State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 26, 2025

William A. Faulk, III
Carlota Hopkins-Baul
Attorneys for Cullen RV Resort, LLC — **VIA EFILE TEXAS**

Aubrey Pawelka
ED Staff Attorney — **VIA EFILE TEXAS**

Pranjal Mehta
OPIC Staff Attorney — **VIA EFILE TEXAS**

Stefanie Albright
Sarah Labashosky
Attorneys for Brazoria County — **VIA EFILE TEXAS**

Mark and Sue Schmidt — **VIA EFILE TEXAS**

RE: Docket Number 582-25-11243; TCEQ No. 2024-1750-MWD; Application by Cullen RV Resort, LLC for TPDES Permit No. WQ0016309001

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact

shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at http://www14.tceq.texas.gov/epic/eFiling/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

SOAH Docket No. 582-25-11243
TCEQ Docket No. 2024-1750-MWD

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY CULLEN RV RESORT, LLC FOR TPDES PERMIT NO. WQ0016309001

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY CULLEN RV RESORT, LLC FOR TPDES PERMIT NO. WQ0016309001

PROPOSAL FOR DECISION

Cullen RV Resort, LLC (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016309001. Applicant seeks the permit to discharge a daily average flow not to exceed 8,000 gallons per day of treated domestic wastewater into an onsite detention pond, then through a storm sewer, then to Cowart Creek, then to Clear Creek Above Tidal in Segment No. 1102 of the San Jacinto-Brazos Coastal Basin. The Administrative Law Judge (ALJ) recommends the Application be granted.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party has challenged notice or jurisdiction, which are addressed in the proposed order without further discussion here.

Applicant filed the Application on March 3, 2023. Originally, the Application requested authorization to discharge wastewater at a daily average flow not to exceed 12,000 gallons per day. Applicant amended the Application on March 6, 2024, with a modified discharge route and a reduced daily average flow of 8,000 gallons per day. TCEQ's Executive Director (ED) declared the Application administratively complete and then technically complete, after which the ED issued a draft permit (Draft Permit).[1] The public comment period ended on June 17, 2024. The ED filed and mailed her response to public comments.

On October 31, 2024, Applicant requested a direct referral of the Application to the State Office of Administrative Hearings (SOAH), and on January 28, 2025, this matter was docketed at SOAH. A preliminary hearing was held on April 1, 2025. Applicant, the ED, the Office of Public Interest Counsel (OPIC), Brazoria County (the County), and Mark and Sue Schmidt were named as parties.

The hearing on the merits was held at SOAH's hybrid hearings facility on June 17, 2025, before SOAH ALJ Rebecca S. Smith. Attorneys Cody Faulk and Carlota Hopkins-Baul represented Applicant. Attorneys Stefanie Albright and Sarah Labashosky represented the County. The Schmidts represented themselves.

[1] Administrative Record (Admin. Record), Tab C.

Attorney Aubrey Pawelka represented the ED. Attorney Pranjal Mehta represented OPIC. The record closed on July 31, 2025, with the filing of response briefs.[2]

Applicant presented the testimony of engineer Shelly Young, P.E.,[3] and manager Rahul "Ralph" Gupta.[4] Protestants presented the testimony of county engineer Matt Hanks, P.E.,[5] and engineer Lauren Ross, Ph.D., P.E.[6] The ED presented the testimony of permit coordinator Sonia Bhuiya,[7] and aquatic scientist Michelle Labrie.[8]

II. BURDEN OF PROOF

TCEQ referred this case to SOAH under Texas Water Code section 5.557, which governs direct referral of environmental permitting cases. Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3), which provides:

> (i-1) In a contested case regarding a permit application referred under Section . . . 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

[2] The Schmidts did not file briefs.

[3] App. Ex. F (Young direct).

[4] App. Ex. J (Gupta direct).

[5] County Ex. 13 (Hanks direct).

[6] County Ex. 1 (Ross direct).

[7] ED Ex. ED-SB-1 (Bhuiya direct).

[8] ED Ex. ED-ML-1 (Labrie direct).

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 . . .; and

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

(i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. Accordingly, the burden of proof remains with the Applicant to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.[9]

[9] 30 Tex. Admin. Code § 80.17(a), (c).

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), were offered and admitted into the record for all purposes.

III. THE PROPOSED FACILITY AND THE DRAFT PERMIT

Applicant seeks a new TPDES Permit to authorize discharge of treated domestic wastewater at daily average flow not to exceed 8,000 gallons per day. The proposed wastewater treatment facility (Facility) would serve an expanded Cullen RV Resort. The Cullen RV Resort currently has 97 recreational vehicle (RV) sites and plans to add another 15.[10] Applicant also intends to add office and storage buildings that would have four restrooms, seven laundry machines, and shower facilities near the pool.[11] The Resort is currently served by an onsