a stream to which irrigable rights attached.[46] The Supreme Court wrote that:

---

44. 16 A.R. 104, pp. 12- 13.

45. 273 S.W. 785 (Tex. 1925).

46. *Id.*

> "[A] water course must have a well-defined channel, bed, and banks, *yet there may be instances where these are slight, imperceptible, or absent, and still a water course exist.* . . .[A] current of water is necessary, *yet the flow of water need not be continuous, and the stream may be dry for long periods of time.* . . .The general rule is that ravines, swales, sloughs, swamps and marshes are not water courses, *and yet they are sometimes.*"[47]

The court stated that, in order to constitute a water course, "there must be something more than mere surface drainage over the entire face of a tract of land" and "a natural water course must have a permanent source of water supply."[48] The court said that "[t]his, however, *merely means that the stream must be such that similar conditions will produce a flow of water, and that these conditions recur with some degree of regularity*, so that they establish and maintain a running stream for considerable periods of time."[49] The court acknowledged that a permanent source of supply can be rain or snowfall precipitated to form itself into a visible course or channel. "*It is immaterial that it may be intermittent in its flow or that at certain seasons of the year there may be a little or even no flow of water.*"[50] The Court ultimately found that Barilla Creek — which usually ran for a day or two following a big rain and ran from one to twenty-two times annually[51] — was a water course.

47. 273 S.W. at 787 (emphasis added).

48. *Id.* at 787-88.

49. *Id.* at 788 (emphasis added).

50. *Id.* at 788 (emphasis added).

51. *Id.* at 788.

In *Domel v. City of Georgetown*,[52] the plaintiffs had sued the City of Georgetown (the City) for diminished property values as a result of the City's discharge of treated wastewater onto their property. The Third Court of Appeals concluded that the State has a superior right to use watercourses to transport water, including wastewater, and there is no need for title or permission from the landowner.

In determining whether the stream on the Domel's property was a watercourse, the court applied the standards set forth in *Hoefs* to the discharge of wastewater. The City's discharge was into an unnamed tributary of Mankins Branch, which subsequently flowed to the San Gabriel River. The tributary was dry about six months out of the year.[53] The court considered the evidence, which included USGS maps that identified the waterbody as an intermittent stream (like the stream in the instant case) and aerial photos from which the court concluded that a tributary was clearly visible as a continuous stream or river bed with defined boundaries meandering though surrounding farmland.[54] The court also looked at Mrs. Domel's testimony, where she admitted that the tributary could fairly be classified as an

52. 6 S.W.3d 349 (Tex. App. — Austin 1999, pet. denied).

53. *Id.* at 354.

54. *Id.*

intermittent stream with perennial pools and that there was a flow of water following significant rains.[55]

As to whether there was a presence of defined bed and banks, the court found that Mrs. Domel's testimony that the bed and banks were not well defined to be conclusory and that her testimony actually supported rather contradicted the City [56] The court said that "[t]emporal changes in the course of flowing water do not equate with having no bed and banks,"[57] and noted that *Hoefs* held that "a watercourse may have a bed and banks that are entirely absent in some instances."[58] The court found that the tributary had a defined channel and it flowed whenever there was rain.[59] Based on these facts, the court found that the tributary in *Domel* was a watercourse.[60]

Importantly, the court in *Domel* stated that "although the facts of a particular case must be examined to determine if an area is a water course, the issue can be determined as a matter of law."[61] While *Hoefs* and *Domel* provide guidance to the Commission in its determination, both opinions acknowledge that there are no "bright lines"; the inquiry is fact-intensive and involves the application of expertise.

55. *Id.* at 356.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at 361-62.
61. *Id.* at 354.

B. The Commission's determination that the wastewater discharge is into water in the state is supported by substantial evidence.

There is ample evidence in the record to support the Commission's findings that the discharge of treated wastewater would be into water in the state, specifically "into an unnamed tributary of Cibolo Creek."[62]

Brittany Lee, the aquatic scientist on the TCEQ's Executive Director's staff, was assigned to evaluate to DHJB's application.[63] At the time of Ms. Lee's testimony, she had worked at the TCEQ for over six years and had reviewed over 70 applications.[64] Ms. Lee testified that she had made an independent determination of the discharge route and concurred with DHJB's description of it in the application.[65] She explained that "an unnamed tributary is a stream that is on a USGS [United States Geological Surv ey] topographical map or is visible through aerial photography; however it does not have a name and is hydrologically connected to another

---

62. Final Order, Finding of Fact No. 91.

63. 8 A.R. 59, Ex. ED-20 at 000169, lines 8-14. (Prefiled testimony of Brittany Lee.) A copy of Ms. Lee's prefiled testimony is in Appendix D.

She described her review:

> I confirm the discharge route, assign the aquatic life and human health water quality criteria associated with the use of the unclassified receiving streams of a proposed discharge, find the appropriate uses for the classified receiving water, identify endangered species in the watershed, and perform an antidegradation review if appropriate." *Id.*

64. *Id.* at 000165, line 9 and 000166, line 4.

65. *Id.* at 000174, lines 15-19 and 000187, lines 9-20.

stream."[66] She said that she had studied USGS and GIS aerial photography[67] and that the USGS map indicated an intermittent stream (denoted by blue dashes and dots) and that the GIS aerial photography suggested pools both upstream and downstream of the proposed discharge point.[68]

Ms. Lee visited the site and walked the discharge route from the location of the proposed discharge outfall to FM 1863 to ensure that she had correctly described and characterized the unnamed tributary.[69] She testified that she would consider the discharge route upstream of the concrete culvert to be a grassy swale because the slope and vegetation indicated a path that water follows.[70] The site visit confirmed Ms. Lee's initial determination that the unnamed tributary is intermittent with limited aquatic life use; she noted that the unnamed tributary was dry, with trace amounts of water in places and other places where water might pool.[71]

66. *Id.* at 000175, lines 10-14.
67. *Id.* at 000175, lines 18-22 and 000187, lines 9-13.
68. *Id.* at 000188, lines 7-14.
69. *Id.* at 000182, lines 8-19.
70. *Id.* at 000183, lines 1-7.
71. *Id.* at 000182, line 22 through 000183, line 1.

DHJB's witness, Tracy Bratton, a professional engineer, also testified that, based on his observations at site visits, USGS maps, and aerial photos, that the discharge route was into a watercourse.[72]

Plaintiff Charles Graham's testimony actually confirmed Ms. Lee's conclusion that the unnamed tributary is an intermittent stream with perennial pools. While he called the stream a "dry creek," he testified that water flows in the dry creek during rain events.[73] He said that, in the early 1990s, the creek was dry nearly all the time except during extreme rain events.[74] He also stated that the depth and the width of the creek vary widely,[75] that the creek flooded over FM 1863 in 1998,[76] that his fields were flooded in 1998 and 2002.[77] Mr. Graham also described the unnamed tributary asa having "defined banks" at places[78]and, in fact, refers to the "banks" of the creek several times in his testimony.[79]

---

72. 5 A.R. 54, DHJB Ex.-3.0 at 007-008. (Prefiled testimony of Tracy Bratton, P.E.) A copy of Mr. Bratton's prefiled testimony is in Appendix E.

73. 7 A.R. 58, Protestants Ex.-1 at 3, lines 27-28. (Prefiled testimony of Charles Graham.)

74. *Id.* at 3, lines 27-28.

75. *Id.* at 6, line 13.

76. *Id.* at 9, lines 10-11.

77. *Id.* at 9, lines 15-16.

78. *Id.* at 6, line 6.

79. *Id.* at 6, lines 6- 1 and 8, lines 30 through 9, line 1.

III. The Commission relied on *evidence* in the record showing that the discharge route on DHJS's property is a watercourse.

(In response to Plaintiffs' Issue No. 1)

The Commission made eight findings of fact supporting its conclusion that the proposed discharge would be to water in the State.[80] Among them are Findings of Fact 91 and 94. Finding of fact 91says that "[p]ortions of the discharge route in the unnamed tributary of Cibolo Creek on Johnson Ranch before it reaches the property line shared with the Protestants do not have well-defined beds and banks." Finding of Fact 94 says that, "[t]he discharge route is dry under normal circumstances but has a regular flow and route during rainfall events and for short durations thereafter." These two findings and the other six related to the Commission's determination that the discharge route on DHJB's property is a watercourse are fully supported by substantial evidence in the SOAH evidentiary record.

At the SOAH evidentiary hearing, the Executive Director introduced the prefiled testimony of Ms. Brittany Lee, an employee of the Commission's Executive Director.[81] Ms. Lee testified about her desktop review of DHJB's application and her subsequent site visit to DHJB's property, where she walked the discharge route.

80. Final Order, Findings of Fact Nos. 91-98.

81. 8 A.R. 59, Ex. ED-20.

Among other things, she testified that the discharge route was an intermittent tributary to Cibolo Creek:

> The review conducted by desktop has some questionable areas that I accounted for by suggesting there are pool/pools within the tributary. . . . [W]e walked along the stream bank on DHJB's property. . . . I observed a dry creek most of the duration of the site visit. There were some areas where water, in trace amounts, appeared in the stream. There were also a couple of areas that suggest water would pool, or spread out and stay for longer periods of time. *Several areas upstream of the concrete culvert do not depict a defined band and banks of a channel, however, slope and vegetation patterns indicated that the water flowed in a general direction. These areas could be considered to be more like swales than a defined stream. . . . My determination of what is there now is an intermittent tributary. After visiting the site and seeing the tributary, the tributary currently would be considered intermittent. This intermittent call would take drought conditions into consideration.* During a year of normal rainfall, the tributary would most likely be intermittent with pools. The areas that remained wet several days after a rain event, and depressional areas within the unnamed tributary, would probably hold water for longer periods of time. Taking this into account, my final interpretation of the stream would remain intermittent with pools.[82]

Ms. Lee touched on this same subject briefly in her live testimony, mentioning the grassy swales and lack of a clearly defined bed and banks in some areas along the discharge route.[83] She noted that both before and after the site visit, her opinion was that DHJB was proposing to discharge to an unnamed tributary.[84] She did not waiver

82. *Id*. at 000182-000183 (emphasis added).

83. 12 A.R. 71 at 50-52 (live cross-examination of Brittany Lee).

84. *Id*. at 48-52.

from her opinion in prefiled testimony that the discharge was to an unnamed tributary (and thus to water in the state).

At the Commission's public agenda meeting on July 1, 2015 (with parties and all counsel present), the Commissioners asked Ms. Lee a few questions about the route on DHJB's property. In particular, she was asked whether the Commissioners had correctly understood her testimony about her observations of the discharge route during the site visit. Echoing her live and prefiled testimony, Ms. Lee said that portions of the discharge route became:

> just kind of low depressions in a discharge route that are overgrown with grass but in the general direction you can look at the vegetation patterns and you can also see that the depression is there. And the bed and banks may not be as defined as where the ditch [on the Graham's property] is but you can still see there is slope on the edges and that indicates that water flows in that general direction . . . .[85]

The Commission did not improperly rely in its discussion with Ms. Lee at the public agenda meeting. Rather, as shown in its final order in which it determined that the discharge was into water in a tributary to Cibolo Creek and thus into water in the state, the Commission noted that it was relying on evidence in the record including Ms. Lee's testimony,[86] saying:

---

85. 17 A.R. 110 (tape of TCEQ's July 1, 2015 public agenda meeting, agenda item 1, around minutes 38-41). For convenience, it can be seen at http://adminmonitor.com/tx/tceq/open_meeting/20150701/.

86. Final Order, p. 13.

> This evidence includes the testimony of the Executive Director's expert witness, Ms. Lee, who originally characterized the discharge route as an intermittent watercourse with perennial pools and confirmed her characterization through a ground inspection of the discharge route by walking the watercourse. The discharge route is more than a wide valley or mere surface drainage and similar conditions will produce a flow of water that will recur with some degree of regularity consistent with the cited applicable case law."[87]

As explained in section II.B., *supra*, in addition to Ms. Lee's prefiled and live testimony, there is other evidence that supports the Commission's findings of fact and determination, *e.g.*, the testimony of Tracy Bratton and U.S. Geological Survey maps showing that the discharge route on DHJB's property is an intermittent stream.

Plaintiffs claim the Commission erred in questioning Ms. Lee at the public agenda meeting. However, they have identified no rule or statute prohibiting the Commissioners from entering into a discussion with staff at a publicly announced open meeting in the presence of the parties and all counsel when the discussion concerns her testimony in the evidentiary record. Even in the context of criminal trials, a judge is permitted to ask questions of a witness.[88] The law did not require Ms. Lee to limit her responses to a verbatim reading of the transcript of her live testimony or her prefiled testimony.

---

87. Final Order, p. 13 (emphasis added).

88. *See Brewer v. State*, 572 S.W.2d 719, 721 (Tex. Crim. App. 1978).

In any case, plaintiffs did not preserve this alleged error. Although Plaintiffs claim that, due to time limitations, they were unable to question Ms. Lee themselves or object to the Commissioners' brief questioning of her, the record shows that they did not even try. Plaintiffs raised no objection at the July 1, 2015 public agenda meeting at which the Commissioners asked their few questions of Ms. Lee, and they said nothing two months later when the Commission re-convened (with counsel present) to consider the final form of their Final Order.[89] Having failed to raise an objection at the time, when the alleged error could have been corrected or prevented, Plaintiffs failed to preserve this point for review.[90]

Plaintiffs argue that the Commission's Final Order relied on the exact words Ms. Lee uttered at the public agenda meeting—that the bed and banks of the discharge on DHJB's property "may not be as defined" as the banks downstream where the ditch is.[91] But the Final Order clearly says the Commission relied on other evidence in the record and Ms. Lee's *testimony*, meaning her live and prefiled testimony at the SOAH evidentiary hearing, not her statement at the public agenda

89. 17 A.R. 110 (tape of TCEQ's July 1, 2015 public agenda meeting, agenda item 1, minutes 38 to agenda item 1). See also 17 A.R. 110 (tape of TCEQ's September 9, 2015 public agenda meeting, agenda item 2).

90. *See, e.g.*, *Johnson v. Hawkins*, 255 S.W.3d 394, 397 (Tex. App.—Dallas 2008, pet. denied) (failure to object to allegedly improper questioning of witness by judge).

91. Plaintiffs call Ms. Lee's response "new evidence that should not have been allowed." Plaintiffs' Initial Brief at 14.

meeting. In reality, Plaintiffs' complaint seems more like an improper attack on the Commission's thinking process at the public agenda meeting rather than its Final Order.[92]

Finally, even if Plaintiffs had preserved this alleged error and even if it had merit, their complaint about the questioning of Ms. Lee fails because they have not demonstrated harm. A party asserting a procedural error under the Administrative Procedure Act (APA),[93] must show that the alleged error prejudiced its substantial rights.[94] Plaintiffs have made no such showing here. The staff member's statements were cumulative of testimony and other evidence in the record, and were not the basis for the Commission's rejection of the ALJ's proposal.

IV. DHJB's application complied with the siting standards in 30 Texas Administrative Code §§ 309.12 and 309.13.

(In response to Plaintiffs' Issue No. 4)

The Commission's Chapter 309 Subchapter B rules address standards for siting domestic wastewater treatment facilities. The chapter includes 30 Texas Administrative Code § 309.12 (titled "Site Selection to Protect Groundwater or

92. *City of Frisco v. Tex. Water Rights Comm'n*, 579 S.W.2d 66 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.) (court reviews agency's order and does not invade thought processes of commissioners or speculate about commissioners' individual motivations).

93. Tex. Gov't Code Chapter 2001.

94. *Nueces Canyon Consol. Indep. Sch. Dist. v. Central Educ. Agency*, 917 S.W.2d 773, 777 (Tex. 1996).

Surface Water"), which concerns general considerations related to site selection, and another rule, 30 Texas Administrative Code § 309.13 (titled "Unsuitable Site Characteristics"), which sets out specific characteristics.

Plaintiffs complain that the "Commission ignored"[95] section 309.12,[96] which says:

> The commission may not issue a permit for a new facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater. In making thisdetermination, the commission *may consider* the following factors:
>
> (1) active geologic processes;
>
> (2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge and aquifer recharge or discharge conditions;
>
> (3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water; and
>
> (4) climatological conditions.[97]

---

95. In parts of their argument point IV, Plaintiffs seem to confuse or conflate the preliminary analysis of DHJB's application by the Executive Director's staff with the Final Order issued by the Commission (*i.e.*, the Commissioners), which is the only thing Plaintiffs are allowed to challenge in this suit. The Executive Director's staff made a preliminary review of DHJB's application and recommended that a permit be issued. Because the matter was contested, there was a contested case hearing at the State Office of Administrative Hearings, to which the Executive Director was a party. The Commission's Final Order is based on and supported by the full evidentiary record, not just the staff's analysis.

96. Plaintiffs' Initial Brief at 33.

97. 30 Tex. Admin. Code § 309.12 (emphasis added).

The Commission complied with section 309.12. In its Final Order, the Commission expressly determined that the application complied with the agency's Chapter 309 Subchapter B's siting rules.[98] In making its determination, the Commission was not required to consider the four optional factors ("the commission may consider") set out in section 309.12. Instead, the Commission acted within its discretion in applying the more stringent factors in section 309.13 specifically relevant to this application.

Although DHJB's application included all the necessary information[99] related to site suitability characteristics of 30 Texas Administrative Code Chapter 309 Subchapter B,[100] the staff of the Executive Director (who recommended issuance of the permit and was a party to the contested case hearing) did not rely on the four factors in section 309.12. As shown by the testimony of the Executive Director's staff member Phillip Urbany,[101] rather than considering the application in comparison to the optional, general (and not particularly relevant to this facility) factors[102] in

98. Final Order, Conclusion of Law No. 5).

99. *See generally* 8 A.R. 59, Ex. ED-1 at 000023, line 8 though 000027, line 1. (Prefiled testimony of Phillip Urbany). A copy of Mr. Urbany's prefiled testimony is in Appendix F.

100. *Id.* at 000023, lines 8-20, 24-27

101. *Id.* at 000024-000026.

102. The optional factors in § 309.12 are more significant in evaluating Texas land application permits (TLAP permits) which authorize application of sewage sludge to be spread on land to enrich it. For example, Plaintiffs witness Dr. Lauren Ross described her

section 309.12, staff instead considered the application in comparison to the more specific and stringent factors in section 309.13. In so doing, the Executive Director's staff essentially ensured that the application complied with the specific prohibitions and requirements in section 309.13 and also with the more general requirement in section 309.12 that contamination of surface water and groundwater be minimized.

Related to wetlands, flood plains, public water wells, private water wells, surface impoundments over aquifers, and property lines (*i.e.*, buffer zones for nuisance odor abatement), section 309.13 includes specific setback and siting provisions. For example, a wastewater treatment plant unit may not be closer than 500 feet to a public water well or 250 feet from a private water well.[103] Phillip Urbany testified that the application, which is in evidence,[104] had sufficient information to show compliance with that part of the rule.[105] The rule prohibits locating a wastewater treatment plant in the 100-year flood plain under most circumstances.[106] The application's Domestic Technical Report 1.1, Item 5 showed

---

past review of geologic assessments of TLAP permits, acknowledging that such assessments are not a component of TPDES permit applications. Transcripts Vol. 2, at 144:14-155:17 (live testimony of Dr. Lauren Ross).

103. 30 Tex. Admin. Code § 309.13(c).

104. 4 A.R. 54, DHJB Ex. 1.2 (DHJB's application).

105. 8 A.R. 59, Ex. ED-1 at 000023, line 8-20 and 000026, lines 12-20.

106. 30 Tex. Admin. Code § 309.13(a).

that the proposed facility will be located above the 100-year frequency flood level.[107] The rules prohibit locating a wastewater treatment plant unit in a wetland.[108] The evidence shows that the DHJB's facility will not be in a wetland.[109] The application contained sufficient information and an adequate setback related to buffer zones for nuisance odor prevention, as required by section 309.13(e).[110] The Commission made specific fact findings that the purposed project will meet these requirements.[111]

Staff also reviewed the application in comparison to the Texas Surface Water Quality Standards to assure protection of water quality. In the Executive Director's Response to Public Comment, the Executive Director commented on impacts to drinking water wells in Response 7, as follows:

> The Water Quality Division has determined that the draft permit complies with the Texas Surface Water Quality Standards (TSWQS). The TSWQS ensure that effluent discharges are protective of aquatic life, human health and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team. According to the Texas Groundwater Protection Strategy, AS-188, if the surface water quality is protected,

---

107. 8 A.R. 59, Ex. ED-1 at 000025, lines 25-29; see also 4 A.R. 54, DHJB Ex. 1.2 at 037.

108. 30 Tex. Admin. Code § 309.13(b).

109. 8 A.R. 59, Ex. ED-1 at 000026, lines 5-7; see also 4 A.R. 54, DHJB Ex. 1.2 at 037.

110. 8 A.R. 59, Ex. ED-1 at 000020, lines 10 through 000021, line 11; *see also* 4 A.R. 54, DHJB Ex. 1.2 at 052-054.

111. *See* Final Order, Findings of Fact Nos.41-45.

then the groundwater quality in the vicinity will not be impacted by the discharge.[112]

In addition, staff evaluated the application in comparison to the Edwards Aquifer rules, including effluent limits in 30 Texas Administrative Code § 213.6(c). The rules were adopted to ensure "that the existing quality of groundwater not be degraded."[113] As discussed elsewhere in this brief, the record shows that the effluent limits in the permit approved by the Commission comply with the Edwards Aquifer rules. The Commission made specific findings on point.[114]

The plain words of section 309.12 show that the rule's four factors are things the Commission may — not must — consider. It was not error for the Commission to focus on compliance with the specific factors in section 309.12, the Texas Surface Water Quality Standards, and the Edwards Aquifer rules to assure that the site will minimize possible contamination of surface water and groundwater. The Commission looked at all of this evidence and determined that "the application will comply with TCEQ's regulations regarding Domestic Wastewater Effluent Limitation and Plant Site at 30 TAC ch. 309."[115]

---

112. 8 A.R. 59, Ex. ED-13 at 000151.

113. 30 Tex. Admin. Code § 213.1(1).

114. See 16 A.R. 104 (Final Order, Findings of Fact Nos. 46-51).

115. 16 A.R. 104 (Final Order, Finding of Fact No. 5).

To the extent Plaintiffs' complaint raises a question of the proper interpretation of agency rules, the Commission's interpretation is reasonable and entitled to deference.[116] Plaintiffs' argument that the Commission abused its discretion or acted arbitrarily in evaluating the application's minimization of possible contamination of water, is simply wrong. The Commission abided by its reasonable interpretation of its Chapter 309 Subchapter B rules and conducted the evaluation that the rules required. Thus it did not act arbitrarily.[117] Moreover, Plaintiffs have not demonstrated prejudice to their substantial rights from the Commission's applying the more relevant, stringent rules designed to protect surface water and groundwater quality.[118]

V. The Commission properly applied its Edwards Aquifer rules to this application.

(In response to Plaintiffs' Issue No. 5)

DHJB plans a residential development on a piece of land—the Johnson Ranch property—in Comal County that, all told, comprises 751.3 acres. Part of the Johnson Ranch property is over the mapped Edwards Aquifer recharge zone and part is over

116. *See* standard of review section of this brief, *supra*.

117. An agency decision may be found to be arbitrary and capricious if it is based on legally irrelevant factors or if legally relevant factors were not considered or if the agency reached an unreasonable result. *See City of El Paso v. Public Util. Comm'n*, 883 S.W.2d 179, 184 (Tex.1994); *Dunn v. Public Util. Comm'n*, 246 S.W.3d 788, 791 (Tex. App.—Austin 2008, no pet.).

118. *See Nueces Canyon*, 917 S.W.2d at 777.

the aquifer's contributing zone. The permitted wastewater treatment plant on which the development will rely is on the contributing zone. The agency order challenged in this suit amended DHJB's existing Texas Land Application permit to authorize the discharge of wastewater into water in the state (a TPDES permit). As part of the TPDES permit, the Final Order authorizes a discharge outfall for the wastewater treatment plant; the outfall will be located in the contributing zone over 600 feet from the recharge zone.[119]

Consistent with the legislature's policy goal that the existing quality of groundwater not be degraded,[120] the Commission adopted rules in 30 Texas Code Chapter 213 (the Edwards Aquifer rules) to regulate activities having the potential to pollute the Edwards Aquifer. The rules define and make regulatory distinctions between the aquifer's recharge zone and its contributing zone. The recharge zone is defined by rule as:

> "that area where the stratigraphic units constituting the Edwards Aquifer crop out . . . where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. [It is] that area designated as such on official maps

119. 12 A.R. 71, Transcript Vol. 2 at 178: 12-13; Transcript Vol. 2 at 173: 6-21; 8 A.R. 59, Ex. ED-20 at 000190, lines 1-20; Ex. ED-28.

120. "[I]t is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge." Water Code § 26.401(b).

> located in the agency's central office and in the appropriate regional office."[121]

With respect to Comal County, another rule essentially defines the contributing zone as all remaining areas within the county that are not mapped as recharge zone.[122]

The Edwards Aquifer rules prohibit new municipal waste discharges on the aquifer that would create additional pollutant loading on the recharge zone.[123] The rules impose stringent effluent limits on new discharges on the contributing zone. If a site is partially on the recharge zone and partially on the contributing zone, then activities on the site "must be treated as if the entire site is located on the recharge zone . . . ."[124]

The location of the "site" of the facility determines which rules apply. A Commission rule, 30 Texas Administrative Code § 213.22(7), defines the site as "[t]he entire area within the legal boundaries of the property described in the application."

In its amendment application, DHJB described the site of its facility as an area encompassing the wastewater treatment plant and the proposed outfall.[125] Plaintiffs

121. 30 Tex. Admin. Code § 213.3(27).

122. 30 Tex. Admin. Code § 213.22(2).

123. 30 Tex. Admin. Code § 213.6(a)(1).

124. 30 Tex. Admin. Code § 213.22(7).

125. 4 A.R. 54, DHJB Ex. 1.2 at 00014, 00044, 00047.

argue that the site is the entire 751.3 acre Johnson Ranch property. The Commission determined[126] that the site is the smaller area covered by DHJB's application to add a discharge point, not the entire Johnson Ranch property DHJB intends to develop with residences. Since substantial evidence shows that the site described in DHJB's application is entirely in the contributing zone,[127] the Commission evaluated DHJB's application under the rule governing facilities in the contributing zone — 30 Texas Administrative Code § 213.6(c)(1). The Commission found that the proposed permit amendment met the stringent effluent limit in that rule.[128]

Plaintiffs essentially wanted DHJB to treat the wastewater effluent to drinking water standards of purity before discharging it. It is undisputed that that is not required under the contributing zone rules. In an effort to fit this application under the rules for facilities in the recharge zone, Plaintiffs make a strained and incorrect interpretation of the Commission's Edwards Aquifer rules, contending that the Commission erred by not requiring DHJB to meet the requirements of the rules governing the recharge zone. The argument is something like this: because DHJB

---

126. Final Order, Finding of Fact No. 74. The Commission upheld the ALJ on this point. 15 A.R. 95 (letter from ALJ to TCEQ General Counsel).

127. 12 A.R. 71 Transcript Vol. 2 at 178: 12-13; Transcript Vol. 2 at 173: 6-21; 8 A.R. 59, Ex. ED-20 at 000190, lines 1-20.

128. 16 AR 104, Final Order, 10-11, Findings of Fact Nos. 74-76, Conclusion of Law 9. In fact, DHJB requested and the Commission approved a phosphorous limit that is more stringent than the contributing zone rule requires. *Id.* at Finding of Fact No. 76.

also needed another type of approval from the Commission for its development of the Johnson Ranch property, and that other approval's "site" is the entire Johnson Ranch, then the "site" for the TPDES permit amendment is the larger site identified in the application for the other approval. (The other regulatory approval DHJB needed from the Commission was an Edwards Aquifer Protection Plan (EAPP), which contains a Water Pollution Abatement Plan (WPAP).)[129]

Plaintiffs' argument fails because the EAPP and WPAP cover both the residential development and the wastewater treatment plant and are a separate approval on which the TPDES permit is not conditioned. The application that was approved by the Commission in the order under appeal in the case at bar is solely an application to amend the TLAP permit. The wastewater treatment plan and the outfall are both entirely in the contributing zone.

Assuming *arguendo* that the Commission's Edwards Aquifer rules are susceptible to Plaintiffs' interpretation, Plaintiff's argument should nonetheless fail because the Commission's interpretation—which is reasonable—is entitled to deference as explained in the Standard of Review section of this brief, *supra*.

---

129. 30 Tex. Admin. Code § 213.4(a)(1) ("No person may commence construction of any regulated activity until an Edwards Aquifer protection plan or modifications to the plan as required by § 213.5 of this title . . . has been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director.").

VI. The Commission's determination that the permit is protective of children and cattle was proper and supported by substantial evidence. (In response to Plaintiffs' Issue No. 6)

Plaintiffs' assertion that the Commission erred when it changed the ALJ's proposed findings regarding protections for children and cattle is without merit. As the Commission explained in the "Explanation of Changes" section of the Final Order, the ALJ had misapplied applicable law when she made her recommendations.

As is discussed above, on pages 3-7, the TCEQ has a pervasive regulatory scheme for domestic wastewater. It has promulgated rules for land application of treated effluent and different rules for discharge into waters in the state. Since DHJB applied for a TPDES permit, pursuant to Chapter 305 of the Commission's rules, the water quality standards in 30 Tex. Admin. Code Chapter 307 apply. The ALJ, in making her recommendations, applied the rules in Chapter 210 (titled "Use of Reclaimed Water") which allow effluent to be directly applied to an area via irrigation system. The first subsection of Chapter 210 chapter explicitly states that "[t]his chapter does *not* apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 [Consolidated Permits]."[130]

130. 30 Tex. Admin.Code § 210.1 (emphasis added).

The applicable standards — those in Chapter 307 — are protective of cattle and children. Those rules contain effluent standards that are specifically tailored to discharge into surface water which is classified as intermittent with perennial pools.[131] In addition to the effluent standards which are set out in Chapter 307, the Edwards Aquifer rules also applied.[132] Moreover, the review performed by Ms. Lee, the ED's aquatic scientist, concluded that the application complied with the Commission's antidegradation rules[133] and determined that existing water quality uses — including recreational uses — would not be impaired by the permit action. Phillip Urbany, the ED's environmental permit specialist, performed a technical review of the permit application.[105] He testified that DHJB's treatment method was "a more advanced method"[106] and said that the draft permits included chlorination requirements and bacteria limits that comply with the stringent effluent limitations in the water quality standards.[107] Mr. Urbany testified that the permit was adequate to address potential impacts to livestock.[108]There was no

131. 30 Tex. Admin Code 307.4(h)(4)

132. 30 Tex. Admin. Code Chapter 213. The application of the Edwards Aquifer rules to this permit application is discussed on pages 3-7, above.

133. 8 A.R. 59, Ex. ED-20 at 000178, lines 8-16. A discussion of the Commission's antidegradation policy is on pages 6-7, above.

105. 8 A.R. 59, Ex. ED-1 at 000004, lines 10-21 and 000005, lines 18-22.

106. 8 A.R. 59, Ex. ED-1 at 0000022, lines 19-23.

107. 8 A.R. 59, Ex. ED-1 at 0000022, lines 15-18.

108. 8 A.R. 59, Ex. ED-1 at 0000028, lines 13-17.

controverting evidence suggesting that the water quality standards would not be met and Plaintiffs do not challenge Conclusion of Law No. 8 which states that DHJB's treated wastewater discharge complies with " the general criteria, antidegradation policy, toxic material provisions and site-specific uses and criteria" in the water quality standards."[109]

Finally, in the "Explanation of Changes" section of the Final Order, the Commission wrote extensively on why it changed the ALJ's proposed findings related to this issue and why the permit is protective of children and cattle:

> [T]he ALJ improperly applied TCEQ policy, relevant rules, and the law related to the determinations that the proposed permit would not be protective of children or cattle coming into contact with, or ingesting the effluent. The ALJ also improperly applied TCEQ policy, relevant rules, and the law with regard to implementation of the TPDES program and implementing the procedures found in 30 TAC Chapter 307 related to the implementation of the TSWQS. The record further establishes that the unclassified receiving waters are properly designated as being an intermittent watercourse with perennial pools in accordance with TCEQ rules found in Chapter 307. *The designation presumes a limited aquatic life use, which includes primary contact recreation, and indicates that the expectations for activities in those waters involves a significant risk of ingestion, including wading by children*. TSWQS standrds adopted for this designation for the unnamed tributary of Cibolo Creek (Segment 1908) are protective of these interests and activities.
>
> *The fact that the unclassified receiving waters are often dry is not unusual, and is inherent in the designation of the receiving waters as intermittent with perennial pools. The designation as "including*

109. Final Order, p. 10.

> *perennial pools" actually results in more stringent effluent limits being applicable.* The effluent limits in the draft permit contained in the proposed permit are also more stringent than those required in 30 TAC Chapter 213 for discharges within 0 to 5 miles of the Edwards Aquifer. *The record includes expert testimony that protectiveness of terrestrial and aquatic life is presumed in setting the TSWQS as stated in 30 TAC § 307.1.* There is no significant evidence contravening the Applicant's showing that existing uses will be protected, including livestock. Further, there is no significant evidence in the record contravening the evidence establishing that the proposed effluent limits are protective of the designated uses of the receiving waters and that those designations were properly established through determination of the appropriate uses and criteria of the receiving waters, application of the TSWQS performance of Tier 1 and Tier 2 anti-degradation reviews, and QualTex modeling and nutrient screening.[110]

VII. Plaintiffs' due process rights have not been violated.

(In response to Plaintiffs' Issue No. 7)

Plaintiffs contend that the Commission violated their right to due process by its questioning of Ms. Lee at the agenda meeting and by making changes to the ALJ's proposed findings of fact and conclusions of law. These contentions are meritless.

Plaintiffs' complaints about Ms. Lee's appearance at the agenda have already been addressed in this brief at pages 22 through 28, above.

---

110. Final Order at 12-13(emphasis added).

The Commission's modifications and changes to the proposal for decision were within its statutory authority. The Legislature anticipated and provided for modifications to a proposal for decision by the ultimate decisionmaker, the Commission.

Section 2001.058(e)[111] of the APA provides that:

> A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:
>
> (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c),
>
> or prior administrative decisions;
>
> (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
>
> (3) that a technical error in a finding of fact should be changed.
>
> The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

Chapter 2003 of the Government Code governs the State Office of Administrative Hearings. Section 2003.047 of the Government Code is entitled "Hearings for the Texas Commission on Environmental Quality." Subsection 2003.047(m) states, in pertinent part, that:

---

111. This section is entitled "Hearing Conducted by the State Office of Administrative Hearings."

> The commission may amend the proposal for decision, including any finding of fact, but any such amendment thereto and order shall be based solely on the record made before the administrative law judge. Any such amendment by the commission shall be accompanied by an explanation of the basis of the amendment.

The Commission complied with the requirements of the Government Code and included a comprehensive explanation of its changes and modification to the proposal for decision in the Final Order. In its discussion of the various issues raised by Plaintiffs, this brief has quoted extensive from the Commission's explanations. The changes to the PFD and the explanation for the changes all fall within the ambit of the Government Code.

Plaintiffs' final complaint speculates that the individual Commissioner's conscientiousness in preparing for the hearing is evidence of some untoward behavior. This speculation is baseless. As the Final Order states, in making its decision the Commission considered the application, "timely public comments and the Executive Director's Response to Comments; the record; and timely related filings, including exceptions and replies."[112] Given the volume of material in this case, it would be expected that the Commissioners would have come to the hearing prepared and knowledgeable about the permit application.

---

112. Final Order, p. 1.

CONCLUSION AND PRAYER

For the reasons set out above, the Commission asks the Court to affirm its decision.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

PRISCILLA HUBENAK
Assistant Attorney General
Chief, Environmental Protection Division

/*s*/ Cynthia Woelk
CYNTHIA WOELK
Assistant Attorney General
Texas Bar Number 21836525
cynthia.woelk@oag.texas.gov

/*s*/ Nancy Elizabeth Olinger
NANCY ELIZABETH OLINGER
Assistant Attorney General
State Bar No. 15254230
nancy.olinger@oag.texas.gov

Environmental Protection Division
P.O. Box 12548 (MC-018)
Austin, Texas 78711-2548
Tel: (512) 463 2012
Fax: (512) 320 0052
ATTORNEYS FOR TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF COMPLIANCE

As required by Travis County Local Rules 10.5, briefs must conform to Texas Rules of Appellate Procedure 9.4(i)(3), I certify that this brief contains 10,225 words, excluding the parts of the brief exempted by Rule 9.4(i)(1). This is a computer generated document created in WordPerfect. In making this certificate, I have relied on the word count provided by the computer program used to prepare the document.

/s/ Cynthia Woelk
CYNTHIA WOELK

CERTIFICATE OF SERVICE

On September 30, 2016, I served the above and foregoing on the following counsel electronically through an electronic filing manager or by electronic mail:

/*s*/ Cynthia Woelk
Cynthia Woelk

LIST OF PERSONS SERVED

Mr. Charles W. Irvine
Ms. Mary B. Conner
Mr. Michael P. McEvilly
IRVINE & CONNER, PLLC
4709 Austin Street
Houston, Texas 77004
charles@irvineconner.com
mary@irvineconner.com
michael@irvineconner.com
Attorneys for Plaintiffs

Mr. Edmond McCarty
JACKSON, SJOBERG, McCARTHY
& TOWNSEND LLP
711 West 7th Street
Austin, Texas 78701
emmcarthy@jacksonsjoberg.com

Attorneys for Intervenor-Defendants DHJB Development LLC and Johnson Ranch Municipal utility District

INDEX TO APPENDIX

APPENDIX E

5 AR 54, DHJB Ex. 3.0 Prefiled Testimony of Tracy Bratton

APPENDIX F

8 AR 59, Ex. ED-1 Prefiled Testimony of Phillip Urbany

APPENDIX A

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2001. Administrative Procedure (Refs & Annos)
Subchapter C. Contested Cases: General Rights and Procedures

V.T.C.A., Government Code § 2001.058

§ 2001.058. Hearing Conducted by State Office of Administrative Hearings

Effective: September 1, 2015
Currentness

(a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.

(b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.

(c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.

(d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

(d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under Section 2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

(f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:

(1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;

(2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;

(3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion or extends a time period under Section 2001.146;

(4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and

(5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

Credits

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1167, § 1, eff. Sept. 1, 1997; Acts 2015, 84th Leg., ch. 228 (H.B. 2154), § 1, eff. Sept. 1, 2015.

V. T. C. A., Government Code § 2001.058, TX GOVT § 2001.058
Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2001. Administrative Procedure (Refs & Annos)
Subchapter G. Contested Cases: Judicial Review

V.T.C.A., Government Code § 2001.171

§ 2001.171. Judicial Review

Currentness

A person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.

Credits
Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

V. T. C. A., Government Code § 2001.171, TX GOVT § 2001.171
Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2001. Administrative Procedure (Refs & Annos)
Subchapter G. Contested Cases: Judicial Review

V.T.C.A., Government Code § 2001.174

§ 2001.174. Review Under Substantial Evidence Rule or Undefined Scope of Review

Currentness

If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:

(1) may affirm the agency decision in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the agency's statutory authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Credits
Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

V. T. C. A., Government Code § 2001.174, TX GOVT § 2001.174
Current through the end of the 2015 Regular Session of the 84th Legislature

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2003. State Office of Administrative Hearings
Subchapter C. Staff and Administration

V.T.C.A., Government Code § 2003.047

§ 2003.047. Hearings for Texas Commission on Environmental Quality

Effective: September 1, 2015
Currentness

(a) The office shall perform contested case hearings for the Texas Commission on Environmental Quality.

(b) The office shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate to the office the responsibility to hear any other matter before the commission if consistent with the responsibilities of the office .

(c) The office may contract with qualified individuals to serve as temporary administrative law judges as necessary.

(d) To be eligible to preside at a hearing on behalf of the commission, an administrative law judge, regardless of temporary or permanent status, must be licensed to practice law in this state and have the expertise necessary to conduct hearings regarding technical or other specialized subjects that may come before the commission.

(e) In referring a matter for hearing, the commission shall provide to the administrative law judge a list of disputed issues. The commission shall specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision to the commission. The administrative law judge may extend the proceeding if the administrative law judge determines that failure to grant an extension would deprive a party of due process or another constitutional right. The administrative law judge shall establish a docket control order designed to complete the proceeding by the date specified by the commission.

(e-1) This subsection applies only to a matter referred under Section 5.556, Water Code. Each issue referred by the commission must have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. The list of issues submitted under Subsection (e) must:

(1) be detailed and complete; and

(2) contain either:

(A) only factual questions; or

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(B) mixed questions of fact and law.

(e-2) For a matter referred under Section 5.556 or 5.557, Water Code, the administrative law judge must complete the proceeding and provide a proposal for decision to the commission not later than the earlier of:

(1) the 180th day after the date of the preliminary hearing; or

(2) the date specified by the commission.

(e-3) The deadline specified by Subsection (e-2) may be extended:

(1) by agreement of the parties with the approval of the administrative law judge; or

(2) by the administrative law judge if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right.

(e-4) For the purposes of Subsection (e-3)(2), a political subdivision has the same constitutional rights as an individual.

(e-5) This subsection applies only to a matter referred under Section 5.557, Water Code. The administrative law judge may not hold a preliminary hearing until after the executive director has issued a response to public comments under Section 5.555, Water Code.

(f) Except as otherwise provided by this subsection, the scope of the hearing is limited to the issues referred by the commission. On the request of a party, the administrative law judge may consider an issue that was not referred by the commission if the administrative law judge determines that:

(1) the issue is material;

(2) the issue is supported by evidence; and

(3) there are good reasons for the failure to supply available information regarding the issue during the public comment period.

(g) The scope of permissible discovery is limited to:

(1) any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; and

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(2) the production of documents:

(A) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

(B) relating to the ownership of the applicant or the owner or operator of the facility or proposed facility.

(h) The commission by rule shall:

(1) provide for subpoenas and commissions for depositions; and

(2) require that discovery be conducted in accordance with the Texas Rules of Civil Procedure, except that the commission by rule shall determine the level of discovery under Rule 190, Texas Rules of Civil Procedure,[1] appropriate for each type of case considered by the commission, taking into account the nature and complexity of the case.

(i) The office and the commission jointly shall adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(i-1) In a contested case regarding a permit application referred under Section 5.556 or 5.557, Water Code, the filing with the office 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:

(1) relates to a matter referred under Section 5.557, Water Code, or an issue included in a list submitted under Subsection (e) in connection with a matter referred under Section 5.556, Water Code; and

(2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(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.

(j) An administrative law judge hearing a case on behalf of the commission, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (k) against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the administrative law judge or the commission.

(k) A sanction imposed under Subsection (j) may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) charging all or any part of the expenses of discovery against the offending party or its representatives;

(3) holding that designated facts be considered admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking pleadings or testimony, or both, in whole or in part.

(l) After hearing evidence and receiving legal argument, an administrative law judge shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

administrative law judge shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. An opportunity shall be given to each party to file exceptions to the proposal for decision and briefs related to the issues addressed in the proposal for decision. The commission shall consider and act on the proposal for decision.

(m) Except as provided in Section 361.0832, Health and Safety Code, the commission shall consider the proposal for decision prepared by the administrative law judge, the exceptions of the parties, and the briefs and argument of the parties. The commission may amend the proposal for decision, including any finding of fact, but any such amendment thereto and order shall be based solely on the record made before the administrative law judge. Any such amendment by the commission shall be accompanied by an explanation of the basis of the amendment. The commission may also refer the matter back to the administrative law judge to reconsider any findings and conclusions set forth in the proposal for decision or take additional evidence or to make additional findings of fact or conclusions of law. The commission shall serve a copy of the commission's order, including its finding of facts and conclusions of law, on each party.

(n) The provisions of Chapter 2001 shall apply to contested case hearings for the commission to the extent not inconsistent with this section.

(o) An administrative law judge hearing a case on behalf of the commission may not, without the agreement of all parties, issue an order referring the case to an alternative dispute resolution procedure if the commission has already conducted an unsuccessful alternative dispute resolution procedure. If the commission has not already conducted an alternative dispute resolution procedure, the administrative law judge shall consider the commission's recommendation in determining whether to issue an order referring the case to the procedure.

Credits

Added by Acts 1995, 74th Leg., ch. 106, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 934, § 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1350, § 6, eff. Sept. 1, 1999; Acts 2015, 84th Leg., ch. 116 (S.B. 709), § 1, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 228 (H.B. 2154), §§ 6, 7, eff. Sept. 1, 2015.

Footnotes

1 Vernon's Ann.Rules Civ.Proc., rule 190.1 et seq.

V. T. C. A., Government Code § 2003.047, TX GOVT § 2003.047

Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Water Code (Refs & Annos)
Title 2. Water Administration (Refs & Annos)
Subtitle D. Water Quality Control
Chapter 26. Water Quality Control (Refs & Annos)
Subchapter A. Administrative Provisions (Refs & Annos)

V.T.C.A., Water Code § 26.001

§ 26.001. Definitions

Effective: September 1, 2001
Currentness

As used in this chapter:

(1) “Board” means the Texas Water Development Board.

(2) “Commission” means the Texas Natural Resource Conservation Commission.

(3) “Executive administrator” means the executive administrator of the Texas Water Development Board.

(4) “Executive director” means the executive director of the Texas Natural Resource Conservation Commission.

(5) “Water” or “water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) “Waste” means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) “Sewage” means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) “Municipal waste” means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) “Recreational waste” means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(14) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) “Sewer system” means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) “Treatment facility” means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) “Disposal system” means any system for disposing of waste, including sewer systems and treatment facilities.

(18) “Local government” means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(19) “Permit” means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) “To discharge” includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) “Identified state supplement to an NPDES permit” means any part of a permit on which the commission has entered a written designation to indicate that the commission has adopted that part solely in order to carry out the commission's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) “NPDES” means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act. [1]

(24) “Treatment works” means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling, additions, and alterations of the items in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;

(D) any works, including sites and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and

(F) facilities to provide for the collection, control, and disposal of waste heat.

(25) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code [2], applies.

Credits

Added by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 985, ch. 367, § 43, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, § 1.064, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, § 19, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 642, § 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.068, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 979, § 24, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, § 43, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, § 12.01, eff. Sept. 1, 2001.

Footnotes

1 33 U.S.C.A. § 1342(b).

2 V.T.C.A., Local Government Code § 232.021 et seq.

V. T. C. A., Water Code § 26.001, TX WATER § 26.001

Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Water Code (Refs & Annos)
Title 2. Water Administration (Refs & Annos)
Subtitle D. Water Quality Control
Chapter 26. Water Quality Control (Refs & Annos)
Subchapter J. Groundwater Protection

V.T.C.A., Water Code § 26.401

§ 26.401. Legislative Findings

Currentness

(a) The legislature finds that:

(1) in order to safeguard present and future groundwater supplies, usable and potentially usable groundwater must be protected and maintained;

(2) protection of the environment and public health and welfare requires that groundwater be kept reasonably free of contaminants that interfere with present and potential uses of groundwater;

(3) groundwater contamination may result from many sources, including current and past oil and gas production and related practices, agricultural activities, industrial and manufacturing processes, commercial and business endeavors, domestic activities, and natural sources that may be influenced by or may result from human activities;

(4) the various existing and potential groundwater uses are important to the state economy; and

(5) aquifers vary both in their potential for beneficial use and in their susceptibility to contamination.

(b) The legislature determines that, consistent with the protection of the public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the environment, the operation of existing industries, and the maintenance and enhancement of the long-term economic health of the state, it is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge.

(c) It is the policy of this state that:

(1) discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard; and

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(2) the quality of groundwater be restored if feasible.

(d) The legislature recognizes the important role of the use of the best professional judgment of the responsible state agencies in attaining the groundwater goal and policy of this state.

Credits
Added by Acts 1989, 71st Leg., ch. 768, § 1, eff. Sept. 1, 1989.

V. T. C. A., Water Code § 26.401, TX WATER § 26.401
Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Vernon's Texas Statutes and Codes Annotated
Water Code (Refs & Annos)
Title 2. Water Administration (Refs & Annos)
Subtitle A. Executive Agencies
Chapter 5. Texas Commission on Environmental Quality (Refs & Annos)
Subchapter B. Organization of the Texas Natural Resource Conservation Commission

V.T.C.A., Water Code § 5.013

§ 5.013. General Jurisdiction of Commission

Effective: September 1, 2015
Currentness

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, 401, 505, 506, and 507, Health and Safety Code; and

(12) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

Credits

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, § 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.005, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 376, § 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, § 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, § 22, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 1323, § 2, eff. Sept. 1, 2007; Acts 2013, 83rd Leg., ch. 170 (H.B. 1600), § 2.01, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 171 (S.B. 567), § 1, eff. Sept. 1, 2013; Acts 2015, 84th Leg., ch. 515 (H.B. 942), § 32, eff. Sept. 1, 2015.

V. T. C. A., Water Code § 5.013, TX WATER § 5.013
Current through the end of the 2015 Regular Session of the 84th Legislature

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX B

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 210. Use of Reclaimed Water
Subchapter A. General Provisions

30 TAC § 210.1
Tex. Admin. Code tit. 30, § 210.1

§ 210.1. Applicability

Currentness

This chapter applies to the reclaimed water producer, provider, and user. If the entity which is the producer of the reclaimed water is the same as the user, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water. This chapter does not apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits), or to the user of such treated wastewater identified in the producer's wastewater discharge permit authorizing disposal by irrigation. This chapter does not apply to those systems authorized under Chapter 285 of this title (relating to On-Site Wastewater Treatment) which utilizes surface irrigation as an approved disposal method.

Credits
Source: The provisions of this § 210.1 adopted to be effective February 12, 1997, 22 TexReg 1103.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 210.1, 30 TX ADC § 210.1

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 213. Edwards Aquifer
Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

30 TAC § 213.3
Tex. Admin. Code tit. 30, § 213.3

§ 213.3. Definitions

Currentness

The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well that contains the casing, pump, and pump column in good condition; or

(B) a non-deteriorated well that has been properly capped.

(2) Aboveground storage tank facility--The site, tract, or other area where one or more aboveground storage tank systems are located, including all adjoining contiguous land and associated improvements.

(3) Aboveground storage tank system--A non-vehicular device (including any associated piping) that is made of nonearthen materials; located on or above the ground surface, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of static hydrocarbons or hazardous substances.

(4) Appropriate regional office--For regulated activities covered by this chapter and located in Hays, Travis, and Williamson Counties, the appropriate regional office is Region 11, located in Austin, Texas. For regulated activities covered by this chapter and located in Kinney, Uvalde, Medina, Bexar, and Comal Counties, the appropriate regional office is Region 13, located in San Antonio, Texas.

(5) Best management practices (BMPs)--A schedule of activities, prohibitions, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to protect groundwater and surface water quality, as provided in technical guidance prepared by the executive director or other BMPs that are technically justified based upon studies and other information that are generally relied upon by professionals in the environmental protection field and are supported by existing or proposed performance monitoring studies, including,

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

but not limited to, the United States Environmental Protection Agency, American Society of Civil Engineers, and Water Environment Research Foundation guidance.

(6) Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well. The cap must be able to sustain a weight of at least 400 pounds. The cap must not be easily removed by hand.

(7) Commencement of construction--The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction or regulated activities.

(8) Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(9) Edwards Aquifer protection plan--A general term that includes a water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the executive director.

(10) Edwards Aquifer protection plan holder--The person who is responsible for compliance with an approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the executive director.

(11) Concentrated animal feeding operation--As defined in § 321.32 of this title (relating to Definitions).

(12) Geologic or manmade features--Features including, but not limited to, closed depressions, sinkholes, caves, faults, fractures, bedding plane surfaces, interconnected vugs, reef deposits, wells, borings, and excavations.

(13) Geologic assessment--A report that is prepared by a geologist describing site-specific geology.

(14) Geologist--A Texas licensed professional geoscientist who has training and experience in groundwater hydrology and related fields that enable that individual to make sound professional judgments regarding the identification of sensitive features located in the recharge zone or transition zone.

(15) Groundwater conservation district--Any groundwater district created by the legislature or the commission subject to Texas Water Code, Chapter 36, to conserve, preserve, and protect the waters of a groundwater water reservoir.

(16) Hazardous substance--Any substance designated as such by the administrator of the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act; regulated

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

in accordance with Federal Water Pollution Control Act, Chapter 311; or any solid waste, or other substance that is designated to be hazardous by the commission, in accordance with Texas Water Code, § 26.263 or Texas Health and Safety Code, § 361.003.

(17) Impervious cover--Impermeable surfaces, such as pavement or rooftops, that prevent the infiltration of water into the soil. Rainwater collection systems for domestic water supplies are not considered impervious cover.

(18) Industrial wastewater discharge--Any category of wastewater except:

(A) those that are primarily domestic in composition; or

(B) those emanating from feedlot/concentrated animal feeding operations.

(19) Injection well--An injection well as defined under Chapter 331 of this title (relating to Underground Injection Control).

(20) Land application system--A wastewater disposal system designed not to discharge wastewater into a surface drainage way.

(21) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(22) Organized sewage collection system--Any public or private sewage system for the collection and conveyance of sewage to a treatment and disposal system that is regulated in accordance with rules of the commission and provisions of Texas Water Code, Chapter 26. A system may include lift stations, force mains, gravity lines, and any other appurtenance necessary for conveying wastewater from a generating facility to a treatment plant.

(23) Permanent best management practices--Best management practices used to prevent and control pollution from regulated activities after construction is complete.

(24) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

(25) Private sewage facilities--On-site sewage facilities as defined under Chapter 285 of this title (relating to On-Site Sewage Facilities).

(26) Private service lateral--A wastewater line extending from the building drain to an existing private or public sewage collection system or other place of disposal that provides service to one single-family residence or building, with the operation and maintenance as the sole responsibility of the tenant or owner of the building. A wastewater line extending

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

from the convergence of private service laterals from more than one single-family residence or building is considered a sewage collection system.

(27) Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the agency's central office and in the appropriate regional office.

(28) Regulated activity--

(A) Any construction-related or post-construction activity on the recharge zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. These activities include, but are not limited to:

(i) construction of buildings, utility stations, utility lines, roads, highways, or railroads;

(ii) clearing, excavation, or any other activities that alter or disturb the topographic, geologic, or existing recharge characteristics of a site;

(iii) any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or

(iv) any other activities that may pose a potential for contaminating the Edwards Aquifer and hydrologically connected surface streams.

(B) Regulated activity does not include:

(i) clearing of vegetation without soil disturbance;

(ii) agricultural activities, except feedlots/concentrated animal feeding operations that are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) activities associated with the exploration, development, and production of oil, gas, or geothermal resources under the jurisdiction of the Railroad Commission of Texas;

(iv) routine maintenance of existing structures that does not involve additional site disturbance, such as, but not limited to:

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces; and

(II) the building of fences, or other similar activities in which:

(-a-) there is little or no potential for contaminating groundwater; or

(-b-) there is little or no change to the topographic, geologic, or existing sensitive features; or

(v) construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot.

(29) Sensitive feature--A permeable geologic or manmade feature located on the recharge zone or transition zone where:

(A) a potential for hydraulic interconnectedness between the surface and the Edwards Aquifer exists; and

(B) rapid infiltration to the subsurface may occur.

(30) Sewage holding tank--A tank or other containment structure used to receive and store sewage until its ultimate disposal in an approved treatment facility.

(31) Site--The entire area included within the legal boundaries of the property described in the application. Regulated activities on a site that is located partially on the recharge zone and transition zone, where the natural drainage in the transition zone flows back to the recharge zone, will be treated as if the entire site is located on the recharge zone.

(32) Static hydrocarbon--A hydrocarbon that is liquid at atmospheric pressure and 20 degrees centigrade.

(33) Stub out--A wye, tee, or other manufactured appurtenance placed in a sewage collection system providing a location for a future extension of the collection system.

(34) Temporary best management practices--Best management practices used to prevent and control pollution from regulated activities during construction.

(35) Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel (e.g., tank or piping) or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected. Tertiary containment systems include, but are not limited to, impervious liners and vaults surrounding a secondary tank and/or piping system, or equivalent triple wall tank or piping system as approved by the executive director.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(36) Transition zone--That area where geologic formations crop out in proximity to and south and southeast of the recharge zone and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer, including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps located in the agency's central office and in the appropriate regional office.

(37) Underground storage tank facility--The site, tract, or other defined area where one or more underground storage tank systems are located, including all contiguous land and associated improvements.

(38) Underground storage tank system--Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

(39) Well--A bored, drilled, or driven shaft, or an artificial opening in the ground made by digging, jetting, or some other method, where the depth of the well is greater than its largest surface dimension. A well is not a surface pit, surface excavation, or natural depression.

Credits

Source: The provisions of this § 213.3 adopted to be effective December 27, 1996, 21 TexReg 12125; amended to be effective June 1, 1999, 23 TexReg 10477; amended to be effective November 3, 2002, 27 TexReg 10031; amended to be effective September 1, 2003, 28 TexReg 6291; amended to be effective September 1, 2005, 30 TexReg 4984.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 213.3, 30 TX ADC § 213.3

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 213. Edwards Aquifer
Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

30 TAC § 213.6
Tex. Admin. Code tit. 30, § 213.6

§ 213.6. Wastewater Treatment and Disposal Systems

Currentness

(a) General.

(1) New industrial and municipal wastewater discharges into or adjacent to water in the state that would create additional pollutant loading are prohibited on the recharge zone.

(2) Increases in existing discharges into or adjacent to water in the state that would increase or add new pollutant loading are prohibited on the recharge zone.

(3) Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit. Permits will not be renewed if the facility becomes non-compliant, as defined in Chapter 70 of this title.

(4) New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there are no bypasses of the treatment facilities or any discharges of untreated or partially treated wastewater.

(5) Design of wastewater treatment plants must be in accordance with Chapter 317 of this title.

(b) Land application systems.

(1) Except for licensed private sewage facilities, land application systems that rely on percolation for wastewater disposal are prohibited on the recharge zone.

(2) Wastewater disposal systems for disposal of wastewater on the recharge zone utilizing land application methods, such as evaporation or irrigation, will be considered on a case-by-case basis. At a minimum, those systems must attain secondary treatment as defined in Chapter 309 of this title (relating to Effluent Limitations).

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(3) Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit unless the facility becomes non-compliant, as defined in Chapter 70 of this title.

(c) Discharge upstream from the recharge zone.

(1) All new or increased discharges of treated wastewater into or adjacent to water in the state, other than industrial wastewater discharges, within zero to five miles upstream from the recharge zone, at a minimum, shall achieve the following level of effluent treatment:

(A) five milligrams per liter of carbonaceous biochemical oxygen demand, based on a 30-day average;

(B) five milligrams per liter of total suspended solids, based on a 30-day average;

(C) two milligrams per liter of ammonia nitrogen, based on a 30-day average; and

(D) one milligram per liter of phosphorus, based on a 30-day average.

(2) All new or increased discharges into or adjacent to water in the state, other than industrial wastewater discharges, more than five miles but within ten miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer, at a minimum, must achieve the level of effluent treatment for 2N based on a 30-day average as set out in Table 1 of Chapter 309 of this title. More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(3) All discharges, other than industrial wastewater discharges, more than five miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek must comply with § 311.43 of this title (relating to Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and Its Tributaries, of the Colorado River Basin), and to § 311.44 of this title (relating to Disinfection). More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(4) Any existing permitted industrial wastewater discharges within zero to ten miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten miles upstream of the recharge zone will be considered on a case-by-case basis, in accordance with appropriate discharge limits applicable to that industrial activity and with consideration of its proximity to the recharge zone.

Credits

Source: The provisions of this § 213.6 adopted to be effective December 27, 1996, 21 TexReg 12125; amended to be effective June 1, 1999, 23 TexReg 10477.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

30 TAC § 213.6, 30 TX ADC § 213.6

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 213. Edwards Aquifer
Subchapter B. Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

30 TAC § 213.22
Tex. Admin. Code tit. 30, § 213.22

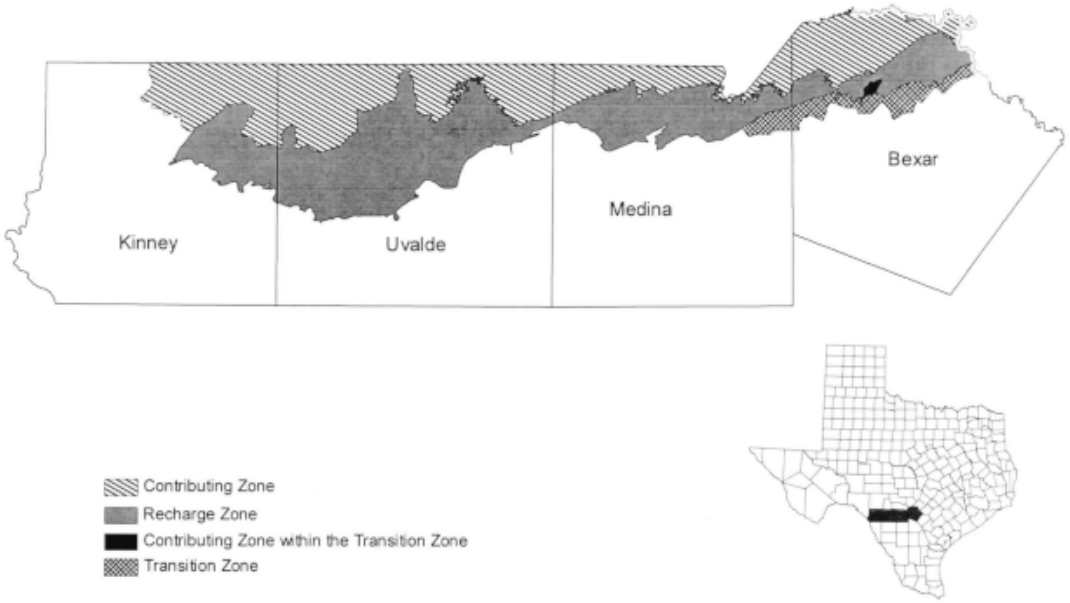
§ 213.22. Definitions

Currentness

The definitions in Texas Water Code, §§ 26.001, 26.263, and 26.342, and in § 213.3 of this title (relating to Definitions) apply to this subchapter. Those definitions have the same meaning unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section.

(1) Best management practices--Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the Edwards Aquifer and hydrologically connected surface streams. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) Contributing zone--The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone is illustrated on Contributing Zone (Southern Part) for the Edwards Aquifer and Contributing Zone (Northern Part) for the Edwards Aquifer. The contributing zone is located upstream (upgradient) and generally north and northwest of the recharge zone for the following counties:



Contributing Zone (Southern Part) for the Edwards Aquifer

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

Contributing Zone (Northern Part) for the Edwards Aquifer

(A) all areas within Kinney County, except the area within the watershed draining to Segment 2304 of the Rio Grande Basin;

(B) all areas within Uvalde, Medina, Bexar, and Comal Counties;

(C) all areas within Hays and Travis Counties, except the area within the watersheds draining to the Colorado River above a point 1.3 miles upstream from Tom Miller Dam, Lake Austin at the confluence of Barrow Brook Cove, Segment 1403 of the Colorado River Basin; and

(D) all areas within Williamson County, except the area within the watersheds draining to the Lampasas River above the dam at Stillhouse Hollow reservoir, Segment 1216 of the Brazos River Basin.

(3) Contributing zone within the transition zone--The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone within the transition zone is depicted in detail on the official recharge and transition zones maps of the agency as provided for in § 213.3 of this title (relating to Definitions). The contributing zone within the transition zone is located generally south and east of the recharge zone and includes specifically those areas where stratigraphic units not included in the Edwards Aquifer crop out at topographically higher elevations and drain to stream courses where stratigraphic units of the Edwards Aquifer crop out and are mapped as recharge zone.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(4) Texas Pollutant Discharge Elimination System permits for storm water discharges from construction activities (TPDES permits)--Texas Pollutant Discharge Elimination System general or individual permits issued by the agency for storm water discharges from construction activities in Texas.

(5) Notice of intent (NOI)--Notice of intent required by the Texas Pollutant Discharge Elimination System general permits for storm water discharges from construction activities.

(6) Regulated activity--

(A) Any construction or post-construction activity occurring on the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone.

(i) These activities include construction or installation of:

(I) buildings;

(II) utility stations;

(III) utility lines;

(IV) underground and aboveground storage tank systems;

(V) roads;

(VI) highways; or

(VII) railroads.

(ii) Clearing, excavation, or other activities which alter or disturb the topographic or existing storm water runoff characteristics of a site are regulated activities.

(iii) Any other activities that pose a potential for contaminating storm water runoff are regulated activities.

(B) “Regulated activity” does not include:

(i) the clearing of vegetation without soil disturbance;

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(ii) agricultural activities, except feedlots/concentrated animal feeding operations that are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) activities associated with the exploration, development, and production of oil or gas or geothermal resources under the jurisdiction of the Railroad Commission of Texas;

(iv) routine maintenance of existing structures that does not involve site disturbance including, but not limited to:

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces; and

(II) the building of fences, or other similar activities that present little or no potential for contaminating hydrologically-connected surface water;

(v) routine maintenance that involves little or no change to the topographic or geologic features; or

(vi) construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot.

(7) Site--The entire area within the legal boundaries of the property described in the application. Regulated activities on a site located partially on the recharge zone and the contributing zone must be treated as if the entire site is located on the recharge zone, subject to the requirements under Subchapter A of this chapter (relating to Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties).

Credits

Source: The provisions of this § 213.22 adopted to be effective June 1, 1999, 23 TexReg 10489; amended to be effective September 1, 2005, 30 TexReg 4984.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 213.22, 30 TX ADC § 213.22

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 305. Consolidated Permits
Subchapter F. Permit Characteristics and Conditions

30 TAC § 305.122
Tex. Admin. Code tit. 30, § 305.122

§ 305.122. Characteristics of Permits

Currentness

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;

(3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of § 305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under § 335.112 of this title (relating to Standards).

(b) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in § 305.62 of this title (relating to Amendments) and § 305.66 of this title (relating to Permit Denial, Suspension, and Revocation), or the permit may be modified upon the request of the permittee as set forth in § 305.69 of this title.

(c) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(d) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(e) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), § 307, and standards for sewage sludge use or disposal under CWA, § 405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§ 301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in § 305.62 and § 305.66 of this title.

Credits

Source: The provisions of this §305.122 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective November 15, 2001, 26 TexReg 9123; amended to be effective February 21, 2013, 38 TexReg 970.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 305.122, 30 TX ADC § 305.122

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 307. Texas Surface Water Quality Standards

30 TAC § 307.1
Tex. Admin. Code tit. 30, § 307.1

§ 307.1. General Policy Statement

Currentness

It is the policy of this state and the purpose of this chapter to maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and taking into consideration economic development of the state; to encourage and promote development and use of regional and area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

Credits

Source: The provisions of this §307.1 adopted to be effective April 29, 1988, 13 TexReg 1784; amended to be effective July 22, 2010, 35 TexReg 6294.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 307.1, 30 TX ADC § 307.1

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 307. Texas Surface Water Quality Standards

30 TAC § 307.2
Tex. Admin. Code tit. 30, § 307.2

§ 307.2. Description of Standards

Currentness

(a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

(2) This section lists the major sections of the standards, defines basin classification categories, describes justifications for standards modifications, and provides the effective dates of the rules.

(3) Section 307.3 of this title (relating to Definitions and Abbreviations) defines terms and abbreviations used in the standards.

(4) Section 307.4 of this title (relating to General Criteria) lists the general criteria that are applicable to all surface waters of the state unless specifically excepted in § 307.8 of this title (relating to Application of Standards) or § 307.9 of this title (relating to Determination of Standards Attainment).

(5) Section 307.5 of this title (relating to Antidegradation) describes the antidegradation policy and implementation procedures.

(6) Section 307.6 of this title (relating to Toxic Materials) establishes criteria and control procedures for specific toxic substances and total toxicity.

(7) Section 307.7 of this title (relating to Site-Specific Uses and Criteria) defines appropriate water uses and supporting criteria for site-specific standards.

(8) Section 307.8 of this title (relating to the Application of Standards) sets forth conditions when portions of the standards do not apply--such as in mixing zones or below critical low-flows.

(9) Section 307.9 of this title describes sampling and analytical procedures to determine standards attainment.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(10) Section 307.10 of this title (relating to Appendices A-G) lists site-specific standards and supporting information for classified segments (Appendices A and C), water bodies that are sole-source surface drinking water supplies (Appendix B), site-specific uses and criteria for unclassified water bodies (Appendix D), site-specific toxic criteria that may be derived for any water in the state (Appendix E), chlorophyll a criteria for selected reservoirs (Appendix F), and site-specific recreational uses and criteria for unclassified water bodies (Appendix G). Specific appendices are as follows:

(A) Appendix A--Site-specific Uses and Criteria for Classified Segments;

(B) Appendix B--Sole-source Surface Drinking Water Supplies;

(C) Appendix C--Segment Descriptions;

(D) Appendix D--Site-specific Uses and Criteria for Unclassified Water Bodies;

(E) Appendix E--Site-specific Toxic Criteria;

(F) Appendix F--Site-specific Nutrient Criteria for Selected Reservoirs; and

(G) Appendix G--Site-specific Recreational Uses and Criteria for Unclassified Water Bodies.

(b) Applicability. The Texas Surface Water Quality Standards apply to surface waters in the state--including wetlands.

(c) Classification of surface waters. The major surface waters of the state are classified as segments for purposes of water quality management and designation of site-specific standards. Classified segments are aggregated by basin, and basins are categorized as follows:

(1) River basin waters. Surface inland waters comprising the major rivers and their tributaries, including listed impounded waters and the tidal portion of rivers to the extent that they are confined in channels.

(2) Coastal basin waters. Surface inland waters, including listed impounded waters but exclusive of paragraph (1) of this subsection, discharging, flowing, or otherwise communicating with bays or the gulf, including the tidal portion of streams to the extent that they are confined in channels.

(3) Bay waters. All tidal waters, exclusive of those included in river basin waters, coastal basin waters, and gulf waters.

(4) Gulf waters. Waters that are not included in or do not form a part of any bay or estuary but that are a part of the open waters of the Gulf of Mexico to the limit of the state's jurisdiction.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(d) Modification of standards.

(1) The commission reserves the right to amend these standards following the completion of special studies.

(2) Any errors in water quality standards resulting from clerical errors or errors in data may be corrected by the commission through amendment of the affected standards. Water quality standards not affected by such clerical errors or errors in data remain valid until changed by the commission.

(3) The narrative provisions, presumed uses, designated uses, and numerical criteria of the Texas Surface Water Quality Standards may be amended for a specific water body to account for local conditions. A site-specific standard is an explicit amendment to this title, Chapter 307 (Texas Surface Water Quality Standards), and adoption of a site-specific standard requires the procedures for public notice and hearing established under the Texas Water Code, § 26.024 and § 26.025. An amendment that establishes a site-specific standard requires a use-attainability analysis that demonstrates that reasonably attainable water-quality related uses are protected. Upon adoption, site-specific amendments to the standards will be listed in § 307.10 of this title.

(4) Factors that may justify the development of site-specific standards are described in §§ 307.4, 307.6, 307.7, and 307.8 of this title.

(5) Temporary variance. When scientific information indicates that a site-specific standards amendment is justified, the commission may allow a corresponding temporary variance to the water quality standards in a permit for a discharge of wastewater or stormwater.

(A) A temporary variance is only applicable to an existing permitted discharge.

(B) A permittee may apply for a temporary variance prior to or during the permit application process. The temporary variance request must be included in a public notice during the permit application process. An opportunity for public comment is provided, and the request may be considered in any public hearing on the permit application.

(C) A temporary variance for a Texas Pollutant Discharge Elimination System permit also requires review and approval by the United States Environmental Protection Agency (EPA) during the permitting process.

(D) The permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality, and the term of the permit must not exceed three years. Effluent limitations that are needed to meet the existing standards are listed in the permit and are effective immediately as final permit effluent limitations in the succeeding permit, unless the permittee fulfills the requirements of the conditions for the variance in the permit.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(E) When the permittee has complied with the terms of the conditions in the temporary variance, then the succeeding permit may include a permit schedule to meet standards in accordance with subsection (f) of this section. The succeeding permit may also extend the temporary variance in accordance with subsection (f) of this section in order to allow additional time for a site-specific standard to be adopted in this title. This extension can be approved by the commission only after a site-specific study that supports a standards change is completed and the commission agrees the completed study supports a change in the applicable standard(s).

(F) Site-specific standards that are developed under a temporary variance must be expeditiously proposed and publicly considered for adoption at the earliest opportunity.

(e) Standards implementation procedures. Provisions for implementing the water quality standards are described in a document entitled Procedures to Implement the Texas Surface Water Quality Standards (RG-194) as amended and approved by the Texas Commission on Environmental Quality and EPA.

(f) Permit schedules to meet standards. Upon permit amendment or permit renewal, the commission may establish interim effluent limitations to allow a permittee time to modify effluent quality in order to attain final effluent limitations. The duration of any interim effluent limitations may not be longer than three years from the effective date of the permit issuance, except in accordance with a temporary variance as described in subsection (d)(5) of this section.

(g) Temporary standards. Where a criterion is not attained and cannot be attained for one or more of the reasons listed in 40 Code of Federal Regulations (CFR) § 131.10(g), then a temporary standard for specific water bodies may be adopted in § 307.10 of this title as an alternative to changing uses. A criterion that is established as a temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section. Specific reasons and additional procedures for justifying a temporary standard are provided in the standards implementation procedures. A temporary standard must identify the water body or water bodies where the criterion applies. A temporary standard identifies the numerical criteria that apply during the existence of the temporary standard. A temporary standard does not exempt any discharge from compliance with applicable technology-based effluent limits. A temporary standard expires no later than the completion of the next triennial revision of the Texas Surface Water Quality Standards. When a temporary standard expires, subsequent discharge permits are issued to meet the applicable existing water quality standards. If a temporary standard is sufficiently justified in accordance with the provisions of subsection (d)(3) of this section, it can be renewed during revisions of the Texas Surface Water Quality Standards. A temporary standard cannot be established that would impair an existing use.

(h) Effective date of standards. Except as provided in 40 CFR § 131.21 (EPA review and approval of water quality standards), these rules become effective 20 days after the date they are filed in the office of the secretary of state. As to actions covered by 40 CFR § 131.21, the rules become effective upon approval by EPA.

(i) Effect of conflict or invalidity of rule.

(1) If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(2) To the extent of any irreconcilable conflict between provisions of this chapter and other rules of the commission, the provisions of this chapter supersede.

Credits

Source: The provisions of this §307.2 adopted to be effective July 10, 1991, 16 TexReg 3400; amended to be effective July 13, 1995, 20 TexReg 4701; amended to be effective August 17, 2000, 25 TexReg 7722; amended to be effective July 22, 2010, 35 TexReg 6294; amended to be effective March 6, 2014, 39 TexReg 1450.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 307.2, 30 TX ADC § 307.2

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 307. Texas Surface Water Quality Standards

30 TAC § 307.4
Tex. Admin. Code tit. 30, §307.4

§ 307.4. General Criteria

Currentness

(a) Application. The general criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activities. General criteria do not apply to those instances when surface water, as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. General criteria are superseded by specific exemptions stated in this section or in § 307.8 of this title (relating to the Application of Standards), or by site-specific water quality standards for classified segments. Provisions of the general criteria remain in effect in mixing zones or below critical low-flow conditions unless specifically exempted in § 307.8 of this title.

(b) Aesthetic parameters.

(1) Concentrations of taste and odor producing substances must not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(2) Surface water must be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers that adversely affect benthic biota or any lawful uses.

(3) Surface waters must be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of surface water in the state. This provision does not prohibit dredge and fill activities that are permitted in accordance with the Federal Clean Water Act.

(4) Surface waters must be maintained in an aesthetically attractive condition.

(5) Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color.

(6) No foaming or frothing of a persistent nature is permissible.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(7) Surface waters must be maintained so that oil, grease, or related residue do not produce a visible film or sheen of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life in accordance with subsection (d) of this section.

(c) Radiological substances. Radioactive materials must not be discharged in excess of the amount regulated by Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Toxic substances. Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life. Additional requirements and criteria for toxic substances are specified in § 307.6 of this title (relating to Toxic Materials). Criteria to protect aquatic life from acute toxicity apply to all surface waters in the state except as specified in § 307.8(a)(3) of this title. Criteria to protect aquatic life from chronic toxicity apply to surface waters with an aquatic life use of limited, intermediate, high, or exceptional as designated in § 307.10 of this title (relating to Appendices A-G) or as determined on a case-by-case basis in accordance with subsection (l) of this section. Toxic criteria to protect human health for consumption of fish apply to waters with a sustainable or incidental fishery, as described in § 307.6(d) of this title. Additional criteria apply to water in the state with a public drinking water supply use, as described in § 307.6(d) of this title. The general provisions of this subsection do not change specific provisions in § 307.8 of this title for applying toxic criteria.

(e) Nutrients. Nutrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use. Site-specific nutrient criteria, nutrient permit limitations, or separate rules to control nutrients in individual watersheds are established where appropriate after notice and opportunity for public participation and proper hearing. Site-specific numeric criteria related to chlorophyll a are listed in Appendix F of § 307.10 of this title.

(f) Temperature. Consistent with § 307.1 of this title (relating to General Policy Statement) and in accordance with state water rights permits, temperature in industrial cooling impoundments, industrial cooling water areas, and all other surface water in the state must be maintained so as to not interfere with the reasonable use of such waters. Numerical temperature criteria have not been specifically established for industrial cooling impoundments, which in most areas of the state contribute to water conservation and water quality objectives. In addition, numerical criteria for temperature are not applicable in designated industrial cooling water areas, as defined in § 307.3 of this title (relating to Definitions and Abbreviations). The horizontal boundaries of an industrial cooling water area must be defined in the applicable wastewater permit. The following temperature criteria, expressed as a maximum temperature differential (rise over ambient) are established except for industrial cooling impoundments, temperature elevations due to discharges of treated domestic (sanitary) effluent, and temperature elevations within designated mixing zones or industrial cooling water areas. The maximum temperature differentials are:

(1) freshwater streams: 5 degrees Fahrenheit (degrees F);

(2) freshwater lakes and impoundments: 3 degrees F; and

(3) tidal river reaches, bay, and gulf waters: 4 degrees F in fall, winter, and spring, and 1.5 degrees F in summer (June, July, and August).

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(4) Additional temperature criteria (expressed as maximum temperatures) for classified segments are specified in Appendix A of § 307.10 of this title. These criteria are not applicable within industrial cooling water areas.

(g) Salinity.

(1) Concentrations and the relative ratios of dissolved minerals such as chloride, sulfate, and total dissolved solids must be maintained such that existing, designated, presumed, and attainable uses are not impaired.

(2) Criteria for chloride, sulfate, and total dissolved solids for classified freshwater segments are specified in Appendix A of § 307.10 of this title.

(3) Salinity gradients in estuaries must be maintained to support attainable estuarine dependent aquatic life uses. Numerical salinity criteria for Texas estuaries have not been established because of the high natural variability of salinity in estuarine systems, and because long-term studies by state agencies to assess estuarine salinities are still ongoing. Absence of numerical criteria must not preclude evaluations and regulatory actions based on estuarine salinity, and careful consideration must be given to all activities that may detrimentally affect salinity gradients.

(h) Aquatic life uses and dissolved oxygen.

(1) Dissolved oxygen concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses. Aquatic-life use categories and corresponding dissolved oxygen criteria are described in § 307.7(b)(3) of this title (relating to Site-Specific Uses and Criteria).

(2) Aquatic life use categories and dissolved oxygen criteria for classified segments are specified in Appendix A of § 307.10 of this title. Aquatic life use categories and dissolved oxygen criteria for other specific water bodies are specified in Appendix D of § 307.10 of this title. Where justified by sufficient site-specific information, dissolved oxygen criteria that differ from § 307.7(b)(3) of this title may be adopted for a particular water body in § 307.10 of this title.

(3) Perennial streams, rivers, lakes, bays, estuaries, and other appropriate perennial waters that are not specifically listed in Appendix A or D of § 307.10 of this title are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria. Applicable dissolved oxygen criteria are described in § 307.7(b)(3)(A) of this title. Higher uses are protected where they are attainable.

(4) When water is present in the streambed of intermittent streams, a 24-hour dissolved oxygen mean of at least 2.0 mg/L and 24-hour minimum dissolved oxygen concentration of 1.5 mg/L must be maintained. Intermittent streams that are not specifically listed in Appendix A or D of § 307.10 of this title are considered to have a minimal aquatic life use except as indicated below in this subsection. For intermittent streams with seasonal aquatic life uses, dissolved oxygen concentrations commensurate with the aquatic life uses must be maintained during the seasons when the aquatic life uses occur. Unclassified intermittent streams with perennial pools are presumed to have a limited aquatic life use and corresponding dissolved oxygen criteria. Higher uses are protected where they are attainable.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(i) Aquatic life uses and habitat. Vegetative and physical components of the aquatic environment must be maintained or mitigated to protect aquatic life uses. Procedures to protect habitat in permits for dredge and fill are specified in Federal Clean Water Act, § 404 and in Chapter 279 of this title (relating to Water Quality Certification).

(j) Aquatic recreation.

(1) Existing, designated, presumed, and attainable uses of aquatic recreation must be maintained, as determined by criteria that indicate the potential presence of pathogens. Categories of recreation and applicable criteria are established in § 307.7(b)(1) of this title.

(2) Recreational use categories and criteria for classified segments are specified in Appendix A of § 307.10 of this title. Site-specific recreational use categories and criteria for selected unclassified water bodies are specified in Appendix G of § 307.10 of this title. Where justified by sufficient site-specific information, recreational uses and criteria that differ from § 307.7(b)(1) of this title may be adopted for a particular water body in § 307.10 of this title. For water bodies not specifically listed in Appendix A or Appendix G of § 307.10 of this title, the following recreational uses are presumed to apply.

(A) Primary contact recreation 1. Primary contact recreation 1 is presumed for lakes, reservoirs, and tidal water bodies. Primary contact recreation 1 is presumed to apply to intermittent streams, intermittent streams with perennial pools, nontidal wetlands, and perennial freshwater streams and rivers, except where site-specific information indicates that recreational activities that involve a significant risk of ingestion have little to no likelihood of occurring, in accordance with subparagraph (C) of this paragraph.

(B) Primary contact recreation 2. No water body is presumed to have a use of primary contact recreation 2. This use is applicable when designated for an individual water body as listed in Appendix A or G in § 307.10 of this title. Primary contact recreation 2 applies to water bodies where water recreation activities that involve a significant risk of ingestion of water occur, but less frequently than for primary contact recreation 1 due to:

(i) physical characteristics of the water body; or

(ii) limited public access.

(C) Secondary contact recreation 1. Secondary contact recreation 1 applies to water bodies where water recreation can occur, but the nature of the recreation does not involve a significant risk of ingestion. Secondary contact recreation 1 applies to intermittent and perennial freshwaters where site-specific information demonstrates that primary contact recreation 1 or 2 have little to no likelihood of occurring. At a minimum, the following characteristics must be demonstrated for a presumed use of secondary contact recreation 1 to apply:

(i) during dry weather flows, the average depth at the thalweg (mid-channel) is less than 0.5 meters and there are not substantial pools with a depth of 1 meter or greater; and

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(ii) there are no existing recreational activities that create a significant risk of ingestion or uses for primary contact recreation 1 or 2.

(D) Secondary contact recreation 2. Secondary contact recreation 2 applies to water bodies where water recreation activities do not involve a significant risk of water ingestion and where activities occur less frequently than for secondary contact recreation 1 due to physical characteristics of the water body or limited public access. No water body is presumed to have a use of secondary contact recreation 2. This use is applicable when designated for an individual water body as listed in Appendix A or G in § 307.10 of this title.

(E) Noncontact recreation. Noncontact recreation applies to water bodies where recreation activities do not involve a significant risk of water ingestion and where primary and secondary contact recreation uses should not occur because of unsafe conditions. No water body is presumed to have a use of noncontact recreation. This use is applicable when designated for an individual water body as listed in Appendix A or G in § 307.10 of this title.

(3) Assigning recreational uses to an unclassified water body.

(A) Applying presumed uses. Recreational uses and associated numerical criteria are assigned to an unclassified water body in accordance with the presumed uses and guidelines established in paragraph (2) of this subsection. To assign uses other than primary contact recreation 1, a reasonable level of inquiry is conducted to determine if a different presumed use is appropriate for a particular water body. A reasonable level of inquiry includes review of available relevant information or completed site surveys.

(B) Assigning presumed uses. Presumed uses of primary contact recreation 1 and secondary contact recreation 1 can be assigned to an individual water body for regulatory action without individually designating the recreational use and criteria in Appendix G in § 307.10 of this title. Regulatory action may include issuing Texas Pollutant Discharge Elimination System permits, revising the list of impaired water bodies under Clean Water Act, § 303(d), or setting and implementing a total maximum daily load. The presumed secondary contact recreation 1 use is included in the public notice of a regulatory action that could affect recreational water quality, and the assigned recreational uses are subject to applicable public comment and approval by the United States Environmental Protection Agency (EPA). For tracking purposes, presumed recreational uses that have been determined to be less stringent than primary contact recreation 1 are noted in a publicly available list such as the EPA's Water Quality Standards Repository prior to a water quality standards revision. Presumed uses that have been determined for particular water bodies are listed in Appendix G in § 307.10 of this title when the water quality standards are revised.

(C) Assigning a use less stringent than presumed use. A recreational use that is less stringent than the applicable presumed use can only be assigned to an individual water body for a regulatory action after that use is approved by the EPA and designated in Appendix A or G in § 307.10 of this title. Support for designating a use less stringent than an applicable presumed use requires a use-attainability analysis (UAA). 40 Code of Federal Regulations § 131.1(g) lists six reasons for a change in use in a water body. At least one of these reasons must be included in the UAA.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(k) Antidegradation. Nothing in this section is intended to be construed or otherwise used to supersede the requirements of § 307.5 of this title (relating to Antidegradation).

(l) Assessment of unclassified waters for aquatic life uses. Waters that are not specifically listed in Appendices A or D of § 307.10 of this title are assigned the specific uses that are attainable or characteristic of those waters. Upon administrative or regulatory action by the commission that affects a particular unclassified water body, the characteristics of the affected water body must be reviewed by the commission to determine which aquatic life uses are appropriate. Additional uses so determined must be indicated in public notices for discharge applications. Uses that are not applicable throughout the year in a particular unclassified water body are assigned and protected for the seasons where such uses are attainable. Initial determinations of use are considered preliminary, and in no way preclude redeterminations of use in public hearings conducted under the provisions of the Texas Water Code. For unclassified waters where the presumed minimum uses or criteria specified in this section are inappropriate, site-specific standards may be developed in accordance with § 307.2(d) of this title (relating to Description of Standards). Uses and criteria are assigned in accordance with this section and with § 307.7(b)(3) of this title. Procedures for assigning uses and criteria are described in the standards implementation procedures.

(m) pH. Consistent with § 307.1 of this title, pH levels in all surface water in the state must be maintained so as to not interfere with the reasonable use of such waters.

Credits

Source: The provisions of this §307.4 adopted to be effective July 10, 1991, 16 TexReg 3400; amended to be effective July 13, 1995, 20 TexReg 4701; amended to be effective April 30, 1997, 22 TexReg 3712; amended to be effective August 17, 2000, 25 TexReg 7722; amended to be effective July 22, 2010, 35 TexReg 6294; amended to be effective March 6, 2014, 39 TexReg 1450.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 307.4, 30 TX ADC § 307.4

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 307. Texas Surface Water Quality Standards

30 TAC § 307.5
Tex. Admin. Code tit. 30, § 307.5

§ 307.5. Antidegradation

Currentness

(a) Application. The antidegradation policy and implementation procedures set forth in this section apply to actions regulated under state and federal authority that would increase pollution of the water in the state. Such actions include authorized wastewater discharges, total maximum daily loads (TMDLs), waste load evaluations, and any other miscellaneous actions, such as those related to man-induced nonpoint sources of pollution, that may impact the water in the state.

(b) Antidegradation policy. In accordance with the Texas Water Code, § 26.003, the following provisions establish the antidegradation policy of the commission.

(1) Tier 1. Existing uses and water quality sufficient to protect those existing uses must be maintained. Categories of existing uses are the same as for designated uses, as defined in § 307.7 of this title (relating to Site-Specific Uses and Criteria).

(2) Tier 2. No activities subject to regulatory action that would cause degradation of waters that exceed fishable/swimmable quality are allowed unless it can be shown to the commission's satisfaction that the lowering of water quality is necessary for important economic or social development. Degradation is defined as a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired. Water quality sufficient to protect existing uses must be maintained. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in and on the water.

(3) Tier 3. Outstanding national resource waters are defined as high quality waters within or adjacent to national parks and wildlife refuges, state parks, wild and scenic rivers designated by law, and other designated areas of exceptional recreational or ecological significance. The quality of outstanding national resource waters must be maintained and protected.

(4) Discharges that cause pollution that are authorized by the Texas Water Code, the Federal Clean Water Act, or other applicable laws must not lower water quality to the extent that the Texas Surface Water Quality Standards are not attained.

(5) Anyone discharging wastewater that would constitute a new source of pollution or an increased source of pollution from any industrial, public, or private project or development is required to provide a level of wastewater

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

treatment consistent with the provisions of the Texas Water Code and the Clean Water Act (33 United States Code, §§ 1251 et seq.). As necessary, cost-effective and reasonable best management practices established through the Texas Water Quality Management Program are achieved for nonpoint sources of pollution.

(6) Application of antidegradation provisions does not preclude the commission from establishing modified thermal discharge limitations consistent with the Clean Water Act, § 316(a) (33 United States Code, § 1326).

(c) Antidegradation implementation procedures.

(1) Implementation for specific regulatory activities.

(A) For TPDES permits for wastewater, the process for the antidegradation review and public coordination is described in the standards implementation procedures.

(B) For federal permits relating to the discharge of fill or dredged material under Federal Clean Water Act, § 404, the antidegradation policy and public coordination is implemented through the evaluation of alternatives and mitigation under Federal Clean Water Act, § 404(b)(1). State review of alternatives, mitigation, and requirements to protect water quality may also be conducted for federal permits that are subject to state certification, as authorized by Federal Clean Water Act, § 401 and conducted in accordance with Chapter 279 of this title (relating to Water Quality Certification).

(C) Other state and federal permitted and regulated activities that increase pollution of water in the state are also subject to the provisions of the antidegradation policy as established in subsections (a) and (b) of this section.

(2) General provisions for implementing the antidegradation policy.

(A) Tier 1 reviews must ensure that water quality is sufficiently maintained so that existing uses are protected. All pollution that could cause an impairment of water quality is subject to Tier 1 reviews. If the existing uses and criteria of a potentially affected water body have not been previously determined, then the antidegradation review must include a preliminary determination of existing uses and criteria. Existing uses must be maintained and protected.

(B) Tier 2 reviews apply to all pollution that could cause degradation of water quality where water quality exceeds levels necessary to support propagation of fish, shellfish, terrestrial life, and recreation in and on the water (fishable/swimmable quality). Guidance for determining water bodies that exceed fishable/swimmable quality is contained in the standards implementation procedures. For dissolved oxygen, analyses of degradation under Tier 2 must utilize the same critical conditions as are used to protect instream criteria. For other parameters, appropriate conditions may vary. Conditions for determining degradation are commensurate with conditions for determining existing uses. The highest water quality sustained since November 28, 1975 (in accordance with EPA Standards Regulation 40 Code of Federal Regulations Part 131) defines baseline conditions for determinations of degradation.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(C) Tier 3 reviews apply to all pollution that could cause degradation of outstanding national resource waters. Outstanding national resource waters are those specifically designated in this chapter.

(D) When degradation of waters exceeding fishable/swimmable quality is anticipated, a statement that the antidegradation policy is pertinent to the permit action must be included in the public notice for the permit application or amendment. If no degradation is anticipated, the public notice must so state.

(E) Evidence can be introduced in public hearings, or through the public comment process, concerning the determination of existing uses and criteria; the assessment of degradation under Tier 1, Tier 2, and Tier 3; the social and economic justification for lowering water quality; requirements and conditions necessary to preclude degradation; and any other issues that bear upon the implementation of the antidegradation policy.

(F) Interested parties are given the opportunity to provide comments and additional information concerning the determination of existing uses, anticipated impacts of the discharge, baseline conditions, and the necessity of the discharge for important economic or social development if degradation of water quality is expected under Tier 2.

(G) The antidegradation policy and the general provisions for implementing the antidegradation policy apply to the determination of TMDLs and to waste load evaluations that allow an increase in loading. If the TMDL or waste load evaluation indicates that degradation of waters exceeding fishable/swimmable quality is expected, the public hearing notice must so state. Permits that are consistent with an approved TMDL or waste load evaluation under this antidegradation policy are not subjected to a separate antidegradation review for the specific parameters that are addressed by the TMDL or waste load evaluation.

Credits

Source: The provisions of this §307.5 adopted to be effective July 10, 1991, 16 TexReg 3400; amended to be effective July 13, 1995, 20 TexReg 4701; amended to be effective August 17, 2000, 25 TexReg 7722; amended to be effective July 22, 2010, 35 TexReg 6294.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 307.5, 30 TX ADC § 307.5

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 309. Domestic Wastewater Effluent Limitation and Plant Siting
Subchapter B. Location Standards

30 TAC § 309.10
Tex. Admin. Code tit. 30, § 309.10

§ 309.10. Purpose, Scope, and Applicability

Currentness

(a) This chapter establishes minimum standards for the location of domestic wastewater treatment facilities. These standards are to be applied in the evaluation of an application for a permit to treat and dispose of domestic wastewater and for obtaining approval of construction plans and specifications. This chapter applies to domestic wastewater permit applications and construction plans and specifications filed on or after October 8, 1990, for new facilities and existing units which undergo substantial change for the continued purpose of domestic wastewater treatment.

(b) The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities or the substantial change of an existing unit on selection of a site that minimizes possible contamination of ground and surface waters; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics.

Credits
Source: The provisions of this § 309.10 adopted to be effective March 19, 1990, 15 TexReg 1160; amended to be effective June 5, 1998, 23 TexReg 5723.

Current through 41 Tex.Reg. No. 7226, dated September 9, 2016, as effective on or before September 16, 2016

30 TAC § 309.10, 30 TX ADC § 309.10

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 330. Municipal Solid Waste
Subchapter A. General Information

30 TAC § 330.1
Tex. Admin. Code tit. 30, § 330.1

§ 330.1. Purpose and Applicability

Currentness

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and it predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendments) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts I-IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

(e) This chapter does not apply to any person that manages medical waste in accordance with the requirements of Chapter 326 of this title (relating to Medical Waste Management). Persons disposing of medical waste at municipal solid waste landfills shall comply with applicable provisions of this chapter. The medical waste provisions being relocated from this

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

chapter to Chapter 326 of this title will remain in effect and continue to apply to permits, registrations, and registrations by rule issued under this chapter until the later of two years from the effective date of Chapter 326 of this title or until a final decision is made on a timely request for an authorization to be updated to comply with Chapter 326 of this title. Permits, registrations, and registrations by rule issued under the existing Chapter 330 rules must be updated by filing a new application within two years or upon renewal to comply with Chapter 326 of this title. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. A person who has an application for the management of medical waste pending before the effective date of Chapter 326 of this title shall be considered under the former Chapter 330 rules unless the applicant elects otherwise.

Credits

Source: The provisions of this §330.1 adopted to be effective October 9, 1993, 18 TexReg 4023; amended to be effective March 27, 2006, 31 TexReg 2502; amended to be effective May 26, 2016, 41 TexReg 3735.

Current through 41 Tex.Reg. No. 7290, dated September 16, 2016, as effective on or before September 23, 2016

30 TAC § 330.1, 30 TX ADC § 330.1

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX C

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 17, 2015

TO: Persons on the attached mailing list.

RE: DHJB Development, LLC
TCEQ Docket No. 2013-2228-MWD; SOAH Docket No. 582-14-3247
TPDES Permit No. WQ0014975001

Decision of the Commission on Application.

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced application. Enclosed with this letter is a copy of the Commission's order and a draft copy of the permit. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

Deadline for Filing Motion for Rehearing.

A MFR must be received by the chief clerk's office no later than the 25th day after the date that the Commission's order on this application is signed. The date of signature is indicated on the last page of the enclosed order.

Motions may be filed in accordance with the requirements in Senate Bill 1267 (84th Regular Session, effective September 1, 2015) and Texas Government Code § 2001. 146 with the chief clerk electronically at http://www.tceq.texas.gov/goto/eFilings or by filing an original and 7 copies with the Chief Clerk at the following address:

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 512/239-3311

In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list as indicated by an asterisk (*). A certificate of service stating that copies of the motion were sent to those on the mailing list must also be sent to the chief clerk. The procedures for filing and serving a MFR and responses are located in Texas Governmental Code § 2001.146 as revised by Senate Bill 1267 (84th Regular Session, effective September 1, 2015) and 30 TAC §§1.10 and 1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h).

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH and official docket number assigned by the Commission; (3) the date of the order; (4) the particular findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and (5) the legal and factual basis for the claimed error.

Unless the time for the Commission to act on the MFR is extended, the MFR is overruled by operation of law at 5:00 p.m. on the 55th day after the date that the Commission's order on this matter is signed.

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

Sincerely,

Bridget C. Bohac

Bridget C. Bohac
Chief Clerk

BCB/ms

Enclosure

MAILING LIST
DHJB Development, LLC
TCEQ Docket No. 2013-2228-MWD; SOAH Docket No. 582-14-3247
TPDES Permit No. WQ0014975001

FOR THE APPLICANT:

* Edmond R. McCarthy, Jr.
Jackson, Sjoberg, McCarthy & Townsend, L.L.P.
711 West 7th Street
Austin, Texas 78701

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Brian Christian, Director
Texas Commission on Environmental Quality
Small Business and Environmental Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

* Kathy J. Humphreys, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

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

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

* Rudy Calderon, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

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

FOR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
via e-Filing:

The Honorable Sarah G. Ramos
Administrative Law Judge
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

ADAMS , ANN
301 STUBBS AVE
MONROE LA 71201-5260

ADAMS , DR. NANCY
ADAMS REAL ESTATE
1124 RIVER MOUNTAIN RD
WIMBERLEY TX 78676-6088

AHUERO , MRS P
6212 FM 1863
BULVERDE TX 78163-4010

ALONGI , ANGELINA
24811 GILTSPUR WAY
SPRING TX 77389-2944

BAGBY , PENNY
4420 MEADOWSIDE LN
ROUND ROCK TX 78665-1447

BARBER , RICK
GROW MY BIZ
3321 SLEEPY HOLLOW RD
ENNIS TX 75119-7244

BARTLEY , MRS DEBBIE
112 S PARK ST
BRENHAM TX 77833-3645

BASINGER , DONNA
1072 ROADRUNNER RD
GLEN ROSE TX 76043-6963

BEDFORD , STEPHENS
2925 GOLDENWAVE
ROCKWALL TX 75032-7320

BEHRENDS-JONES , MS JULIE ANN
PO BOX 99
BLANCO TX 78606-0099

BIANCHI , MRS JESSICA
210 COUNTRYSIDE DR
ARLINGTON TX 76014-3125

BLANKS , BRUCE
PO BOX 700515
SAN ANTONIO TX 78270-0515

BLASING , MARK
930 COUNTY ROAD 451
HONDO TX 78861-6029

BOATMAN , MARYLOIS
PO BOX 80
ROANS PRAIRIE TX 77875-0080

BORSETH , MR JON
1873 COUNTY ROAD 2343
MARIETTA TX 75566-6026

BRAND , MRS PATRICIA L
1980 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1630

BRAND , MR TROY CALVIN
1980 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1630

BRANNON , MR SAM
APT 4210
2600 HUNTER RD
SAN MARCOS TX 78666-5141

BRAUN , ASHLEY
PO BOX 669
HELOTES TX 78023-0669

BROWNE , MICAH
211 T ANCHOR VW
CANYON TX 79015-5912

BROWNING , MS MARTHA S
121 LEXINGTON DR
TERRELL TX 75160-5001

BUTLER , PAT G
581 DRESDEN WOOD DR
BOERNE TX 78006-5878

CABALLERO JR , MR ALFONSO
17915 SUMMER KNOLL DR
SAN ANTONIO TX 78258-3428

CAGE , RAY
1923 FOOTHILL DR
PRESCOTT AZ 86303-5540

CAMERON , ARTHUR
18952 COUNTY ROAD 234
TYLER TX 75707-4228

CAMPBELL , THE HONORABLE DONNA
TEXAS SENATE
RM 3E.8
PO BOX 12068
AUSTIN TX 78711-2068

CANON , KELLY
901 KRISTIN CT
ARLINGTON TX 76012-4472

CANTU , ERIN P
2595 CASEY RD
BULVERDE TX 78163-1842

CHAPMAN , MRS THERESA
104 MEADOW HL
CONVERSE TX 78109-2510

CHENOWETH , KRISTI K
901 W 15TH 1/2 ST
HOUSTON TX 77008-3413

CHILDS JR , MR DARA W
709 SUE BARNETT DR
HOUSTON TX 77018-5411

CLARK III , MR GRADY
3000 FOREST HILLS CT
BRYAN TX 77803-0409

CLEMENTS , NANCY
4369 COUNTY ROAD 2116
DOUGLASSVILLE TX 75560-4611

COLE , THEODORE
1137 ANDERSON ST
IRVING TX 75062-6947

* CONNER, MARY B & IRVINE,CHARLES
4709 AUSTIN ST
HOUSTON TX 77004-5004

COONES , MR FRED DAVID
30925 BULVERDE HILLS DR
BULVERDE TX 78163-2137

COONES , LAURA
30925 BULVERDE HILLS DR
BULVERDE TX 78163-2137

COONES , MRS LINDA
30925 BULVERDE HILLS DR
BULVERDE TX 78163-2137

CULPEPPER , MRS DANA
1012 4TH ST
BLANCO TX 78606-4919

DAMVAR , LENA
100 E INWOOD FOREST DR
WIMBERLEY TX 78676-5105

DAVIDEK , DIRK
10634 CANYON RIV
HELOTES TX 78023-3983

DAVIDSON , MR JORDAN
3727 ANDREWS HWY
ODESSA TX 79762-6332

DAVIS , RONALD R
1789 S CRANES MILL RD
NEW BRAUNFELS TX 78132-1615

DE HON , JACKIE
2109 CONNIE DR
CANYON LAKE TX 78133-5259

DEVINE , MR ED
1434 WINDMILL LN
MESQUITE TX 75149-6854

DOE , JOE
3301 WASHINGTON ST
PASADENA TX 77503-1346

DUNHAM , DOUG
19917 CR 684A
SWEENY TX 77480

DUNN , COQUINA
20545 KESWICK ST
WINNETKA CA 91306-2102

DUPRAT-WALDO , RITA
1412 VINTAGE WAY
NEW BRAUNFELS TX 78132-2668

ECHOLS , GUY D
5875 SPRING XING
SAN ANTONIO TX 78247-1988

ECKHART , JENNIFER
6611 RANCH PARK DR
MAGNOLIA TX 77354-4889

FAILE , MR MARTY
PO BOX 525
ADKINS TX 78101-0525

FISHER , MRS MISTY
1910 AGGIE LN
AUSTIN TX 78757-1836

FLY JR , ROBERT
29768 BULVERDE LN
BULVERDE TX 78163-2015

FOULDS , DONNA
5855 TEMERITY WAY
BULVERDE TX 78163-4189

FOULDS , MR GEORGE P
5855 TEMERITY WAY
BULVERDE TX 78163-4189

GAINER , JANE
PO BOX 1277
MENARD TX 76859-1277

GIPSON , MR JOHN G
4310 COMMERCE ST
ROWLETT TX 75088-5060

GLAZE , ROSEMARY
1635 SPRINGWOOD DR
SPRING BRANCH TX 78070-5824

GOODE , MR FOSTER
11518 SRALLA RD
CROSBY TX 77532-7074

GRAHAM , DR. DEB
2 BLUE HERON BLVD
BOERNE TX 78006-9430

GRAHAM , PATRICIA LUX
102 ALMA LN
ROCKPORT TX 78382-8004

GRAHAM , TERRELL
18645 STATE HIGHWAY 239 W
KENEDY TX 78119-4739

GRIMES , PAT J
3126 WROXTON RD
HOUSTON TX 77005-4029

*HAAG , PHIL
MCGINNIS LOCHRIDGE LLP
600 CONGRESS AVE STE 2100
AUSTIN TX 78701-2986

HAGGARD , MITCHELL
6320 COUNTY ROAD 319
ALVARADO TX 76009-8493

HALL , TERRI
TEXANS UNTIING FOR REFORM AND FREEDOM (T
PO BOX 29254
SAN ANTONIO TX 78229-0254

HALPIN , BEKI
7107 STONE LEDGE CIR
AUSTIN TX 78736-1931

HARLOW , MS LEA
112 HUNTERS BRANCH ST
SHAVANO PARK TX 78231-1207

HARRINGTON , MR JAMES M
102 SAN LEANNA DR
ROCKPORT TX 78382-9675

HARRIS , MRS ARLINE JOAN
HARRIS FARMS
PO BOX M
DILLEY TX 78017-0920

HARRIS , EDWARD
1670C S CRANES MILL RD
NEW BRAUNFELS TX 78132-1651

HASTINGS , MARGIE
PO BOX 34601
SAN ANTONIO TX 78265-4601

HAWKINS , MILTON
PO BOX 1502
JOHNSON CITY TX 78636-1502

HEBERT , MRS LEIGH
484 CYPRESS SPRINGS DR
SPRING BRANCH TX 78070-4640

HERZOG , MRS COLETTE
13055 TAYLORCREST RD
HOUSTON TX 77079-6125

HICKS , RALPH
4295 OLD HOWARD RD
TEMPLE TX 76504-4823

HILL , MS LYNN A
200 BALCH LN
ALVARADO TX 76009-3436

HILTON , RANDY
1714 OAKWOOD ST
HALTOM CITY TX 76117-5452

HOMRIGHAUS JR , MR HENRY L
16 20TH AVE N
TEXAS CITY TX 77590-6133

HOUSER-AMAYA , SABRINA A
DRY COMAL CREEK VINEYARDS
1741 HERBELIN RD
NEW BRAUNFELS TX 78132-1838

HOWE , JEANNE
PO BOX 374
BULVERDE TX 78163-0374

JONES , JEFF
PO BOX 1659
BLANCO TX 78606-1659

KAHL , KONRA
94 SUN VALLEY DR
SPRING BRANCH TX 78070-7003

KOENIG , CHARLOU
19141 STONE OAK PKWY STE 104
SAN ANTONIO TX 78258-3367

LAMB , ELIZABETH O
PO BOX 1740
HELOTES TX 78023-1740

LANE , JAMES E
LLLL RANCH LLC
STE 602
1300 ROLLINGBROOK ST
BAYTOWN TX 77521-3846

MARSHALL , MS REBECCA
REBECCA MARSHALL
731 S LINDSAY ST
GAINESVILLE TX 76240-5338

MARTIN , ANDREW
90 HUNTERS CREEK DR
LONGVIEW TX 75605-7477

MARTIN , MRS ELIZABETH L
900 HERITAGE OAKS
NEW BRAUNFELS TX 78132-1667

MARTIN , MR TYLER
2302 CLASSEN BLVD
SAN ANGELO TX 76901-2035

MARVIN , MR FRED
7911 S FM 973
AUSTIN TX 78719-9730

MAURER SR , MR MICHAEL L
PO BOX 700606
SAN ANTONIO TX 78270-0606

MCKAY , KATHLEEN
2714 TRINITY PASS
SAN ANTONIO TX 78261-2340

MCWILLIAMS JR , MR CAREY F
1544 CONNETTERE
NEW BRAUNFELS TX 78132-2777

MILLER , DR. DIANNE
1065 COUNTY ROAD 335
BURNET TX 78611-4956

MOORE , MRS BONNIE DARLENE
31429 SUNLIGHT DR
BULVERDE TX 78163-2787

NAPOLITANO , MICHAEL
731 EAGLES GLN
SCHERTZ TX 78108-3437

NEAL III , MR J T
1600 N SAINT CHARLES AVE
PILOT POINT TX 76258-2706

NETHERY , MS MARY
318 PEREIDA ST
SAN ANTONIO TX 78210-1147

O'BANNON , MARY
2182 YEAGER CREEK RD
JOHNSON CITY TX 78636-4276

OBIN , RICHARD
7159 PARK ROAD 37
LAKEHILLS TX 78063-6331

ODOM , L R
3708 AUSTIN AVE
SNYDER TX 79549-5902

OLSON , BETTY
12025 WILKIE LN
HOUSTON TX 77076-1136

OSBORN , SCOTT
2404 BARETTA DR
MESQUITE TX 75181-1038

PADGETT , MR JUSTIN
6609 NORWOOD AVE
LUBBOCK TX 79413-5908

PALMER , MR JACK
7818 BRIARGATE DR
SAN ANTONIO TX 78230-5002

PARK , MR CHRISTOPHER LYNN
APT 1733
12410 ALAMEDA TRACE CIR
AUSTIN TX 78727-6492

PATERSON , ALBERT
14738 HILLSIDE RDG
SAN ANTONIO TX 78233-3841

PEACE , ANNALISA
GREATER EDWARDS AQUIFER ALLIANCE
PO BOX 15618
SAN ANTONIO TX 78212-8818

PETTIT , MARY
6418 RYAN RAY
BULVERDE TX 78163-4111

PLANO , JOE
PO BOX 3083
UNIVERSAL CITY TX 78148-2183

QUIGLEY , DON
713 MERRILL ST
HOUSTON TX 77009-6207

RAB , MRS JACQUELINE HOPE
834 COUNTY ROAD 162
BAY CITY TX 77414-2516

RAMSEY , REVEREND ISOM KELLLY
7425 WOODED CREEK DR
BEAUMONT TX 77708-1232

RIVERA , MS BELINDA R
504 E MARKET ST
LOCKHART TX 78644-2810

ROAN , MR TIMOTHY
PO BOX 15
HELOTES TX 78023-0015

RODGERS , ANTHONY OWEN
31227 SETTING SUN DR
BULVERDE TX 78163-2749

ROGILLIO , BELINDA
714 S KAUFMAN DR
DEER PARK TX 77536-4239

ROHAN , DEBORAH
1411 HORIZON CIR
SAN ANTONIO TX 78258-3152

RYAN , CHERYN
101 FIRWOOD S
KYLE TX 78640-5597

RYHERD , WILLIAM STEVEN
249 WELLESLEY BLVD
SAN ANTONIO TX 78209-4255

SADLER , TRACEY
704 COUNTY ROAD 263A
CAMERON TX 76520-5091

SAMUELSON JR , DAVID
701 W NOTON ST
PFLUGERVILLE TX 78660-4708

SANCHEZ , LAUREN
722 BURWOOD LN
SAN ANTONIO TX 78213-3644

SANSONE JR , MR JOHN ANTHONY
5852 TEMERITY WAY
BULVERDE TX 78163-4189

SARTOR , SUDIE
505 EL PORTAL DR
SAN ANTONIO TX 78232-2005

SCHAEFER , STEPHANIE
6260 US HIGHWAY 281 N
SPRING BRANCH TX 78070-5926

SCHRAM , MR MARK P
1991 PURSLEY RD
DRIPPING SPRINGS TX 78620-4735

SEABOLT , JAMES
NDS CORPORATION
983 INDIGO RUN DR
BULVERDE TX 78163-3217

SHARPE , CAROLYN
9880 WILDWOOD HILLS LN
AUSTIN TX 78737-9284

SIMS , MR DAVID
PO BOX 621
LOCKHART TX 78644-0621

SMITH , CYNTHIA R
PO BOX 334
JOHNSON CITY TX 78636-0334

SMITH , MR ROBERT JOHN
310 FAIRCREST DR
GARLAND TX 75040-3526

SPEIRAN , MR MICHAEL
1 EWING CT
LUCAS TX 75002-5102

STALEY , SUZANNE
UNIT A
1739 VASSAR ST
HOUSTON TX 77098-5453

STERLING , SONDRA
401 OAKVIEW LN
CLEVELAND TX 77328-4628

STEVICK , MS SARAH A
31118 WILDCAT DR
BULVERDE TX 78163-4552

STOVALL , WILLIAM JESS
9435 E LOOP 1604 N
CONVERSE TX 78109-9754

STREATER , LYNDA
419 SUSIE DR
CANYON LAKE TX 78133-5288

TAYLOR , TAMMY
1500 COUNTY ROAD 2110 W
CLARKSVILLE TX 75426-6889

TESHERA , SUZANNE
100 MISTI LN
DRIFTWOOD TX 78619-5114

THEBERGE , JANET
708 HENRIETTA ST
FREDERICKSBURG TX 78624-4430

TRACY , SUSAN C
PO BOX 1434
MEDINA TX 78055-1434

TRIESCH , MR GENE
PO BOX 958
BLANCO TX 78606-0958

TRIESCH , MRS LAVADA
PO BOX 958
BLANCO TX 78606-0958

URBANOVSKY , ROBIN
30652 ONION CRK
BULVERDE TX 78163-2721

VAUGHN , CHARLES
PO BOX 1132
JOHNSON CITY TX 78636-1132

WATSON , CHERYL
30722 ONION CRK
BULVERDE TX 78163-2723

WHITE , BARBARA
PO BOX 71
MEDINA TX 78055-0071

WHITE , KAREN
17421 CALLA DR
DALLAS TX 75252-5708

WHITMORE , JAMES A
USAF RETIRED
257 DRY BEAR CRK
NEW BRAUNFELS TX 78132-1633

WIERMAN , REBECCA
400 BLUE CREEK DR
DRIPPING SPRINGS TX 78620-3406

WILLIAMS , MRS BOBBIE
2105 STANTON ST
BRADY TX 76825-7411

WILLIAMS , JUSTIN L
STE 200
719 S SHORELINE BLVD
CORPUS CHRISTI TX 78401-3526

WILLIAMS , MR STEVE
TP RANCH
PO BOX 840515
HOUSTON TX 77284-0515

WOOD , MS BETTY
6060 COUNTY ROAD 256
STAMFORD TX 79553-8308

WOOSTER , ELMER KERRICK
18615 COUNTY ROAD 461
BRAZORIA TX 77422-6688

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ORDER GRANTING THE APPLICATION BY DHJB DEVELOPMENT, LLC FOR AN AMENDMENT TO TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMIT NO. WQ0014975001

On July 1, 2015 and September 9, 2015, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of DHJB Development, LLC (DHJB or Applicant) to amend Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014975001 to authorize the discharge of treated wastewater effluent at an average daily flow not to exceed 350,000 gallons per day in the final phase in Comal County, Texas. Sarah G. Ramos, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD). The Commission also considered timely public comments and the Executive Director's Response to Comments; the record; and timely related filings, including exceptions and replies.

The following are parties to the proceeding: Applicant; Johnson Ranch Municipal Utility District (Johnson Ranch MUD); Patricia Graham, Terrell Graham, Margie Hastings, Asa Dunn, and the Greater Edwards Aquifer Alliance (Protestants); the Executive Director (ED); and the Office of Public Interest Counsel (OPIC).

After considering the PFD, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

Procedural History

1. On August 20, 2012, Applicant applied to TCEQ to amend its Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014975001.

2. TCEQ's ED received the permit application on September 24, 2012, and declared it administratively complete on November 7, 2012.

3. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on November 21, 2012 in the *New Braunfels Herald-Zeitung*.

4. The application was declared technically complete on May 2, 2013.

5. The Notice of Application and Preliminary Decision (NAPD) was published on May 17, 2013 in the *New Braunfels Herald-Zeitung*.

6. The combined Spanish language NORI/NAPD was published in the *La Voz* newspaper on August 30, 2013.

7. The public comment period ended on September 30, 2013.

8. The ED's Final Decision Letter and Response to Comments was mailed on November 21, 2013.

9. The hearing request period ended on December 23, 2013.

10. Patricia Graham timely requested a hearing.

11. By Interim Order dated April 21, 2014, TCEQ referred the application to SOAH to consider four issues:

    - Whether the proposed permit will adversely impact use and enjoyment of adjacent and downstream property or create nuisance conditions;
    - Whether the discharge route has been properly characterized;
    - Whether the proposed permit complies with TCEQ siting regulations found in 30 Texas Administrative Code (TAC) Chapter 309; and
    - Whether the treated effluent will adversely impact the cattle that currently graze in the area.

12. TCEQ's Chief Clerk certified that the Notice of Hearing was mailed on June 26, 2014 to the individuals on the mailing list maintained by the Chief Clerk for this matter.

13. The notice stated the time, date, and place of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.

14. The Notice of Hearing was published in the *New Braunfels Herald-Zeitung* on July 1, 2014.

15. At the preliminary hearing held on August 19, 2014, Terrell Graham, Patricia Graham, Margie Hastings, Asa Dunn, and the Greater Edwards Aquifer Alliance requested and were granted party status opposing the permit; Johnson Ranch MUD was granted party status and was aligned with DHJB.

16. Ms. Graham, Ms. Hastings, and Mr. Dunn own property that is adjacent on the east or downstream of the proposed discharge route where effluent would flow.

17. The Greater Edwards Aquifer Alliance is a 501(c)(3) nonprofit corporation.

18. The hearing on the merits, held at the SOAH offices at the William Clements Building, 300 West 15th Street, Austin, Texas 78701, began November 17, 2014, and concluded November 19, 2014.

Requested Permit

19. Applicant currently possesses TPDES Permit No. WQ0014975001 authorizing disposal of 75,000 gallons per day (0.075 MGD) of treated effluent by subsurface drip irrigation in its final phase.

20. Applicant applied to TCEQ for a major amendment to its Permit No. WQ0014975001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 75,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day (.35 MGD).

21. The major amendment would convert the existing permit from authorizing Applicant to dispose of treated effluent via subsurface drip irrigation under a Texas Land Application Permit (TLAP) to authorizing Applicant to dispose of treated effluent via discharge into water in the state via a TPDES permit.

22. The TLAP permit authorizes the disposal of treated domestic wastewater via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet.

23. This permit amendment would not continue the authorization for Applicant to use a subsurface drip irrigation system.

24. Applicant currently collects wastewater at its wastewater treatment plant site and has the same hauled off-site by an authorized "pump and haul" operator for disposal of wastewater.

25. A TPDES permit would authorize a wastewater discharge from a treatment plant that will be an activated sludge process plant operated in the extended aeration mode.

26. The wastewater treatment facility is located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of U.S. Highway 281 in Comal County, Texas 78163.

27. Applicant intends for the plant to serve residential customers at a residential subdivision being developed by Applicant.

28. The parties referred to the proposed subdivision as Johnson Ranch.

29. Applicant proposes to discharge the treated effluent at an outfall location on Applicant's property into an unnamed tributary of Cibolo Creek.

30. Johnson Ranch overlies the Edwards Aquifer contributing zone, except for the southern 50 acres which overlies the Edwards Aquifer recharge zone.

31. The proposed wastewater treatment plant site is located on the Edwards Aquifer contributing zone.

32. The outfall from the proposed wastewater treatment plant site would be on the Edwards Aquifer contributing zone.

33. The discharge route from the outfall at DHJB Development, LLC's wastewater treatment plant, as described in the Application, will run through Applicant's property across the Contributing Zone and over the Recharge Zone of the Edwards Aquifer in an unnamed tributary of Cibolo Creek. That unnamed tributary of Cibolo Creek will continue downstream in route to Cibolo Creek, a classified segment within the San Antonio River Basin.

34. The distance from the discharge point to the boundary of the mapped Edwards Aquifer recharge zone is less than 565 feet.

35. A portion of the discharge route in the unnamed tributary of Cibolo Creek on the Johnson Ranch is in the Edwards Aquifer recharge zone.

36. The entire portion of the discharge route in the unnamed tributary of Cibolo Creek crossing through the Graham-Hastings-Dunn properties is in the Edwards Aquifer recharge zone.

Impact on Protestants' Property

37. The distance along the unnamed tributary of Cibolo Creek from the discharge point to the Graham-Hastings property is approximately 1,900 feet (about 0.4 miles).

38. The distance along the unnamed tributary of Cibolo Creek from the discharge point to Cibolo Creek is approximately 0.8 miles.

39. If the effluent is discharged at the rate of 350,000 GPD, or even at some lesser levels, the effluent will reach the Graham-Hastings property.

40. Discharged effluent from the proposed facility into the unnamed tributary of Cibolo Creek will moisten or saturate soils.

40A. Applicant has concretized a channel it plans to use for the discharge of effluent, and the channel is directed toward Ms. Graham's property line.

40B. Ms. Graham, Ms. Hastings, and Mr. Dunn currently lease their property to a rancher for cattle ranching.

40C. Approximately twenty head of cattle are ranched on the property.

Buffer Zones

41. Applicant's wastewater treatment plant site and all wastewater treatment plant units will be more than 150 feet from the nearest property line.

42. All of the wastewater treatment plant units will be located outside the nearest FEMA 100-year flood frequency level, and protected from inundation and damage during a 100-year flood frequency event.

43. The wastewater treatment plant units will not be located in wetlands.

44. The wastewater treatment plant units will not be located within 500 feet of any public water supply well.

45. The wastewater treatment plant units will not be located within 250 feet of any private water well.

Effluent Limits

46. The proposed discharge outfall is within 0 and 5 miles of the Edwards Aquifer recharge zone. Accordingly, the effluent limits required by the Edwards Aquifer Rule found in 30 TAC § 213.6(c)(1) apply.

47. The Edwards Aquifer Rule stipulates that proposed effluent limits for any permit located within 0 to 5 miles of the Edwards Aquifer recharge zone, based on a 30-day average, must be: 5.0 milligrams per liter (mg/l) 5-day carbonaceous biochemical oxygen demand (CBOD5), 5.0 mg/l total suspended solids (TSS), 2.0 mg/l ammonia nitrogen (NH3-N), 1.0 mg/l total phosphorus, 126 *E. coli* colony forming units (CFU) or most probable number per 100 ml, and 4.0 mg/l minimum dissolved oxygen.

48. The proposed effluent limit of 0.5 mg/L total phosphorus is more stringent than the limit required by the Edwards Aquifer Rule.

49. The effluent must contain a chlorine residual of at least 1.0 mg/l, and not more than 4.0 mg/l, after a detention time of at least 20 minutes based on peak flow.

50. The proposed effluent limit for pH is 6-9 standard units.

51. The effluent limits, chlorine residual criteria and other pertinent requirements in the proposed permit meet and/or exceed the standards prescribed by the applicable Edwards Aquifer Rule for any permit located within 0 to 5 miles of the Edwards Aquifer recharge zone.

Surface Water Quality Standards

52. The applicable water quality standards are the Texas Surface Water Quality Standards (TSWQS) in Chapter 307 of TCEQ's rules. The TSWQS apply to surface water in the state and are set by the Commission at levels designed to be protective of public health, aquatic resources, terrestrial life, and other environmental and economic resources, as well and are supplemented by the applicable Commission rules protecting the Edwards Aquifer in the Contributing Zone and Recharge Zone published in 30 TAC Ch. 213 (the "Edwards Aquifer Rules").

53. The TSWQS consist of general standards, narrative standards, surface water segment-specific numeric standards, numeric standards for toxic substances, and antidegradation review. The Edwards Aquifer Rules consist of general standards, narrative standards, and numeric standards presented as minimum acceptable criteria to comply with the antidegredation policy.

54. The TSWQS establish specific uses for each classified water body in the state and also provide numeric criteria for each classified stream.

55. When discharging to an intermittent stream with perennial pools, the effluent limits necessary to maintain the existing uses and aquatic life of that stream including its pooled areas are typically more stringent than the effluent limits necessary to protect the existing uses of an intermittent stream or watercourse with no perennial pools.

56. Pursuant to the Texas Surface Water Quality Standards (TSWQS), the specified uses for an unclassified tributary within three miles of Cibolo Creek (Segment 1908) and in the contributing, transition, or recharge of the Edwards Aquifer which is considered to have perennial pools include primary contact recreation, limited aquatic life use, public drinking water supply, and aquifer protection.

57. To protect and maintain a stream's aquatic life use, TCEQ evaluates a discharge's effect on the dissolved oxygen in the receiving stream.

58. The dissolved oxygen criterion for the unnamed tributary of Cibolo Creek is 3.0 mg/l.

59. The proposed effluent limits of 5.0 mg/l CBOD5, 2.0 mg/l NH3-N, and 4.0 mg/l minimum dissolved oxygen are adequate to ensure that the dissolved oxygen level in the

receiving stream will be maintained above the 3.0 mg/l criterion and, therefore, aquatic life use will be maintained and protected.

60. The proposed discharge will not violate the dissolved oxygen standards for a tributary of Cibolo Creek.

61. Compliance with the recreational use standard in the TSWQS is evaluated solely through application of the bacteria standard.

62. For freshwater, the geometric mean of *E. coli* shall not exceed 126 CFUs per 100 milliliters of water, which is the same as the specific numeric criteria for unnamed tributaries of Cibolo Creek.

63. The bacteria limits in the ED's proposed draft permit are the same as those in the TSWQS for the unnamed tributary of Cibolo Creek (Segment 1908).

64. For stream segments that are classified as a public water supply, TCEQ evaluates the presence of toxic materials and evaluates the discharge to ensure that it will not prevent a public water supplier from treating the surface water through conventional treatment methods to drinking water standards.

65. The TSWQS establish numeric criteria for toxic materials, and those criteria apply regardless of whether they are in the permit.

66. Applicant's proposed discharge does not require inclusion of specific effluent limits on toxic materials because its proposed permitted average flow would be less than one million gallons per day (MGD), it will not have an approved pretreatment program, it is not an industrial facility, it will serve residential customers, and it will not likely have any industrial facilities discharging into the proposed plant.

67. Applicant must provide notice to the ED if there is a substantial change in the volume or character of the wastewater, including the introduction of toxic materials by an industrial user of Applicant's plant.

68. The proposed discharge meets both the TSWQS and the Edwards Aquifer Rules necessary to maintain the public water supply use, contact recreation, aquatic life, and the toxic pollutant numeric criteria, and provide for aquifer protection.

69. All TPDES permits must be reviewed for compliance with the TSWQS antidegradation policy.

70. Tier 1 of an antidegradation review confirms that the effluent quality is consistent with the designated uses of the receiving stream segment and that no in-stream surface water quality standards (either numeric or narrative) will be exceeded.

71. A Tier 2 review is conducted on waterbodies with intermediate, high, or exceptional aquatic life uses to ensure that the water quality will not be diminished.

72. A Tier 1 and Tier 2 antidegradation review found that no significant degradation of water quality is expected in the receiving water and that the existing uses will be maintained and protected.

73. The proposed discharge would not impact Cibolo Creek's ability to meet the TSWQS.

74. The proposed discharge is within 0 to 5 miles of the Edwards Aquifer Recharge Zone. Accordingly, the effluent limits of 30 TAC § 213.6(c)(1) apply. The effluent limits of 30 TAC § 213.6(c)(1) apply.

75. The effluent limits of 30 TAC § 213.6(c)(1) are as follows: 5.0 mg/L 5-day carbonaceous biochemical oxygen demand (CBOD5), 5.0 mg/L total suspended solid (TSS), 2.0 mg/L ammonia nitrogen (NH3-N), 1.0 mg/L total phosphorus.

76. The Applicant has requested, and the Executive Director has proposed a more stringent phosphorous limit of 0.5 mg/L in the proposed Permit.

Bacteria and Chlorine

77. To meet the bacteria limits for the proposed plant, Applicant will disinfect the effluent using chlorination and will expose the effluent to the chlorine for at least 20 minutes.

78. With the proper dosage of chlorine for the proper detention time, the bacteria levels will be reduced to levels that comply with TCEQ requirements.

79. Applicant must monitor the chlorine residual levels five times per week by grab sample and monitor the bacteria levels once a week by grab sample.

80. Applicant must submit plans, specifications, and a final engineering design report to TCEQ for review and approval to ensure that the facility is designed to meet the permitted limits, including disinfection requirements and the bacteria limits.

81. The proposed discharge would not contribute excess bacteria to Cibolo Creek.

Additional Public Use and Enjoyment Issues

82. The proposed discharge will not impact the unnamed tributary of Cibolo Creek's ability to maintain its primary contact recreation use.

83. [deleted]

84. The proposed permit will not adversely impact the use and enjoyment of any adjacent and/or downstream property or create nuisance conditions.

85. The discharge route in the unnamed tributary of Cibolo Creek in the proposed permit has been properly characterized.

86. The proposed permit complies with the TCEQ siting regulations found in 30 TAC Chapter 309.

87. The treated effluent will not adversely impact cattle that currently graze in the area.

88. The proposed discharge will not result in negative impacts to water in the state.

89. Treated effluent discharged at the levels in the proposed TPDES permit would be safe for children who come into direct contact with it as prescribed by the TSWQS effluent criteria and uses for a tributary of Cibolo Creek (Segment 1908).

90. Treated effluent discharged at the levels in the proposed TPDES permit would be safe for cattle that come into direct contact with it as prescribed by the TSWQS effluent criteria and uses for a tributary of Cibolo Creek (Segment 1908).

Discharge Would Be to Water in the State

91. Portions of the discharge route in the unnamed tributary of Cibolo Creek on Johnson Ranch before it reaches the property line shared with the Protestants do not have well-defined beds and banks.

92. No aquatic resources on the Johnson Ranch are permanent.

93. A recent United States Geological Services (USGS) map shows an unnamed tributary of Cibolo Creek as a broken line and dots typical of USGS markings denoting an intermittent stream.

94. The discharge route is dry under normal conditions, but has a regular flow and route during rainfall events and for short durations thereafter.

95. A grassy swale in the unnamed tributary of Cibolo Creek upstream from the Protestants' properties has native grasses growing in it.

96. Aquatic resources on the Johnson Ranch include ephemeral watercourses, an artificial waterbody, vegetated swales, and areas of diffuse surface drainage, as well as the unnamed tributary of Cibolo Creek that is the proposed discharge route.

97. The discharge route from the point of discharge at the Applicant's outfall in the proposed Permit and continuing across Applicant's property in the unnamed tributary of Cibolo Creek is a watercourse.

98. From and beyond the Applicant's property line on Johnson Ranch where the unnamed tributary of Cibolo Creek continues to flow into the Graham property and continuing through Ms. Hastings' property and continuing to Cibolo Creek, the unnamed tributary of Cibolo Creek is a watercourse with defined bed and banks.

Transcript Costs

99. The cost for recording and transcribing the hearing on the merits by a court reporter and producing transcripts for Applicant, the ALJ, and the Commission totaled $4,931.40.

100. Johnson Ranch MUD is a municipal utility district, a governmental entity with limited resources.

101. Applicant is a residential development company, Protestants are individual landowners, and the Greater Edwards Aquifer Alliance is a 501(c)(3) nonprofit corporation.

102. Protestants ordered a copy of the transcript for which they paid $1,000.

103. Applicant had the burden of proof and benefitted the most from having the ability to cite to the transcript.

104. Except for the copy of the transcript ordered by Protestants, Applicant should pay court reporting and transcription costs.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over water quality to issue TPDES Permit No. WQ0014975001 under TEX. WATER CODE §§ 5.013, 26.003, 26.011, and 26.027

2. The Commission has jurisdiction over this matter. Texas Water Code chs. 5 and 26.

3. SOAH has jurisdiction over this hearing process and the authority to issue a proposal for decision with findings of fact and conclusions of law. Texas Water Code §§ 5.311 and 26.021; Texas Gov't Code ch. 2003.

4. Under 30 TAC § 80.17(a), Applicant has the burden of proof, by a preponderance of the evidence, on the referred issues.

5. After final review under 30 TAC ch. 217, the Design Criteria for Domestic Wastewater Systems, the application will comply with TCEQ's regulations regarding Domestic Wastewater Effluent Limitation and Plant Siting at 30 TAC ch 309.

6. Pursuant to 30 TAC § 307.1, it is the policy of this state and the purpose of Chapter 307 to maintain the quality of water in the state consistent with, among other things, public health and enjoyment and protection of terrestrial life. All reasonable methods are to be used to implement this policy.

7. The toxic criteria in the TSWQS apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activity. 30 TAC §307.6.

8. In accordance with TCEQ's regulations implementing the TSWQS at 30 TEX. ADMIN. CODE Chapter 307, Applicant's discharge under the terms of the proposed permit will comply with the general criteria, antidegradation policy, toxic material provisions, and site-specific uses and criteria

9. In accordance with TCEQ's regulations regarding the Edwards Aquifer at 30 TEX. ADMIN. CODE Chapter 213, Applicant's discharge under the terms of the proposed permit will comply with the general criteria, antidegradation policy, applicable aquifer

protection requirements and site-specific uses and criteria relating the Contributing Zone and Recharge Zone of the Edwards Aquifer

10. Water in the state includes, in part, groundwater, streams, creeks, natural or artificial, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. Texas Water Code § 26.001(5).

11. The discharge route in the proposed permit has been properly characterized as water in the state.

12. The discharged effluent would comply with the limits for toxins established by the TSWQS, 30 TAC Chapter 307.

13. Applicant met its burden of proving the permit would not impair the use and enjoyment of the Protestants' Graham-Hastings-Dunn properties, including in regard to children coming into direct contact with it. 30 TAC § 307.1.

14. Applicant met its burden of proving the permit would not impair the use and enjoyment of the Protestants' Graham-Hastings-Dunn properties, including in regard to cattle that will consume undiluted treated effluent. 30 TAC § 307.1.

15. Allocating court reporting and transcription costs of $3,931.40 to Applicant and $1,000.00 to Protestants is a reasonable allocation of costs under the factors set forth in 30 TAC § 80.23(d).

16. The ALJ's Proposal for Decision, including the amended proposed Order with Findings and Conclusions, in part, contained errors of law based upon the ALJ's application and/or misinterpretation of applicable law, TCEQ rules and long standing policies which have been corrected pursuant to Section 2001.058, Tex. Gov't Code.

17. Pursuant to the law applicable to a TPDES permit the Applicant met its burden of proving the permit will not impair the use and enjoyment of adjacent and downstream property, including Protestants Graham-Hastings-Dunn property, pursuant to 30 TAC §307.1 or create nuisance conditions.

18. In accordance with TCEQ's regulations implementing the Texas Surface Water Quality Standards at 30 TAC Chapter 307, the discharge under the terms of the Permit will comply with all of the general criteria, anti-degradation policy, toxic material provisions, and site specific uses and criteria.

19. Pursuant to the law applicable to a TPDES permit the Applicant met its burden of proving the Permit will not adversely impact the cattle that graze in that area.

20. Pursuant to the law applicable to a TPDES permit the discharge route has been properly characterized as water in the state.

21. Issues outside of the Commission's jurisdiction in this matter addressed in the ALJ's PFD, such as erosion, stormwater, and property access, are superfluous to the

Commission's decision and should not be included in the order.

III. EXPLANATION OF CHANGES

During its July 1, 2015 Agenda Meeting, the Commission heard arguments from the parties related to issues with the ALJ's Proposal for Decision and Proposed Order. Having heard the comments from the parties and having reviewed the Exceptions and Replies to Exceptions to the Proposal for Decision from the parties, the Commission found certain improper Findings of Fact and Conclusions of Law in the ALJ's Proposed Order. Pursuant to Texas Government Code §2001.058, a state agency may change a finding of fact or conclusion of law made by an administrative law judge if it is determined: 1) the ALJ did not properly apply or interpret applicable law, agency rules, policies, or prior administrative decision; 2) a prior administrative decision the ALJ relied on is incorrect or should be changed; or 3) that a technical error in a finding of fact should be changed. In addition, Texas Government Code § 2003.047(m) states that except as provided by TH&SC § 361.0832, the Commission shall consider the PFD, and the parties' exceptions, briefs, and arguments, and may amend the proposal for decision, including any finding of fact, but any such amendment and order shall be based solely on the record made before the administrative law judge. Pursuant to Texas Government Code §§2001.058 and 2003.047(m), following discussions at its July 1, 2015 and September 9, 2015 Agenda Meetings, the Commission made changes to the ALJ's Proposed Order for the following reasons:

The Commission is limited in what can be considered when reviewing a TPDES permit like the Applicant has brought here. Texas Water Code §5.013 and §5.102 limit the Commission's consideration to those issues within its jurisdiction as prescribed by Chapter 26 of the Texas Water Code. Issues related to erosion and flooding addressed by the ALJ are outside of the bounds of the Commission's jurisdiction, and it would be inappropriate for the Commission to make findings on those issues.

Having reviewed the ALJ's Proposal for Decision, the record, the pleadings from the parties, and the applicable regulations, it is evident that the ALJ misapplied or misinterpreted the law, Commission Rules, and longstanding TCEQ policies. Specifically, the ALJ improperly applied TCEQ policy, relevant rules, and the law related to the determinations that the proposed permit would not be protective of children or cattle coming into contact with, or ingesting the effluent. The ALJ also improperly applied TCEQ policy, relevant rules, and the law with regard to the implementation of the TPDES program and implementing the procedures found in 30 TAC Chapter 307 related to implementation of the TSWQS. The record further establishes that the unclassified receiving waters are properly designated as being an intermittent watercourse with perennial pools in accordance with TCEQ rules found in Chapter 307. This designation presumes a limited aquatic life use, which includes primary contact recreation, and indicates that the expectation for activities in those waters involves a significant risk of ingestion, including wading by children. TSWQS standards adopted for this designation for the unnamed tributary of Cibolo Creek (Segment 1908) are protective of these interests and activities.

The fact that the unclassified receiving waters are often dry is not unusual, and is inherent in the designation of the receiving waters as intermittent with perennial pools. The designation as "including perennial pools" actually results in more stringent effluent limits being applicable. The effluent limits in the draft permit contained in the proposed permit are also more stringent than those required in 30 TAC Chapter 213 for discharges within 0 to 5 miles of the Edwards Aquifer. The record includes expert testimony that protectiveness of terrestrial and aquatic life is

presumed in setting the TSWQS as stated in 30 TAC § 307.1. There is no significant evidence contravening the Applicant's showing that existing uses will be protected, including livestock. Further, there is no significant evidence in the record contravening the evidence establishing that the proposed effluent limits are protective of the designated uses of the receiving waters and that those designations were properly established through determination of the appropriate uses and criteria of the receiving waters, application of the TSWQS performance of Tier 1 and Tier 2 anti-degradation reviews, and QualTex modeling and nutrient screening.

Further, the Applicant met its burden to prove by a preponderance of the evidence that the characterization of the discharge route is correct as being water in the state. In looking at the applicable case law, specifically the *Hoefs, Big Lake* and *Domel* decisions, as well as the evidence and testimony presented in the hearing, the ALJ incorrectly held that the discharge route was improperly characterized. *See Hoefs v. Short*, 273 S.W. 785, 787 (Tex. 1925); *Turner v. Big Lake Oil Co.*, 62 S.W.2d 491 (Tex. Civ. App. – El Paso 1933), aff'd, 96 S.W.2d 221 (Tex. 1936); *Domel v. Georgetown*, 6 S.W.3d 349, 358-59 (Tex. App. – Austin 1999, pet. denied). This evidence includes the testimony of the Executive Director's expert witness, Ms. Lee, who originally characterized the discharge route as an intermittent watercourse with perennial pools and confirmed her characterization through a ground inspection of the discharge route by walking the watercourse. The discharge route is more than a wide valley or mere surface drainage and similar conditions will produce a flow of water that will recur with some degree of regularity consistent with the cited applicable case law.

In addition, the General Counsel has made changes to the Proposed Order consistent with the Commission's direction at its September 9, 2015, Agenda Meeting. During that meeting, the Commission directed the General Counsel to make any necessary or appropriate clarifications and conforming changes to the Proposed Order, including modifying the Explanation of Changes to include appropriate references, legal citations, and make typographical and formatting corrections.

IV. ORDERING PROVISIONS

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 amendment application of DHJB Development, LLC for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014975001 is hereby granted.

2. In accordance with 30 TAC §50.117, the Commission issues this Order and the attached permit as its single decision on the permit application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, documents the Executive Director's review of the permit application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit (Exhibit A) are appropriate and satisfy all applicable federal and state requirements.

3. The Executive Director's Response to Comments is hereby adopted in accordance with 30 TAC §50.117.

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 Tex. Gov't Code §2001.144, as revised by Texas Senate Bill 1267, 84th Legislative Session, 2015.

6. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

7. If any provision, sentence, clause, or phase 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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

9-15-15

Date Signed

EXHIBIT A

TPDES PERMIT NO. WQ0014975001
[For TCEQ office use only - EPA I.D. No. TX0133825]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

This amendment supersedes and replaces TCEQ Permit No. WQ0014975001 issued August 26, 2010.

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

DHJB Development, LLC

whose mailing address is

102A Cordillera Ridge
Boerne, Texas 78006

is authorized to treat and discharge wastes from the Johnson Ranch Wastewater Treatment Facility, SIC Code 6531

located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163

to an unnamed tributary; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **March 1, 2018**.

ISSUED DATE:

_____
For the Commission

INTERIM I EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion to 0.115 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.0375 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 104 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Min. Self-Monitoring Requirements	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (1.6)	10	20	30	One/week	Grab
Total Suspended Solids	5 (1.6)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (0.63)	5	10	15	One/week	Grab
Total Phosphorus	0.5 (0.16)	2	4	6	One/week	Grab
E. coli, CFU or MPN/100 ml	126	N/A	N/A	399	One/quarter	Grab

2. 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 (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. 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.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the completion to the 0.115 million gallons per day (MGD) facilities, and lasting through the completion of expansion to the 0.350 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.115 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 319 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Min. Self-Monitoring Requirements	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (4.8)	10	20	30	One/week	Grab
Total Suspended Solids	5 (4.8)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (1.9)	5	10	15	One/week	Grab
Total Phosphorus	0.5 (0.48)	2	4	6	One/week	Grab
E. coli, CFU or MPN/100 ml	126	N/A	N/A	399	One/month	Grab

2. 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 (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. 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.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the completion of expansion to the 0.350 million gallons per day (MGD) facilities, and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.350 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 972 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Min. Self-Monitoring Requirements	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (15)	10	20	30	One/week	Grab
Total Suspended Solids	5 (15)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (5.8)	5	10	15	One/week	Grab
Total Phosphorus	0.5 (1.5)	2	4	6	One/week	Grab
E. coli, CFU or MPN/100 ml	126	N/A	N/A	399	One/month	Grab

2. 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 (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. 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.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

   a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.

   b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

   c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.

   d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.

   e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.

   f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

   a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

      i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.

c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.

d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day.

The daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

e. Bacteria concentration (*E. coli* or Enterococci) - Colony Forming Units (CFU) or Most Probable Number (MPN) of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).

g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.

3. Sample Type

a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).

b. Grab sample - an individual sample collected in less than 15 minutes.

4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.

5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.

6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.

b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.

c. Records of monitoring activities shall include the following:

i. date, time and place of sample or measurement;

ii. identity of individual who collected the sample or made the measurement.

iii. date and time of analysis;

iv. identity of the individual and laboratory who performed the analysis;

v. the technique or method of analysis; and

vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later

than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

   a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

   b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:

      i. Unauthorized discharges as defined in Permit Condition 2(g).

      ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.

      iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

   c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.

   d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.

8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

   All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

   a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D,

Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. One hundred micrograms per liter (100 µg/L);

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

iv. The level established by the TCEQ.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. Five hundred micrograms per liter (500 µg/L);

ii. One milligram per liter (1 mg/L) for antimony;

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to CWA § 301 or § 306 if it were directly discharging those pollutants;

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and

c. For the purpose of this paragraph, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the POTW; and

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

   a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.

   b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:

      i. Violation of any terms or conditions of this permit;

      ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

      iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

   c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

   a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.

   b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

   c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

   d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.

   e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.

f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and TWC§ 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.

h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.

i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§ 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC § 361.

b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

   a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:

      i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or

      ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;

      iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

   b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.

   c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.

   d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.

   e. In accordance with the TWC § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.

   f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA § 307(a) for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be

modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA § 307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

   a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.

   b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

   This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

   Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

   A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

   The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

    The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy

    a. Each permittee shall notify the Executive Director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 Bankruptcy) of the United States Code (11 USC) by or against:

i. the permittee;

ii. an entity (as that term is defined in 11 USC, § 101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

iii. an affiliate (as that term is defined in 11 USC, § 101(2)) of the permittee.

b. This notification must indicate:

i. the name of the permittee and the permit number(s);

ii. the bankruptcy court in which the petition for bankruptcy was filed; and

iii. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:

a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.

b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.

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

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.

6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC § 7.302(b)(6).

7. Documentation

   For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §§ 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words confidential business information on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.

   a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

      If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.

9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.

10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.

11. Facilities that generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:

a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.

b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.

c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.

d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.

e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.

f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC § 335 and must include the following, as it pertains to wastewater treatment and discharge:

i. Volume of waste and date(s) generated from treatment process;
ii. Volume of waste disposed of on-site or shipped off-site;
iii. Date(s) of disposal;
iv. Identity of hauler or transporter;
v. Location of disposal site; and
vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC § 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC § 361.

SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.

2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.

3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method that receives the prior approval of the TCEQ for the contaminants listed in 40 CFR Part 261.24, Table 1. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 13) within seven (7) days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 13) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

Pollutant	Ceiling Concentration (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC § 312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U.S. Environmental Protection Agency as being equivalent to those in Alternative 5.

b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1

i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.

ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;

ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;

iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;

iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and

v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U.S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;

ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;

iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;

iv. The Executive Director will accept from the U.S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and

v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

ix. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC § 312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following Alternatives 1 through 10 for vector attraction reduction.

Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.

Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius. Volatile solids must be reduced by less than 17% to demonstrate compliance.

Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° Celsius. Volatile solids must be reduced by less than 15% to demonstrate compliance.

Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° Celsius.

Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° Celsius and the average temperature of the sewage sludge shall be higher than 45° Celsius.

Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.

Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 9 - i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on

the land surface within one hour after the sewage sludge is injected.

iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.

ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

Toxicity Characteristic Leaching Procedure (TCLP) Test	- once during the term of this permit
PCBs	- once during the term of this permit

All metal constituents and fecal coliform or Salmonella sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC § 312.46(a)(1):

Amount of sewage sludge (*) metric tons per 365-day period	Monitoring Frequency
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(*) *The amount of bulk sewage sludge applied to the land (dry wt. basis).*

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC § 312.7

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

Pollutant	Cumulative Pollutant Loading Rate (pounds per acre)*
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

*Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.

2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner which complies with the Management Requirements in accordance with 30 TAC § 312.44.

3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:

   a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.

   b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.

   c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:

   a. The location, by street address, and specific latitude and longitude, of each land application site.

   b. The approximate time period bulk sewage sludge will be applied to the site.

   c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.

2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at

the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.

2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludge, if applicable).

3. A description of how the vector attraction reduction requirements are met.

4. A description of how the management practices listed above in Section II.C are being met.

5. The following certification statement:

   "I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC § 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC § 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained. The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply:

   a. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.

   b. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.

   c. The number of acres in each site on which bulk sludge is applied.

   d. The date and time sludge is applied to each site.

e. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.

f. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 13) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. that applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.

17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.

    a. The location, by street address, and specific latitude and longitude.

    b. The number of acres in each site on which bulk sewage sludge is applied.

    c. The date and time bulk sewage sludge is applied to each site.

    d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.

    e. The amount of sewage sludge (i.e., dry tons) applied to each site.

    The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.

B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a municipal solid waste landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.

C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR § 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 13) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 13) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year.

E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.

F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.

2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 13) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.

2. Annual sludge production in dry tons/year.

3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.

4. Amount of sludge transported interstate in dry tons/year.

5. A certification that the sewage sludge meets the requirements of 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.

6. Identity of hauler(s) and transporter registration number.

7. Owner of disposal site(s).

8. Location of disposal site(s).

9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

   This Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.

3. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.

4. Prior to construction of the Interim I, Interim II and Final phases of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.6(c). If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Pages 2, 2a and 2b of the permit.

5. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1908 of the San Antonio River Basin and any subsequent updating of the water quality model for Segment No. 1908, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC § 305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.

6. The permittee shall comply with the requirements of 30 TAC § 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).

7. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 13) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first and prior to completion of each additional phase on Notification of Completion Form 20007.

8. In accordance with 30 TAC §319.9, a permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission in writing of its compliance and request a less frequent measurement schedule. To request a less frequent schedule, the permittee shall submit a written request to the TCEQ Wastewater Permitting Section (MC 148) for each phase that

includes a different monitoring frequency. The request must contain all of the reported bacteria values (Daily Avg. and Daily Max/Single Grab) for the twelve consecutive months immediately prior to the request. If the Executive Director finds that a less frequent measurement schedule is protective of human health and the environment, the permittee may be given a less frequent measurement schedule. For this permit, 1/quarter may be reduced to 1/6 months in the Interim I and Interim II phase; 1/month may be reduced to 1/quarter in the Final phase. **A violation of any bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule and submit written notice to the TCEQ Wastewater Permitting Section (MC 148).** The permittee may not apply for another reduction in measurement frequency for at least 24 months from the date of the last violation. The Executive Director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

9. The permittee shall provide verification of the completion of construction of the wastewater treatment facility prior to the expiration date of this permit. If complete construction of at least the Interim I Phase stage does not occur prior to the expiration date of this permit, the permittee shall not apply for permit renewal.

APPENDIX D

DIRECT TESTIMONY
BRITTANY LEE

TABLE OF CONTENTS

EXHIBITS

I. Background

a. Experience

Q: Please state your name and current place of employment for the record.

A: Brittany Lee, Texas Commission of Environmental Quality (TCEQ), 12100 Park 35 Circle, Austin, Texas.

Q: How long have you been with the Texas Commission on Environmental Quality or its predecessor agency?

A: I have been with the TCEQ full time 6 years. Including internships, I will have worked at TCEQ for 8 years as of January 2015.

Q: In what capacity are you currently employed?

A: I am an Aquatic Scientist III.

Q: What are your job responsibilities at the TCEQ?

A: I conduct water quality standards reviews and biomonitoring reviews for Texas Pollutant Discharge Elimination System (TPDES) permit applications. I also perform state 401 Water Quality Certification reviews for the United States Army Corps of Engineers 404 permit dredge and fill applications and mitigation banks. I provide site-specific surface water criteria for Leaking Petroleum Storage Tanks (LPSTs). I also conduct and evaluate water quality studies and other projects.

Q: Approximately how many wastewater permit applications have you worked on or reviewed in the course of your employment with TCEQ?

A: Approximately 700 to date.

Q: Please describe your educational background.

A: I have a Bachelors of Science Degree in Aquatic Biology from Texas State University-San Marcos.

Q: Do you recognize Exhibit ED-21?

A: Yes.

Q: What is it?

A: It is my resume.

Q: Does it accurately reflect your educational and work background?

A: Yes.

b. Application Review Process

Q: Which rules or guidelines are applicable for your review of a municipal wastewater discharge permit application?

A: I consider portions of the federal Clean Water Act (CWA); portions of the Texas Water Code (TWC); Title 30, Texas Administrative Code (TAC) Chapters 307 and 213; TCEQ's *2003 Procedures to Implement the Texas Surface Water Quality Standards (IPs)*; Commission policies; and EPA guidelines.

Q: In what ways do you use guidance to help you reach your conclusions?

A: Guidance documents, such as the IPs, ensure consistency in the interpretation of the rules and regulations to protect water quality.

Q: Do you recognize Exhibit ED-22?

A: Yes.

Q: What is it?

A: It is a copy of TCEQ's *2003 Procedures to Implement the Texas Surface Water Quality Standards*. The document control number is RG-194 (revised). This document is often referred to as the "IPs."

Q: Is this the current version of the IPs?

A: No, now we have a 2010 version of the IPs that was partially approved by EPA. Currently we are using both the 2003 and the 2010 IPs because some portions of the 2010 IPs are not approved by EPA yet. Where the 2010 Implementation Procedures have not been approved, we are to use the 2003 IPs.

Q: When did the ED begin using this version of the IPs?

A: The Commission approved it in 2010, and EPA approved the 2010 version in July of 2013.

Q: What is the difference between the 2003 and the 2010 IPs that impacts your review?

A: Relevant to the review of this application, the 2010 version includes the addition of the nutrient screening, which we are using but is not EPA-

approved. We have been doing nutrient screening for some time - the 2010 IPs just clarify prior agency practice.

Q: Do you recognize Exhibit ED-23?

A: Yes.

Q: What is it?

A: It is a copy of TCEQ's *2010 Procedures to Implement the Texas Surface Water Quality Standards*. The document control number is also RG-194.

Q: What specific role do you play in the technical review of an application for a TPDES wastewater discharge permit?

A: I confirm or find the discharge route, assign the aquatic life and human health water quality criteria associated with the uses of the unclassified receiving streams of a proposed discharge, find the appropriate uses for the classified receiving water, identify endangered species in the watershed, and perform an antidegradation review if appropriate.

Q: Please describe your review of a TPDES wastewater discharge permit.

A: First, I verify the proposed discharge point and discharge route down to the first classified segment. Second, I determine if the discharge goes into a receiving water that is classified or unclassified. Third, I assess any unclassified water bodies, or those not specifically listed in Appendix A or Appendix D of the Texas Surface Water Quality Standards (TSWQS), to determine an aquatic life use and associated human health criteria according to their flow characteristics (intermittent, intermittent with

perennial pools, or perennial) and other available data. Next, I assign a aquatic life use (no significant, limited, intermediate, high, or exceptional) and corresponding dissolved oxygen criteria to the unclassified water bodies. I then identify endangered and threatened species in the watershed. I also perform an antidegradation review for new and amended permit applications.

Q: What is a classified segment?

A: The TSWQS define a classified segment as one that is listed in Appendix A of the TSWQS along with its designated uses and criteria.

Q: How are uses and criteria assigned to receiving waters?

A: Uses and criteria for the classified segment are designated in Appendix A of the TSWQS. Unclassified receiving water uses are determined by the flow characteristics of the stream (intermittent, intermittent with perennial pools, perennial, or tidal). If there are impoundments within the discharge route, the size of the impoundment, and location of the impoundment may determine the aquatic life use for the impoundment. All unclassified stream characteristics not listed in the TSWQS, as well as size and location of the impoundments, are determined by available data and uses are assigned accordingly.

Q: What are uses and criteria of a water body?

A: Uses are those activities or purposes that a water body can, or can potentially provide. Criteria are those water quality conditions that are to be met in order to support and protect the uses of a water body.

Q: What uses can be assigned to a water body?

A: There are designated and existing uses. A designated use is that which is assigned to specific water bodies in Appendix A or in Appendix D in §307.10 of the TSWQS. Typical uses which may be designated for specific water bodies include public water supply, categories of aquatic life use, recreation categories, and aquifer protection. An existing use is that which is currently being supported by a specific water body or which was attained on or after November 28, 1975.

Q: Please describe the implications of designated and existing uses regarding water quality protection.

A: Designated and existing uses have corresponding numerical and narrative criteria established in the TSWQS for the purpose of protecting those uses. Designated and existing uses are presumed to be representative of the water quality of the water bodies assigned those uses. The criteria for designated and existing uses are used to determine effluent limits needed to protect water bodies assigned those uses. Once the uses for a water body have been determined, TCEQ cannot issue a wastewater discharge permit that would lower the uses. For example, if a water body has a designated use of high aquatic life use, TCEQ cannot issue a wastewater discharge permit that would lower the designated use to limited aquatic life use.

Q: What are the various aquatic life use subcategories delineated in the 2003 IPs?

A: The aquatic life uses include exceptional, high, intermediate, limited, and no significant. The corresponding dissolved oxygen criteria and aquatic life attributes are described on page 154 of the 2003 IPs.

c. Antidegradation Review

Q. How is degradation defined?

A. According to section 307.5(b) of the TSWQS, degradation under Tier 1 is the impairment of existing uses. Degradation under Tier 2 is the lowering of water quality that exceeds fishable/swimmable quality by more than a *de minimis* extent, but not to the extent that an existing use is impaired.

Q: What do you mean by fishable and swimmable quality?

A: Fishable and swimmable waters are defined in section 307.2(b)(2) of the TSWQS as waters that have quality sufficient to support propagation of indigenous fish, shellfish, and wildlife and recreation in and on the water.

Q. What does the term *de minimis* mean?

A. In regard to the Tier 2 antidegradation determination, *de minimis* would mean a less than noticeable decrease in water quality.

Q: Can you explain a Tier 1 review in a little more detail?

A: Sure. First, I determine the appropriate uses and criteria of the receiving waters. Effluent limits and the permit will be drafted to protect the uses and meet the criteria established for the receiving waters. I use other

available information, such as the Texas Surface Water Quality Inventory and characteristics of the water body and local aquatic communities, to preliminarily determine if existing uses would be maintained and protected. If the water body is not attaining water quality standards for a particular constituent, I evaluate the potential for the discharge to increase loading of that constituent. The dissolved oxygen modeler's review assures that Tier 1 antidegradation is covered for dissolved oxygen (DO). The Tier 1 review is detailed in the Water Quality Standards Team Interoffice Memorandum that was sent to the permit writer.

Q: Can you explain a Tier 2 review in a little more detail?

A: A Tier 2 review applies to water bodies that have intermediate, high, or exceptional aquatic life uses. This review ensures that where water quality exceeds the normal range of fishable/swimmable quality, that water quality will be maintained. I use available information, such as the Texas Surface Water Quality Inventory and characteristics of the water body and local aquatic communities, when conducting a Tier 2 review. I also evaluate potential parameters of concern typically associated with the type of proposed discharge effluent. I follow the guidance in the IPs for Tier 2 antidegradation; this includes a list of examples where degradation is unlikely to occur and where it is likely to occur. The Tier 2 review is provided in the Water Quality Standards Team Interoffice Memorandum that was sent to the permit writer.

Q: Do you typically document your water quality standards review in any manner?

A: Yes, I complete a worksheet that I keep in my working file in the Water Quality Assessment Section. I also draft an interoffice memorandum, which is sent to the permit writer. The memorandum will become a part of the permit file.

Q: What information is typically included in this memo?

A: It will include the name of the permitting team, name of the reviewer, name of the applicant, name of the peer reviewer if applicable, type of permit action (new, amend, or renewal), date, permit number, date application was received, discharge route, segment name and number, designated uses for segment and its corresponding dissolved oxygen criterion, and uses assessed for the unclassified receiving waters in the discharge route and their associated dissolved oxygen criteria. An antidegradation determination statement is required on new and amendment permit applications that propose an increase in pollution loading. Additionally, any permit conditions are also included as a means to preclude degradation. Finally, I add Endangered Species language indicating if there is potential for any adverse impact from the proposed discharge to federally endangered or threatened aquatic or aquatic-dependent species, including proposed species that may be present in the receiving waters.

d. Ms. Lee's Review of DHJB Development, LLC's Application.

Q. Have you reviewed the application for the TPDES permit for the DHJB Development, LLC?

A. Yes.

Q: From now on I'm just going to refer to DHJB Development, LLC as DHJB. Is that okay?

A: Yes.

Q: What parts of DHJB's application did you review?

A: I reviewed the domestic technical report and USGS topographic maps as well as portions of the administrative report of the application delineating the discharge route.

Q: Were the parts of the technical report that you needed complete?

A: Yes.

Q: Please describe the technical review you performed for DHJB's application.

A: First, I verified that the Applicant's description of the discharge point was correct, and then I defined the discharge route to determine the segment and basin in which the discharge is located in. I listed the segment as Upper Cibolo Creek and used Appendix A of the TSWQS to assign the uses to Upper Cibolo Creek. Once the segment is defined, I then listed the unclassified water body in the discharge route as the unnamed tributary and described the unnamed tributary based on maps and available data. I

then assign the uses to the unnamed tributary based on this description. After describing the uses for the unnamed tributary, I noted the proposed discharge volume and proposed permit limits the applicant anticipated. I also noted this was a permit amendment to change the permit to a discharge permit from a land application permit. I looked at the State Inventory List, referred to as 305(b), to determine any constituents of concern, or parameters that are not supported in the segment or associated tributaries. I then performed a nutrient screening and made an antidegradation statement.

Q: What do you mean by "an unnamed tributary"?

A: An unnamed tributary is a stream that is on a USGS topographical map or is visible through aerial photography; however, it does not have a name and is hydrologically connected to another stream. Essentially, an unnamed tributary is a branch off of a larger body of water.

Q: **What are the uses of the unnamed tributary?**

A: The unnamed tributary in the review for DHJB has a limited aquatic life use, assumed contact recreational use, incidental fisheries use.

Q: **How did you determine the uses of the unnamed tributary?**

A: I first determined the stream type (intermittent with pools) using information supplied by the applicant as well as United States Geological Survey (USGS) topographic maps and aerial imagery from Geographic Information Systems (GIS), then I assigned the aquatic life use and dissolved oxygen criteria that correlated with the stream type. The aquatic

life use that correlates to an intermittent stream with perennial pools without a TCEQ receiving water assessment (RWA) is presumed "limited," which is what I assigned to the unnamed tributary.

Q: Can you explain what "Upper Cibolo Creek in Segment 1908 of the San Antonio River Basin" means?

A: Upper Cibolo Creek is the name of the classified segment in the discharge route. Upper Cibolo Creek is also the stream into which the unnamed tributary flows. 1908 is the segment number assigned to Upper Cibolo Creek. The San Antonio River Basin references the entire watershed for segment 1908 and any other classified segments beginning with the number 19.

Q: What are the uses of Upper Cibolo Creek in Segment 1908 of the San Antonio River Basin?

A: According to Appendix A of the TSWQS, Upper Cibolo Creek in Segment 1908 of the San Antonio River Basin has high aquatic life use (with corresponding dissolved oxygen criterion of 5.0 mg/L), primary contact recreation, public water supply and aquifer protection.

Q: Once you determined that the discharge was to the unnamed tributary, how did you determine the 3.0 mg/L would be the appropriate dissolved oxygen criterion?

A: For most streams characterized as intermittent with pools (i.e., ones without a TCEQ RWA), the presumptive aquatic life use is limited with corresponding 3.0 mg/L dissolved oxygen criteria.

Q: **Is the 3.0 mg/L dissolved oxygen criterion for the unnamed tributary appropriate for Upper Cibolo Creek?**

A: No. The 3.0 mg/L dissolved oxygen criteria is not appropriate for Upper Cibolo Creek.

Q: **Why?**

A: Upper Cibolo Creek is a classified segment listed in Appendix A of the TSWQS with specific dissolved oxygen criteria of 5.0 mg/L. A DO of 3.0 mg/L is also inappropriate because Upper Cibolo Creek, regardless of being a classified segment, is also a perennial stream, and perennial streams are presumed to have a high aquatic life use with corresponding 5.0 mg/L dissolved oxygen criteria.

Q: What is a DO criterion?

A: A dissolved oxygen criterion refers to the 24-hour dissolved oxygen mean that is required to support the uses of a water body.

Q: Once you have established the DO criteria, do you also determine the effluent limits necessary to meet the DO criteria?

A: No.

Q: Who does?

A: A water quality modeler from the Water Quality Assessment team. Charlie Marshall was the initial modeler for this application.

Q: What did you do after you verified the discharge location?

A: As I previously mentioned, I noted the applicant's proposed effluent information, reviewed the 305(b) list and noted any concerns or uses not

supported by the segment, conducted a total phosphorus screening, and made an antidegradation statement. I performed a Tier 1 and Tier II antidegradation review on the receiving waters.

Q: What was the result of your Tier 1 antidegradation review?

A: My conclusion was the uses of the unnamed tributary will be maintained so long as the facility abides by the limitations I recommended in the memorandum.

Q: Did you perform a Tier 2 antidegradation review?

A: Yes. Segment 1908 has a high aquatic life use, so it also required a Tier 2 antidegradation review.

Q: What did you determine in your Tier 2 antidegradation review for the proposed discharge of DHJB?

A: I preliminarily determined that existing uses will not be impaired by this permit action so long as the applicant complies with the limits that I recommended in the memorandum.

Q: Did you do any other review of the application?

A: Yes, I performed an endangered species review and nutrient screening.

Q: What did you determine based on your endangered species review?

A: I determined there are several threatened or endangered species in the Segment 1908 and Comal County, which is reflected in my memorandum. In my memorandum, I recommended that the application be reviewed by EPA, and the United States Fish and Wildlife Service, if necessary.

Q: Can you describe what nutrient screening is?

A: Nutrient screening is a process where I assess the discharge route and determine if a nutrient limit is necessary to maintain the existing water quality. We have different screening worksheets for different types of water bodies. The worksheets generally assign point values to various aspects of receiving waters that may contribute to nutrient enrichment. The point values help me to form a recommendation regarding the need for a nutrient limit or monitoring.

Q: Can you describe the factors that were included in the nutrient screening for the unnamed tributary?

A: The screening included the size of the discharge, in-stream dilution, substrate type, depth, stream type, shading, impoundments, water clarity, aquatic vegetation, whether it is an impaired segment, and consistency with other permits in the area.

Q. After performing the nutrient screening, did you recommend anything to prevent degradation?

A. Yes. I recommended a 0.5 mg/L permit limit for Total Phosphorus.

Q: Why did you recommend a 0.5 mg/L limit for Total Phosphorus?

A: I based my recommendation on the results of the nutrient screening, similar discharges in the area, the size of the discharger, the proximity to the Recharge Zone of the Edwards Aquifer, and common knowledge of the area. Based on these factors and using my best professional judgment, I felt that a total phosphorus limit was necessary to prevent degradation.

Q: Have you reviewed the draft permit for DHJB?

A: Yes.

Q: Was your recommendation for a 0.5 mg/L Total Phosphorus limit included in the draft permit?

A: Yes.

Q: Does your team typically recommend effluent limits to the permit writer?

A: If there is a potential for degradation resulting from the discharge, we may recommend a limit.

Q: Does your team typically recommend effluent limits for Total Phosphorus?

A: We recommend effluent limits requirements for Total Phosphorus when necessary.

Q: Do you consider a 0.5 mg/L effluent limit for Total Phosphorus to be a stringent limit?

A: Yes.

Q: **Why?**

A: A typical phosphorus limit is 1.0mg/L. If a stream is sensitive or located in an area that is susceptible to algae, a lower limit may be recommended. Lower limits are considered to be more stringent.

Q: As part of your review do you consider the effluent set an applicant requests?

A: Sometimes. If an applicant's request is lower than our typical limits we may consider the request.

Q: **Are you aware that DHJB initially requested an effluent limit of 0.5 mg/L Total Phosphorus?**

A: Yes, I am aware.

Q: **Did this impact your decision to recommend an effluent limit of 0.5 mg/L in any way?**

A: It would not change my opinion for the need of a phosphorus limit for this draft permit.

Q: Did you write a memo after you performed your water quality standards review for DHJB?

A: Yes. The memo is dated January 11, 2013.

Q. Do you recognize Exhibit ED-24?

A: Yes. It is my January 11, 2013 memo.

Q: Did you memorialize your nutrient screening during your review of the DHJB application?

A: Yes.

Q. Do you recognize Exhibit ED-25?

A: Yes. It is the result of my nutrient screening.

Q: Have you been to the location of the proposed wastewater treatment site?

A: Yes.

Q: When did you visit the location of the proposed wastewater treatment site?

A: We visited the site October 20, 2014.

Q: Who else attended the site visit?

A: Kathy Humphreys and Daniel Ingersoll from the TCEQ, Charles Irvine representing the Protestants, and Eddie McCarthy, and Charlie Hill representing the applicant.

Q: Do you do site visits for all contested case hearings?

A: No.

Q: Why did you do one for this proceeding?

A: I conducted the site visit to verify that the characteristics of the unnamed tributary were as I described in my worksheet. The review conducted by desktop has some questionable areas that I accounted for by suggesting there are pool/pools within the tributary. The site visit also allowed me to see the areas that were tree lined in the aerial imagery.

Q: What did you do on your site visit?

A: We walked the discharge route from the location of the proposed outfall down to FM 1863.

Q: Did you walk in the actual stream bed?

A: We did for a while, then we walked along the stream bank on DHJB's property. The stream bed became inaccessible once we reached the Graham's property boundary

Q: What did you observe?

A: I observed a dry creek most of the duration of the site visit. There were some areas where water, in trace amounts, appeared in the stream. There were also a couple of areas that suggest water would pool, or spread out

and stay for longer periods of time. Several areas upstream of the concrete culvert do not depict a defined bed and banks of a channel, however, slope and vegetation patterns indicated that water flowed in a general direction. These areas could be considered to be more like swales than a defined stream.

Q: Does this change your determination that the discharge route is to an unnamed tributary then to Upper Cibolo Creek in Segment 1908 of the San Antonio River Basin?

A: No. The unnamed tributary characterization encompasses the features mentioned and the uses still protect those aforementioned features.

Q: Did you observe anything that would make you change your determination that the unnamed tributary is intermittent with pools and a limited aquatic life use?

A: No. My determination of what is there now is an intermittent tributary. After visiting the site and seeing the tributary, the tributary currently would be considered intermittent. This intermittent call would take drought conditions into consideration. During a year of normal rainfall, the tributary would most likely be intermittent with pools. The areas that remained wet several days after a rain event, and depressional areas within the unnamed tributary, would probably hold water for longer periods of time. Taking this into account, my final interpretation of the stream would remain intermittent with pools.

Q: After visiting the site, do you still believe that a Total Phosphorus limit of 0.5 mg/L will prevent degradation of the receiving water?

A: Yes. My visit to the site did not change my opinion for the recommended 0.5 mg/L Total Phosphorus limit.

Q: In summary, after your site visit, did you determine that any of your prior determinations were incorrect?

A: No. After visiting the site, my prior determinations would be incorrect taking drought conditions into consideration; however, during a normal period of rainfall, it is my opinion that the prior determination would be correct.

Q: **Are you aware of the issues the Commission referred to SOAH?**

A: Yes.

Q: **Which, if any, of the issues are within the scope of your review?**

A: Issues A, B and D.

II. Referred Issue A: The Proposed Permit will not Adversely Impact the Use and Enjoyment of Adjacent and Downstream Property Owners, nor will it Create a Nuisance

Q: **During your review of an application for a TPDES permit, do you consider if a proposed discharge would create a nuisance?**

A: Yes. However, in my opinion, most of the nuisance issues that are potentially created by a discharge are addressed by the review of the permit writer.

Q: How could a discharge cause a nuisance?

A: A discharge can create algal issues that weren't in the stream previously, which then changes the aesthetics of the stream, and potentially the dissolved oxygen content.

Q: Does TCEQ have rules that address potential nuisance issues related to nutrients?

A: Yes.

Q: **Can you describe the rules?**

A: Yes. 30 TAC 307.4 (e) states that "Nutrients from a permitted discharge or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use." 30 TAC § 307.4 (b)(1) states that concentrations of taste and odor producing substances must not interfere with the production of potable water; 30 TAC § 307.4 (b)(4) states that surface waters must be maintained in an aesthetically attractive condition. 30 TAC § 307.4(h)(4)(i) speaks to aquatic life uses and habitat, both vegetative and physical components must be maintained or mitigated to protect aquatic life uses. These last three sections mentioned above are not directly related to nutrients; however, nutrients can indirectly or directly affect those standards.

Q: Does the proposed permit include any provisions that fall under your purview that address nuisance conditions?

A: The nutrient screening that I performed and the Total Phosphorus limit that I recommended will limit the potential nuisance conditions that could result from algal growth.

Q: In your professional opinion, will the discharge from the DHJB facility adversely impact the use and enjoyment of adjacent and downstream property or create nuisance conditions?

A: No. In my professional opinion if the applicant abides by the conditions I recommended for the draft permit, the DHJB facility will not impact the use and enjoyment of the adjacent and downstream property, nor will it create nuisance conditions related to excessive nutrients.

III. Referred Issue B: The Discharge Route has been Properly Characterized

Q: **Are you familiar with the discharge route that DHJB indicated in its application?**

A: Yes.

Q: **Where in the application is the discharge route described?**

A: It is Item 8 on page 11 of the Administrative Report.

Q: **What did DHJB state the discharge route would be?**

A: The discharge route was described as starting from the plant site to an unnamed tributary of Upper Cibolo Creek; then to Upper Cibolo Creek (segment 1908) of the San Antonio River Basin.

Q: **Do you agree?**

A: Yes.

Q: **Did you do an independent verification?**

A: Yes.

Q: **What did you do?**

A: As I mentioned above, I looked at various maps supplied by the applicant. I also reviewed USGS topographic maps and GIS aerial imagery. I took the latitude and longitude of the proposed outfall location that was provided by the applicant and verified that it matched the plot that the applicant provided on their map. In this case, the latitude and longitude of the proposed outfall did not exactly match the outfall as indicated on the map. When this happens I use the point that the applicant plotted on the map itself and use that as the discharge point. I then looked for adjacent water bodies to determine the appropriate receiving water. I then followed the receiving water downstream on a USGS map to each subsequent stream until I reach the first classified segment.

Q: How did you determine the aquatic life use for the unnamed tributary?

A: Once I characterized the stream as intermittent with pools, there is a presumptive limited aquatic life use, designated by our IPs.

Q: How did you determine the stream characterization?

A: The applicant characterized the receiving water in Item 5, pages 15 and 16 of Domestic Technical Report 2.0. The applicant described the receiving water body as a dry creek in a natural area with "no usage." However, I performed my own review of the receiving water and developed my own characterization. I looked at the USGS topographic map and noted how the stream is characterized by USGS. In this case, USGS illustrated the unclassified stream with blue dashes and dots, which are meant to indicate an intermittent stream. Afterward, I looked at GIS aerial photography and observed the unclassified stream. The aerial photography suggested the existence of a small pool downstream of the discharge point, as well as a pool upstream of the discharge point. Otherwise, the unclassified stream did not appear to contain water. Based upon this, I characterized the unclassified stream as intermittent with perennial pools.

Q: What do you mean by the term "intermittent stream with perennial pools?"

A: The term "intermittent stream with perennial pools" is defined in the Texas Surface Water Quality Standards as an intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.

Q: Where is that definition in the Texas Surface Water Quality Standards?

A: The definition is found at 30 TAC § 307.3(32).

Q: Is your stream characterization memorialized somewhere?

A: Yes, I included this assessment in my standards worksheet.

Q. Do you recognize Exhibit ED-26?

A: Yes. It is my standards worksheet.

Q. Do you recognize Exhibit ED-27?

A: Yes. It is a copy of the aerial photograph that I reviewed.

Q: On the standards worksheet, can you explain what the abbreviations PCR, H, PS/AP, AL, HH and HH-PS+ mean?

A: These abbreviations PCR, H, PS/AP stand for Primary Contact Recreation, High, Public Water Supply, Aquifer Protection and relate to the uses for Upper Cibolo Creek. The abbreviations AL, HH and HH-PS+ mean Aquatic Life, Human Health, Public Water Supply plus Sustainable Fishery and relate to recommended receiving water uses and associated criteria.

Q: Did you determine if the outfall is in the Edwards Aquifer Recharge Zone or Contributing Zone?

A: Yes. The location of the proposed outfall is in the contributing zone of the Edwards Aquifer.

Q: How do you know?

A: The application stated the discharge is located within the contributing zone. I confirmed this using a USGS map and GIS layers. I use the USGS map to plot the discharge point. Then I added the Edwards Aquifer

Regulatory Layer GIS so that I could see the location of the outfall relative to the boundary between the contributing zone and the recharge zone. After that, I confirmed the outfall would be in the contributing zone. I then added the point where the recharge zone begins on the USGS map. Based on the USGS map and the USGS map with the GIS layer, I determined that the discharge point is located within the contributing zone.

Q: Please turn to Exhibit ED-28. Do you recognize this document?

A: Yes.

L pg 24 PFD

Q: Please explain what it is.

A: This is a copy of the USGS topo map that I generated using GIS. I highlighted the proposed discharge route.

Q: I see some hand written notes. Do you recognize the writing?

A: Yes. It is mine.

Q: **Can you determine how far the recharge zone is from the outfall using this document?**

A: Yes. I used the measurement tool in GIS to approximate the distance.

Q: How far is the recharge zone from the outfall?

A: Using the GIS tool, I approximated that the location of the proposed outfall is approximately 565 stream feet from the Edwards Aquifer Recharge Zone.

Q: Please turn to Exhibit ED-29. Do you recognize this document?

A: Yes.

Q: Please explain what it is.

A: The map is an overlay of the Edwards Aquifer Regulatory layer over the USGS map. I made this map to confirm that the proposed discharge point would be located in the Contributing Zone.

Q: Are there any special rules for discharges in the contributing zone of the Edwards Aquifer?

A: Yes. The rules governing the Edwards Aquifer are in 30 TAC Chapter 213. Specifically, the rules regarding activities over the contributing zone are found in Subchapter B.

Q: I noticed that there are some handwritten notes on Exhibit ED-29. Do you recognize the handwriting?

A: Yes. It is mine.

Q: What did you handwrite?

A: I wrote the approximate distance from the outfall to the recharge zone.

Q: Why did you make that notation?

A: Personal notes for myself as well as subsequent reviewers.

Q: Why did you put the word "regulatory" in quotation marks?

A: I made the notation because the boundary used on our GIS layer is defined as the regulatory boundary.

Q: Is this the layer that you commonly use in the ordinary course of your duties to determine the proximity of outfall locations to the Edwards Aquifer Recharge Zone?

A: Yes.

Q: Would it have made a difference in your recommendation on this application if the outfall were located in the Edwards Aquifer Recharge Zone?

A: Yes.

Q: Why?

A: Because discharges directly to the Recharge Zone of the Edwards Aquifer are prohibited.

Q: Please look at Exhibit 30. Have you seen this document before?

A: Yes.

Q: Is it a document that you rely on in your review?

A: Typically I don't need to review the buffer zone map, because all of the information I need for my review is included in the documents I have already discussed. However, sometime between my initial review of this application and before I began preparing for this hearing, someone brought the map to my attention.

Q: Do you recall who brought the buffer zone map to your attention?

A: I do not recall.

Q: Do you recall why it was brought to your attention?

A: It was brought to my attention because of the note at the top regarding the future creek re-routing.

Q: Did you consider this map after it was brought to your attention?

A: Yes.

Q. Why did you consider this map?

A: I wanted to ensure that my recommendation was accurate and the discharge route description did not change.

Q: Do you see the notation "future creek re-routing" just above the diagram of the facility?

A: Yes.

Q: Did you consider this in your review?

A: Not during my initial review, but I considered it once it was brought to my attention.

Q: Does the potential re-routing change your opinion on the discharge route?

A: No it does not.

Q: Why not?

A: My opinion remains the same because the discharge is still into the unnamed tributary. The distance to the next waterbody minimally changed, but the waterbody itself remained the same.

Q: In your professional opinion is the discharge route correctly characterized as: to an unnamed tributary; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin?

A: Yes it is.

Q: In your professional opinion is the unnamed tributary intermittent with pools with a limited aquatic life use?

A: Yes.

Q: In your professional opinion is the outfall in the Contributing Zone of the Edwards Aquifer?

A: Yes.

Q: In your professional opinion are the uses for Segment 1908 – primary contact recreation, public water supply, aquifer protection and high aquatic life use appropriate?

A: Yes.

IV. Referred Issue D: The Treated Effluent will not Adversely Impact the Cattle that Currently Graze in the Area.

Q: How does the antidegradation review assure that cattle grazing in the area are protected?

A: As I discussed above, my antidegradation review determined that the existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Upper Cibolo Creek, which has been identified as having high aquatic life use. Because the

existing water quality should be maintained, there should not be any impact to the cattle grazing in the area.

Q: In your professional opinion, will the treated effluent from the DHJB wastewater treatment plant have a negative impact on the cattle grazing in the area?

A: No.

Q: Does this conclude your testimony?

A: Yes, but I reserve the right to amend it at a later date if it becomes necessary.

THE EXECUTIVE DIRECTOR OFFERS EXHIBITS ED-20 THROUGH ED-30.

APPENDIX E

SOAH DOCKET NO. 582-14-3427
TCEQ DOCKET NO. 2013-2228-MWD

APPLICATION OF DHJB DEVELOPMENT, LLC FOR A MAJOR AMENDMENT TO TPDES PERMIT NO. WQ0014975001	§ § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DHJB DEVELOPMENT LLC'S
PREFILED TESTIMONY OF TRACY BRATTON, P.E.

Q: Please state your name and business address.

A: Tracy Bratton. 3101 Bee Caves Rd Suite 100, Austin, TX 78746

Q: What is your occupation?

A: I am a Professional Engineer with Bowman Consulting

Q: How long have you been employed by Bowman Consulting?

A: I have been at Bowman Consulting for approximately 20 months. This firm was known as Loomis Partners Inc. before it was purchased by Bowman. I have worked for this firm, whether known as Bowman or Loomis, for approximately ten years total.

Q: Can you please generally describe what you do at Bowman Consulting?

A: I help clients with several types of projects, including public infrastructure projects for cities and counties, private sector residential projects and commercial land development projects, I provide engineering and related consulting services for such projects, including roadways, drainage, stormwater, water, sewer, and wastewater projects.

Q: What is your involvement in this proceeding?

A: I have worked on several types of plans for both the Applicant, DHJB Development LLC ("DHJB") and Aligned Party Johnson Ranch Municipal Utility District ("JRMUD").

Q: Are you being compensated for the work you are doing on behalf of the Applicant in these proceedings?

A: Yes

Q: Please describe for me your undergraduate education including the school you attended and the degree you received.

A: I received a B.S. in Civil Engineering in 1997 from the University of Texas.

Q: Do you hold any professional licenses associated that are relevant to the work performed on behalf of the Applicant in this matter?

A: I have a Professional Engineer license in the State of Texas, No. 90095. I also have the following TXDOT Pre-Certifications: 1.5.1 Feasibility Studies; 2.5.1 Water Pollution Abatement Plan; 3.1.1 Route Studies & Schematic Design – Minor Roadway; 3.2.1 Route Studies & Schematic Design – Major Roadway; 4.1.1 Minor Roadway Design; 4.2.1 Major Roadway Design; 8.1.1 Signing, Pavement Marking and Channelization; 10.2.1 Basic Hydraulic Design

Q: Does the "P.E." behind your name mean that you are a registered Professional Engineer in the State of Texas?

A: Yes

Q: Is your Professional Engineering registration current and are you otherwise in good standing?

A: Yes

Q: In order to maintain good standing on your registration, are you required to regularly participate in and/or attend continuing education courses?

A: Yes

Q: How long have you worked for the Applicant in connection with Johnson Ranch Development?

A: I have been project lead for all the design at Johnson Ranch since 2010, but did a little work on the project for a few years before that.

Q: Can you identify what has been marked as Exhibit DHJB 3.1? [Resume]

A: Yes, it's my resume.

Q: Is the information contained in Exhibit DHJB 3.1 true and accurate?

A: Yes

Q: Can you identify what has been marked as Exhibit DHJB 1.2 [DHJB's Application]

A: Yes, it's DHJB's TDPES Permit No. WQ0014975001 ("Permit Application") to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day in the final phase in Comal County

Q: Have you previously reviewed the Application?

A: Yes

Q: Are you generally familiar with the Application?

A: Yes

Q: Can you identify what has been marked as Exhibit DHJB 1.5[Executive Director's proposed permit amendment]?

A: Yes, that's the TCEQ Executive Director's proposed permit amendment.

Q: Have you reviewed the proposed amendment identified as Exhibit DHJB 1.5?

A: Yes

Q: Can you describe for me the authorized discharges in the proposed permit amendment?

A: In the initial phase, the amendment authorizes the discharge of up to 0.0375 MGD per day on average. The next phase authorizes discharge of up to 0.115 MGD. . The final phase would authorize the discharge of up to 0.35 MGD.

Q: Would you please explain what is meant by .35 MGD? Let's start with what is meant by "MGD"?

A: Million Gallons per Day

Q: Now the .35 MGD, does that mean 350,000 gallons per day?

A: Yes.

Q: Have you done any analysis of the impact of the flow being discharged from the WWTP downstream in the unnamed tributary as it flows through neighboring properties?

A: Yes.

Q: I show you what has been marked as Exhibit DHJB 3.2. Can you identify Exhibit DHJB 3.2 for me?

A: Yes, it is a letter I wrote to you in response to your request for clarification of some calculations of estimated water levels in the unnamed tributary used as the discharge route that Bury Engineering had done. The calculations were brought up at Charlie Hill's deposition and, based upon your description of the deposition, you said you thought there were some mis-impressions about how deep the water in the creek downstream would be. My letter addresses those issues and provides some projected water depths based upon the more refined data we had available based upon additional work our Firm had done at

Johnson Ranch in connection with the MUD's Stormwater and Drainage Project after Bury had filed the application and done the calculations.

Q: Please summarize the conclusions in your letter marked as Exhibit DHJB 3.2.

A: My letter, dated October 13, 2014, was meant to address issues raised at Mr. Hill's depositions. I generally focused on the discharge from the proposed plant on Johnson Ranch. The main issue was to update prior calculations made by Bury with data I had in my possession which allowed for more exact calculations than those made by Bury based on the data they had at the time. Many of the estimates and assumptions originally made by Bury were overly conservative with respect to the bed slope of the stream, the watercourse cross-section, and water loss due to infiltration and evaporation. Finally, the letter was meant to better explain the bed and banks of the tributary and to explain the misconceptions that Protestants have, based on some photos taken by the Protestants.

Q: Have you seen the TCEQ Interim Order dated April 21, 2014, marked as Exhibit DHJB 1.8 which led to this SOAH Hearing?

A: Yes

Q: What do you understand the four narrow issues that the TCEQ submitted to be heard by the ALJ in this proceeding to be?

A: As I understand the Order, this hearing is only supposed to deal with: 1) Whether the proposed permit will adversely impact use and enjoyment of adjacent and downstream property or create nuisance conditions; 2) Whether the Discharge Route has been properly characterized; 3) Whether the proposed permit complies with TCEQ siting regulations found in 30 TAC Chapter 309; and 4) Whether the treated effluent will adversely impact the cattle that currently graze in the area.

Q: Based upon your training, education, experience, and knowledge of the project, do you have any reason to believe the proposed permit will adversely impact use and enjoyment of adjacent and downstream property or create nuisance conditions?

A: No, in my opinion, there will be times when no water leaves the Johnson Ranch property. To the extent it makes it to the dry creek bed between Johnson Ranch and the confluence with Cibolo Creek, it will either evaporate fairly quickly, or in wetter periods it will become mixed with stormwater runoff and / or base stream flow in the area flowing naturally into the creek and continue to flow down to Cibolo Creek where it will be further diluted by those flows. Alternatively, if there is a sufficient flow from the treatment plant on a continuous basis to form a stream of water onto the portion of the creek downstream of Johnson Ranch, that stream would likely flow continuously down to Cibolo Creek, not forming stagnant pools in the creek.

Q: Based upon your training, education, experience and knowledge of the project, in your opinion, do you have any reason to believe that the Discharge Route was not properly characterized?

A: No, in my opinion, the discharge route is a watercourse within the definition used in TCEQ Rules, and my understanding of Texas law defines a watercourse to have a bed and banks, whether or not it contains water on a perennial or intermittent basis.

Q: Have you ever been to Johnson Ranch?

A: Yes on multiple occasions over the past 5-6 years.

Q: Are you familiar with the general location of the proposed treatment plant?

A: Yes.

Q: Are you familiar with the location and route of the treated wastewater effluent once discharged from the wastewater treatment plant?

A: Yes.

Q: Can you please describe for me the proposed discharge route?

A: The discharge route is an unnamed tributary of Cibolo Creek. The route flows for approximately 1,900 feet from the wastewater treatment plant outfall before it leaves the Johnson Ranch property. Before it leaves the property, the tributary is joined at a confluence by a second unnamed tributary of the Cibolo. This tributary is described as "Unnamed Tributary 21" in the FEMA floodplain models. From that confluence on Johnson Ranch, the tributary flows from the Johnson Ranch property through the Graham property, then through the Hastings property. Approximately 1,600 feet after leaving the Johnson Ranch property, Unnamed Tributary 21 joins another watercourse on the Hastings property, described as "Unnamed Tributary 20" in the FEMA floodplain models. From that confluence it retains the designation Unnamed Tributary 20 as it continues approximately 600 feet further to Cibolo Creek.

Q: And the route shown in Exhibit 1.7 in your opinion is a properly characterized map showing the Discharge Route?

A: Yes, in my opinion. I have walked portions of the route and observed other portions while making inspections of adjacent development of streets, utilities and drainage.. I have also reviewed it on USGS maps which show it as a dashed blue line for an intermittent creek, and viewed aerial photos of the route from a variety of sources, including Google Earth.

Q: Do you have any reason to believe that the proposed permit does not comply with TCEQ siting regulations found in 30 TAC Chapter 309 in some way?

A: No, not in my opinion. I am familiar with the Johnson Ranch property based upon my work on drainage studies for the MUD, and infrastructure development and design work, for construction of the sewer collecting system as well as floodplain mapping activities.

Q: Do you have any reason to believe that the treated effluent will adversely impact the cattle that currently graze in the area?

A: No, in my opinion, I think it is unlikely that much effluent, undiluted by storm runoff will make it offsite. I have been on the downstream properties and observed that (i) the owners maintain troughs to water the cattle, and (ii) in many places the creek slopes are fairly steep such that cattle would not go down there in pursuit of small pools of water that might collect before evaporating. I live on an operating cattle ranch. Our ranch contains a spring fed creek that is more accessible (shallower slopes) than that downstream of Johnson Ranch. Currently we have approximately 30 head of cows (and a similar number of calves) in the pasture that contains the spring fed creek. While the cattle do at times seek shelter there amongst the trees at times of high heat or heavy rains, I have not observed them to drink from this stream. At 2 to 3 inches deep along most of the length from where the springs emerge to where it crosses our fence to enter major stream, it is simply too shallow to interest them. They instead make very regular trips to water troughs observable from our kitchen window.

Q: The Protestants have expressed concerns that if granted, the discharge of treated effluent from the Johnson Ranch wastewater treatment plant will cause nuisance conditions in the form of standing water and algae blooms in the watercourse from the forming of

intermittent pools, do you have any opinion based upon your experience and training and knowledge of the Johnson Ranch wastewater discharge route about those concerns?

A: For this to happen in any noticeable way would take an extremely specific set of circumstances that is, in my opinion, highly unlikely to happen for any significant period of time. To form stagnant pools on the downstream properties, t the perfect amount of water would have to be discharged and other environmental conditions just right so that that the discharged water could travel far enough down the watercourse to get to a section inside the Protestants' property (not evaporating or infiltrating before it reaches their property), but not have enough volume that it continued to flow down to the Cibolo Creek. I believe based on my training and experience, and knowledge of the conditions on the ground that while it may technically be possible, it is incredibly unlikely for any significant period of time.

Q: Does this conclude your testimony at this time?

A: Yes. I reserve the right to amend or supplement my testimony if additional information becomes available before or during the hearing.

EXHIBITS

All referenced Exhibits are being provided on a separate CD accompanying the Testimony.

APPENDIX F

ED-1

SOAH DOCKET NO. 582-14-3427
TCEQ DOCKET NO. 2013-2228-MWD

APPLICATION BY DHJB DEVELOPMENT, LLC FOR TPDES PERMIT NO. WQ0014975001	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PREFILED TESTIMONY

OF

Phillip Urbany

Wastewater Permitting, Municipal Permits Team

Water Quality Division

TCEQ Office of Water

ON BEHALF OF THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Filed November 3, 2014

ED-1

DIRECT TESTIMONY

PHILLIP URBANY
TABLE OF CONTENTS

EXHIBITS

ED-1	Prefiled Testimony of Phillip Urbany
ED-2	Resume of Phillip Urbany
ED-3	Draft Permit Number WQ0014975001
ED-4	February 18, 2013 Statement of Basis/Technical Summary and Executive Director's Preliminary Decision
ED-5	March 5, 2014 letter from Charlie Hill to David Akoma
ED-6	Compliance History Report
ED-7	April 30, 2013 Statement of Basis/Technical Summary and Executive Director's Preliminary Decision
ED-8	Affidavit of Publication and Tear Sheet for Notice of Hearing on the Application
ED-9	Chief Clerk Certification of Mailed Notice of Hearing and Notice Instructions, Mailed June 30, 2014

ED-10	Tear Sheet, Public Notice Verification Form, and Affidavit of Publication for the Combined Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment (Combined NORI/NAPD)
ED-11	Tear Sheet, Public Notice Verification Form, and Affidavit of Publication for the Revised Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment (Revised NAPD)
ED-12	Public Notice Verification Form, Affidavit of Publication, and Tear Sheet for the Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment (NORI)
ED-13	November 20, 2013 Executive Director's Response to Public Comment (RTC)

I. Background

Q: Please state your name and current place of employment for the record.

A: Phillip Urbany, Texas Commission of Environmental Quality (TCEQ), 12100 Park 35 Circle, Austin, Texas.

Q: How long have you been with the Texas Commission on Environmental Quality or its predecessor agency?

A: 23 years.

Q: In what capacity are you currently employed?

A: Environmental Permit Specialist V.

Q: What are your job responsibilities at the TCEQ?

A: I perform technical evaluations of Texas Pollutant Discharge Elimination System (TPDES) and non-TPDES TCEQ domestic wastewater discharge permit applications, including Texas Land Application Permits (TLAP); I prepare TPDES and TCEQ draft permits; I participate in public meetings, alternative dispute resolutions, contested case hearings on draft permits and permit applications; I undertake special projects such as preparation of responses to inquiries related to domestic wastewater discharge; I conduct staff training and presentations; and I participate in professional training and continuing education courses.

Q: How many wastewater permit applications have you worked on or reviewed in the course of your employment with TCEQ?

A: Over 1,100 to date.

Q: Please describe your educational background.

A: I have a Bachelor of Arts Degree in Biology from State University of New York at Oswego. Also, I have a current Texas Registered Sanitarian license.

Q: Do you recognize Exhibit ED-2?

A: Yes.

Q: What is it?

A: It is my resume.

Q: Does it accurately reflect your educational and work background?

A: Yes.

II. Application Review Process

Q: Are you familiar with the application by DHJB Development, LLC?

A: Yes.

Q: Can we agree to refer to DHJB Development, LLC as "DHJB" or the "Applicant" for the remainder of this testimony?

A: Yes.

Q: Did you perform the initial review of the DJHB application?

A: No.

Q: Who did?

A: David Akoma.

Q: How did you become familiar with the application?

A: The Municipal Permits Team Leader assigned me to review the application and draft permit since I am more familiar with the contested hearing process and I have experience with providing expert witness testimony.

Q: Can you generally describe the process you use to review a permit application?

A: Once a permit application is received by our Applications Team they are given 10 days to review it for administrative completeness. If more information is necessary the applicant is sent a notice of deficiency and has up to 30 days to respond. When the application is administratively complete, a Notice of Receipt of Application is prepared by the Applications Team and submitted to the Office of the Chief Clerk for

mailing. After the administrative review is complete, the Water Quality Assessment staff review the technical aspects of the application information and provide their recommendations in memoranda to the permit coordinator. The permit coordinator will also perform a technical review and then develop a draft permit in accordance with appropriate state and federal regulations, guidance, and policies to protect waters of the state. Each draft permit is reviewed by a senior member of the municipal permitting team for accuracy and consistency. The draft permit is then mailed to the applicant to allow them a 14-day period to make comments. Major amendment draft permits are scheduled concurrently for Executive Review Committee (ERC). The ERC includes representatives from the Environmental Assessments Division, the Permitting Section, Legal Division, and the Field Operations Division. The purpose of the ERC is to coordinate agency action on permit applications. Comments to the draft permit by the applicant and ERC will be evaluated and the draft permit will be revised as necessary.

Q: As a permit writer, which parts of an application do you review?

A: I will review the domestic administrative reports and domestic technical reports and their attachments.

Q: Is this a similar process used by other permit writers in your section?

A: Yes.

Q: In the course of your review, do you consult any rules or guidelines?

A: Yes.

Q: Which rules or guidelines do you apply in your review of a municipal wastewater discharge permit application?

A: During my review, I will consider various provisions from Title 30, Texas Administrative Code (TAC), including the following chapters:

Chapter 30 – Occupational Licensing and Registrations

Chapter 281 - Applications Processing
Chapter 213 - Edwards Aquifer
Chapter 305 - Consolidated Permits
Chapter 307 - Texas Surface Water Quality Standards
Chapter 309 - Effluent Limitations
Chapter 217 - Design Criteria for Sewerage Systems
Chapter 319 - Monitoring frequency

I also consider portions of the federal Clean Water Act (CWA); Texas Water Code (TWC); TCEQ's *2003 Procedures to Implement the Texas Surface Water Quality Standards* (IPs); Commission policies; and EPA guidelines.

Q: Do you review any other materials besides the application, applicable rules, or guidance?

A: I will also consider the memoranda from the Water Quality Assessment Section. In this case that would be the memoranda from Brittany Lee and Charlie Marshall.

III. Review of the Application of DHJB Development, LLC

Q: What portions of the DHJB application did you review in preparation of your testimony today?

A: I reviewed all administrative and technical reports in the application, including the attachments.

Q: Did you review any other materials in preparation of your testimony today?

A: Yes. I reviewed the draft permits, supporting documents, the standards memo and the modeling memo, and other documents from David Akoma's working file.

Q: Do you recognize what I have marked as Exhibit ED-3?

A: Yes, it is a copy of the Draft Permit that was created by David Akoma for this application.

Q: Is it a true and accurate reflection of the original document?

A: Yes.

Q: Can you summarize the difference between the Draft Permit and the existing permit for DHJB?

A: The applicant has applied for an amendment of its existing permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0375 million gallons per day (MGD) in the Interim I phase, 0.115 MGD in the Interim II phase and 0.350 MGD in the Final phase. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.0375 MGD in the Interim phase and 0.075 MGD in the Final phase via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet.

Q: Can you summarize the permit conditions in the Draft Permit?

A: The Johnson Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units for all three phases include: a bar screen, aeration basins, secondary clarifiers, alum injection, a filtration system, sludge holding tanks and a chlorine contact chamber.

Q: Where will the wastewater treatment facility be located?

A: According to the application, the wastewater treatment facility will be located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163.

Q: Did you review Dr. Ross' testimony on pages 20 – 21?

A: Yes I did.

Q: Do you recall Dr. Ross' testimony that there are some conflicts and contradictory descriptions of the proposed treatment process.

A: Yes I do.

Q: Do you have an opinion on her testimony?

A: Yes, I do. I understand why Dr. Ross may be confused. When DHJB initially applied for the amendment, it is our understanding that they intended to keep the no-discharge phase in its permit. The first Statement of Basis/Technical Summary and Executive Director's Preliminary Decision that Mr. Akoma prepared on February 18, 2014 included authorization for subsurface drip irrigation and three discharge phases. During Mr. Akoma's review of the application, he submitted the draft permit and the Statement of Basis/Technical summary to the applicant for review and comment. The applicant provided comments to Mr. Akoma in a letter dated March 5, 2014. In that letter, the applicant indicated that they wanted to eliminate the first phase (the subsurface drip irrigation phase), and remove the references to primary clarifiers in phases II, III, and final. Additionally, in the March 5, 2014 letter the applicant clarified that there will be alum injection in the Interim II phase, which is now the Interim I phase since the original Interim I phase (the subsurface drip irrigation phase) was deleted. This means that there are alum injection and secondary clarifiers in all three phases of the draft permit.

Q: Do you recognize the document that I have placed before you that is labeled Exhibit ED-4?

A: Yes, it is a copy of the February 18, 2014 Statement of Basis/Technical Summary and Executive Director's Preliminary Decision.

Q: Is it a true and correct copy of the original?

A: Yes.

Q: Do you recognize the document that I have placed before you that is labeled Exhibit ED-5?

A: Yes, it is a copy of the March 5, 2014 letter from Charlie Hill to David Akoma.

Q: Do you know if Mr. Akoma made the changes that Mr. Hill requested?

A: It appears that he did because the April 30, 2014 Statement of Basis/Technical Summary and Executive Director's Preliminary Decision (Exhibit ED-7) reflects the changes Mr. Hill requested.

Q: Does the draft permit submitted as exhibit ED-3 and the final Statement of Basis/Technical Summary and Executive Director's Preliminary Decision (Exhibit ED-7) indicate that the applicant will use alum injection and have secondary clarifiers?

A: Yes, they do.

Q: Does the draft permit have effluent limits?

A: Yes.

Q: What are the effluent limits?

A: The effluent limitations for the Interim I phase, Interim II phase, and Final of the draft permit, based on a 30 day average, are 5 mg/L five-day Carbonaceous Biochemical Oxygen Demand ($CBOD_5$), 5 mg/L Total Suspended Solids (TSS), 2 mg/L Ammonia Nitrogen, 0.5 mg/L Total Phosphorus, 126 *E. coli* Colony Forming Units (CFU) or Most Probable Number (MPN) per 100 ml, and 4.0 mg/L minimum dissolved oxygen (DO). 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 based on peak flow. Additionally, there is a pH limit of 6-9 in all phases of the draft permit.

Q: What is an effluent set?

A: The effluent sets in 30 TAC § 309.4 for domestic wastewater treatment plants are intended to represent standard levels of treatment normally required for domestic wastewater treatment plants.

Q: Do applicants request particular effluent sets?

A: Yes. Page 12 of Domestic Technical Report 1.1 of the application for a TPDES permit requires applicants to provide proposed effluent limits and indicate the type of disinfection proposed for each phase.

Q: Did DHJB request a particular effluent set?

A: Yes. The applicant proposed effluent limits of 5 mg/L $CBOD_5$, 5 mg/L TSS, 2 mg/L Ammonia Nitrogen, and 0.5 mg/L Total Phosphorus, or a 5-5-2-0.5.

Q: Is that the effluent set you just described?

A: Yes.

Q: Do you simply take the effluent sets recommended by an applicant and put them in a permit?

A: No.

Q: How do you establish effluent limits in the draft permit?

A: It is a combination of the recommendations from the Water Quality Assessment Section and those established by rule.

Q: What effluent limits do you get from the Water Quality Assessment Section?

A: DO, CBOD, total phosphorus, and ammonia-nitrogen.

Q: Which effluent limits do you get from the rule?

A: The rules provide for pH, TSS, *E. coli.*, and disinfection requirements.

Q: Where in the rules do you get these limits?

A: The requirement for pH is in 30 TAC § 309.1(b). Because this discharge is within zero and five miles of the Edwards Aquifer Recharge Zone, the effluent limits of 30 TAC § 213.6(c)(1) apply. This would include a prescribed limit for carbonaceous biochemical oxygen demand, total suspended solids, and ammonia nitrogen. The Chapter 213 rule sets out a phosphorous limit of 1.0 mg/l; however, the Standards Reviewer in this case recommended a phosphorous limit of 0.5 mg/l. *E. coli* limits are established in Chapter 307 based on the recreational uses of the receiving water, and disinfection requirements are established in 30 TAC § 309.3.

Q: What is the difference between the daily average and the single grab effluent limit?

A: A daily average concentration is the arithmetic average of all effluent samples, composite or grab, as required by a permit, within a period of one calendar month, consisting of at least four separate representative measurements. A grab sample is an individual sample collected in less than 15 minutes.

Q: Why did you recommend a Total Phosphorus limit of 0.5 mg/L?

A: It was the water quality limit proposed by the applicant and supported by the Water Quality Assessment Section.

Q: In your opinion, are these effluent limitations adequate to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries?

A: Yes.

Q: Do you recall Dr. Ross' testimony on pages 21-22 that she does not believe that the treatment process proposed by DHJB will be able to achieve the phosphorus limits in the draft permit?

A: Yes I do.

Q: Do you believe the treatment process proposed will be able to achieve the phosphorus limits in the draft permit?

A: Yes I do.

Q: Why?

A: I believe that Dr. Ross's testimony was based on the assumption that one or more of the phases would not have alum injection with filtration. As I explained above, I believe that these treatment technologies are proposed and that they are incorporated into the April 30, 2014 Statement of Basis/Technical Summary and Executive Director's Preliminary Decision.

Q: What is the peak flow?

A: For the 0.35 MGD final phase the two hour peak flow is 972 gallons per minute

Q: How is that determined?

A: Peak Flow is the highest two hour average flow rate expected to be delivered to the treatment units under any operational conditions, including periods of high rainfall (generally the two-year, 24 hour storm is assumed) and prolonged periods of wet weather.

Q: How often do peak flows typically occur?

A: Peak flow typically occurs during periods of wet weather.

Q: Are you familiar with the 75/90 rule?

A: Yes.

Q: Please explain your understanding of the 75/90 rule.

A: Whenever flow measurements for any domestic sewage treatment facility reach 75 percent of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion or upgrading of the domestic wastewater treatment or collection facilities. Whenever the flow reaches 90 percent of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75 percent of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission. This requirement comes from 30 TAC § 305.126.

Q: Has DHJB applied for a Chapter 210 authorization?

A: No.

Q: Can you briefly describe what a Chapter 210 authorization is?

A: It is an application for the beneficial use of reclaimed wastewater effluent as provided under Title 30 of the Texas Administrative Code Chapter 210. Instead of discharging the treated effluent, it is used to irrigate.

Q: Does the issuance of a TPDES permit have any bearing on a Chapter 210 authorization?

A: Yes, it can. You need either a TPDES or a TLAP permit to request a 210 authorization.

Q: Can an entity obtain a Chapter 210 authorization without having a TPDES or TLAP permit?

A: No.

Q: Why is it important that an entity obtain a TPDES permit before applying for a Chapter 210 authorization?

A: You need the permit for the reuse option because 210 authorizations are "on demand," which means a user of the water may not wish or be able to use the water in some cases. The provider has to have a disposal method for the water in those cases.

Q: Are any special effluent limits required in the TPDES permit for the effluent to be used under Chapter 210?

A: For Type I reclaimed water uses, reclaimed water on a 30-day average must have a quality of: 5 mg/l BOD_5 or $CBOD_5$, Turbidity 3 nephelometric turbidity units (NTU), Fecal coliform or *E. coli* 20 CFU/100 ml (30-day geometric mean), Fecal coliform or *E. coli* 75 CFU/100 ml (maximum single grab), Enterococci 4 CFU/100 ml (30-day geometric mean), and Enterococci 9 CFR/100 ml (maximum single grab). For Type II reclaimed water use, reclaimed water on a 30-day average shall have a quality of 15 mg/l BOD_5 20 mg/l or $CBOD_5$, Fecal coliform or *E. coli* 200 CFU/100 ml (30-day geometric mean), Fecal coliform or *E. coli* 800 CFU/100 ml

(maximum single grab), Enterococci 35 CFU/100 ml (30-day geometric mean), and Enterococci 89 CFU/100 ml (maximum single grab).

Q: Is the collection system considered part of a wastewater treatment facility?

A: No.

Q: Why not?

A: The waste and wastewater from humans or household operations is discharged to a wastewater collection system and is conveyed to a treatment works. It is reviewed separately for the discharge permit application. The TPDES permit is a written document issued by the Commission which, by its conditions, would authorize the permittee to construct and operate the wastewater treatment facility, in accordance with stated limitations for effluent discharge.

Q: Does the permit you prepared for DHJB address stormwater discharges?

A: No.

Q: Why not?

A: Stormwater is regulated under general permits, which are not part of this permitting action.

Q: Are you familiar with the Edwards Aquifer Program?

A: Somewhat.

Q: Are you familiar with the rules regarding discharges over the Edwards Aquifer that are in 30 TAC Chapter 213?

A: Yes.

Q: Do you use those rules in your review of a TPDES permit in any way?

A: Yes.

Q: How do you use those rules?

A: As I stated above, when a discharge is between zero and five miles of the Edwards Aquifer Recharge Zone, I will consult the effluent limitations prescribed in Chapter 213.

Q: Do you know what a Water Pollution Abatement Plan (WPAP) is?

A: I have heard the term before, but I am not aware of the details of what goes into a WPAP.

Q: Do you use WPAPs in your evaluation of TPDES permits in any way?

A: No.

Q: Why not?

A: A WPAP is not a part of my review of a TPDES application. They are received and reviewed by another part of the Agency.

Q: Do you consider the ability of an applicant to comply with TCEQ rules when creating a draft permit?

A: Yes. I will review the compliance history report of an applicant when I create a draft permit.

Q: What role does the compliance history have in the review of an application?

A: The applicant is required to operate in compliance with the Texas Water Code, TCEQ's rules, and the terms of the proposed permit. TCEQ may issue a permit if the application meets all administrative and technical requirements to protect water quality. The applicant's compliance history rating is unclassified for this proposed facility. The compliance history report indicates no final enforcement orders, court judgments, consent decrees, or criminal convictions of the state of Texas and the federal government.

Q: Did the compliance history for DHJB have an impact on the terms and conditions of the Draft Permit?

A: No. There was no rating for the site and no rating for the developer in the compliance history report that was created during the application review. This is because the facility has not been constructed.

Q: Do you recognize what I have marked as Exhibit ED-6?

A: Yes, it is a copy of the compliance history report for this application, which was reviewed during the development of the draft permit.

Q: Is it a true and accurate reflection of the original document?

A: Yes.

Q: As a permit writer, what steps do you take upon completion of a Draft Permit?

A: After declaring an application technically complete, I file the draft permit, statement of basis/technical summary, and application with the Chief Clerk. I draft a Notice of Application and Preliminary Decision, which I submit to the Chief Clerk. The Office of the Chief Clerk prepares the notice document for mailing and publication. This notice is mailed to the applicant by the Chief Clerk with instructions for publication. The notice is mailed concurrently by the Chief Clerk to adjacent landowners named in the permit application and other government agencies. There will then be a public comment period extending 30 days beyond the publication of the NAPD.

Q: Do you recognize what I have marked as Exhibit ED-7?

A: Yes, it is a copy of the Statement of Basis/Technical Summary and Executive Director's Preliminary Decision for this application that was created by David Akoma on April 30, 2013.

Q: Is it a true and accurate reflection of the original document?

A: Yes.

Q: What is the purpose of the Statement of Basis/Technical Summary?

A: The Statement of Basis/Technical Summary describes the processes and conclusions in developing the draft permit and the Executive Director's decision.

Q: Do you know if DHJB published notice of the Draft Permit for this application?

A: Yes.

Q: How do you know that to be true?

A: I have reviewed the Chief Clerk's file and noted that DHJB provided tear sheets and publisher affidavits for the Notice of Application and Preliminary Decision.

Q: Do you recognize what I have marked as Exhibits ED-8 through ED-12?

A: Yes, they are the public notice documents for this application.

Q: Are the exhibits true and accurate reflections of the original documents?

A: Yes.

Q: Did the TCEQ receive any public comments on this application?

A: Yes.

Q: As a permit writer, do you review public comments as a part of your review of an application?

A: Yes.

Q: As a permit writer, are you able to make changes to a Draft Permit in response to a comment?

A: Yes.

Q: As a permit writer, do you respond to comments?

A: Yes. Whenever we receive comments on an application, we will develop a written response to public comments, or RTC. The RTC is then filed with the Chief Clerk, who then mails the document to individuals on the mailing list, including those individuals who provided public comment.

Q: Was a response to public comments developed for this application?

A: Yes.

Q: Do you recognize what I have marked as Exhibit ED-13?

A: Yes, it is a copy of the Executive Director's Response to Public Comments that was created for this application and filed with the Chief Clerk on November 20, 2013.

Q: Is it a true and accurate reflection of the original document?

A: Yes.

Q: Were any changes made to the Draft Permit in response to comments?

A: None.

Q: After reviewing the application of DHJB, the memoranda from the Water Quality Assessment Section, the compliance history of DHJB, the public comments, David Akoma's working file, and TCEQ rules and guidance, is it your opinion that the terms and conditions of the Draft Permit are adequate?

A: Yes.

Q: Are you familiar with the Commissioners' Interim Order for this application, issued April 21, 2014?

A: Yes.

Q: Have you reviewed the four issues referenced in the Interim Order?

A: Yes.

Q: As a permit writer, are any of the referred issues the types of issues you consider during an application review?

A: Yes. Issues A), C), and D) from the Interim Order are similar to some of the issues I consider while reviewing a permit application.

IV. Referred Issue A. The Proposed Permit will not Adversely Impact the Use and Enjoyment of Adjacent and Downstream Property Owners, nor will it Create a Nuisance

Q: Do you review applications to determine whether the proposed activity will adversely impact the use and enjoyment of adjacent and downstream property or create nuisance conditions?

A: Yes. A wastewater treatment facility can have the potential to create a nuisance condition.

Q: What sort of nuisance conditions do you consider relating to adjacent property owners during the review of a TPDES application?

A: I consider odors.

Q: How do you consider nuisance odors during your review?

A: I review the buffer zone map submitted by the applicant. I check to see if the application indicated ownership or control of a buffer zone around wastewater treatment units. The buffer zone must be 150 feet from the edge of the treatment units to the nearest property line.

Q: What is the purpose of the buffer zone?

A: The purpose of the buffer zone is to provide nuisance odor prevention, which is the reduction, treatment, and dispersal of potential odor conditions that interfere with another's use and enjoyment of property that are caused by or generated from a wastewater treatment plant unit.

Q: Are buffer zones required by rule?

A: Yes, buffer zones are required by 30 TAC § 309.13(e).

Q: Did DHJB submit information in its application indicating whether it meets the buffer zone requirements?

A: Yes. DHJB addressed buffer zones in Item 2 of Page 16 of the Administrative Report. They provided a buffer zone map, which indicates that they have ownership of the required buffer zone. The application also

indicates that the proposed facility complies with the Unsuitable Site Characteristics contained in 30 TAC §§ 309.13(a)-(d).

Q: Does the Draft Permit contain any terms or conditions that address the maintenance of buffer zones?

A: Yes.

Q: Can you describe those terms and conditions?

A: The Draft Permit contains Other Requirement No. 6, which provides that the permittee must comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee must comply with the requirements of 30 TAC Section 309.13(e).

Q: What sort of nuisance conditions do you consider relating to downstream property owners during the review of a TPDES application?

A: TCEQ rules in Chapter 307 establish aesthetic parameters for treated effluent discharges. Under the rule, concentrations of taste and odor producing substances must not interfere with the production of potable water by reasonable water treatment methods or impart unpalatable flavor to food fish. Surface water must be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers that adversely affect benthic biota or any lawful uses. The surface waters must be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of surface water in the state. Surface waters must be maintained in an aesthetically attractive condition. Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color. No foaming or frothing of a persistent nature is permissible. Finally, surface waters must be maintained so that oil, grease, or related residue do not

produce a visible film or sheen of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.

Q: How do you address these aesthetic parameters in the development of a draft permit?

A: Every draft permit that I develop includes a standard permit condition designed to address aesthetic parameters. Each effluent limitation page includes a provision stating that the discharge shall contain no floating solids or visible foam in other than trace amounts, and no discharge of visible oil.

Q: Is this provision included in the Draft Permit for DHJB?

A: Yes.

Q: Are there any aspects of the DHJB application that potentially address these aesthetic parameters?

A: Yes.

Q: What are those aspects?

A: DHJB proposes a high degree of treatment in this application. The treatment methods include activated sludge, extended aeration, secondary clarification, alum injection, a filtration system, and chlorination.

Q: Is this a typical treatment process?

A: No, alum injection is a more advanced treatment method. The alum injection functions to coagulate the phosphorous. It also coagulates dissolved and suspended solids, producing a clear effluent. It is also used for drinking water treatment.

Q: Have you personally visited a permitted wastewater treatment site that uses a treatment method that is similar to the one proposed by DHJB?

A: Yes.

Q: Have you personally observed the final, treated effluent from such a facility under normal operating conditions?

A: Yes.

Q: How would you describe the effluent in terms of aesthetic parameters?

A: The treated effluent that I observed was clear water.

Q: In the context of your review of a TPDES permit application, do you consider the ponding of treated effluent downstream of the outfall a nuisance?

A: No, my review of nuisance conditions is limited to those factors listed above.

Q: Do you consider possible nuisance conditions created by silt from development activities during a review of a TPDES permit application?

A: No, I do not.

Q: Why don't you consider possible nuisance conditions from silt during a review of a TPDES permit application?

A: Because silt is usually the result of construction activities. Silt is not a component of domestic wastewater, nor is it something that would be introduced in the treatment process. As discussed above, my consideration of nuisance conditions is limited to nuisance odors associated with the treatment process.

Q: Have you read the prefiled testimony of Mr. Terrell Graham?

A: Yes.

Q: Do you recall his testimony that there is "silt, rocks, and trash" coming onto his property?

A: Yes I do.

Q: Do you consider the "silt, rocks, and trash" on Mr. Graham's property a nuisance?

A: No, not in the context of the draft permit that is the subject of this proceeding.

Q: After reviewing the application materials of DHJB and the Draft Permit, is it your opinion that the Draft Permit and the proposed facility are adequate to address nuisance issues?

A: Yes.

V. Referred Issue C. The Proposed Permit Complies with the Siting Regulations Found in 30 TAC Chapter 309

Q: Do you review applications to determine whether the proposed facility complies with TCEQ siting regulations found in Chapter 309?

A: Yes.

Q: Let's look at each subchapter individually. What does Subchapter A of Chapter 309 address?

A: Subchapter A of Chapter 309 addresses effluent limitations.

Q: Did you review the application of DHJB against these requirements?

A: Yes.

Q: What portions of the application address these requirements?

A: As I stated earlier, the application contained proposed effluent limitations.

Q: Does the Draft Permit contain any terms or conditions that address the regulations in Chapter 309, subchapter A?

A: Yes. Also, as I mentioned earlier, the Draft Permit contains effluent limitations consistent with Chapter 309 and Chapter 213.

Q: What does Subchapter B address?

A: Subchapter B of Chapter 309 addresses location standards for domestic wastewater treatment facilities.

Q: Did you review the application of DHJB against these requirements?

A: Yes

Q: What portions of the application address these requirements?

A: The Domestic Technical Report 1.1, Item 3 on Page 12 of 44 addresses the location of the facility related to the 100-year frequency flood level and wetlands. Domestic Administrative Report 1.1, Item 2 on page 16 of 18 addresses buffer zones, and also whether the applicant will comply with the requirements regarding unsuitable site characteristics in 30 TAC §§ 309.13(a)-(d).

Q: Starting with 30 TAC § 309.12, do you review TPDES permit applications against these standards?

A: No.

Q: Why not?

A: When I look at the requirements of 30 TAC § 309.12, they do not appear to apply to the type of factors we consider in a TPDES discharge permit application. Factors such as active geological processes, groundwater conditions, soils, and climatological conditions all appear to apply to the factors we consider in TLAP applications.

Q: Moving on to 30 TAC § 309.13. Are you familiar with the requirements in this section?

A: Yes.

Q: If this permit is issued, will any of the wastewater treatment plant units be in the 100-year flood plain?

A: No.

Q: How do you know?

The Domestic Technical Report 1.1, Item 5 on Page 12 of 44 was marked indicating the facilities are to be located above the 100-year frequency flood level. The applicant indicated that their source for this information was the FEMA map for unincorporated and incorporated areas of Comal County.

Q: What is a wastewater treatment plant unit?

A: The term "wastewater treatment plant unit" is a defined term found at 30 TAC § 309.11. The term includes "any apparatus necessary for the purpose of providing treatment of wastewater," which the rule describes.

Q: If this permit is issued, will any of the wastewater treatment plant units be in a wetland?

A: None were shown in the application.

Q: If this permit is issued, will any of the wastewater treatment plant units be located closer than 500 feet from a public water well or 250 feet from a private water well?

A: No.

Q: How do you know?

A: In the Domestic Administrative Report 1.0, Item 2, page 16 of 18 the application indicated that DHJB will comply with the requirements of 30 TAC §§ 309.13(a)-(d). This includes setback provisions for public and private wells, found at 30 TAC § 309.13(c). Also, the application includes Exhibits 4A and 4B, which appear to indicate the nearest existing private well to the wastewater treatment units. The applicant has indicated that the existing private well is more than 250 feet from the nearest treatment unit.

Q: Does the draft permit authorize DHJB to use surface irrigation of wastewater effluent, or a soil absorption system. For the purpose of your answer, a soil absorption system includes low pressure dosing systems, drip irrigation systems, and evapotranspiration beds.

A: No.

Q: In conclusion, after reviewing the application materials of DHJB and the Draft Permit, is it your opinion that the Draft Permit and the proposed facility are adequate to address all of the regulations found in Chapter 309?

A: Yes.

VI. Referred Issue D. The Treated Effluent will not Adversely Impact Cattle that Graze in the Area

Q: Do you review applications to determine whether the proposed facility will adversely impact cattle or other livestock?

A: Yes.

Q: How do you address whether a proposed facility will have an adverse impact on cattle or other livestock?

A: Draft permits are developed in accordance with the TSWQS, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. For example, 30 TAC § 307.6(b)(3) provides that water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three. Also, 30 TAC § 307.6(b)(4) provides that water in the state must be maintained to preclude adverse effects on aquatic life, terrestrial life, livestock, and domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.

Q: Did you review the application of DHJB against these requirements?

A: Yes.

Q: What portions of the application address these requirements?

A: These requirements would be addressed by the proposed effluent limits, which I mentioned above. Also, the applicant proposed to implement chlorination for disinfection. This is proposed in the Domestic Technical Report 1.1, Item 3 on page 12 of 44.

Q: Does the Draft Permit contain any terms or conditions that address the potential impacts to cattle or livestock?

A: Yes.

Q: Can you describe those terms and conditions?

A: To ensure that the effluent was properly chlorinated, the Draft Permit contains a requirement that 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 based on peak flow. Additionally, the Draft Permit contains a bacteria limit of 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, which further demonstrates that the disinfection processes of the facility are functioning properly.

Q: After reviewing the application materials of DHJB and the Draft Permit, is it your opinion that the Draft Permit and the proposed facility are adequate to address potential impacts to cattle or livestock?

A: Yes.

Q: Does this conclude your testimony?

A: Yes, but I reserve the right to amend it at a later date if it becomes necessary

THE ED OFFERS EXHIBITS ED-1 THROUGH ED-13.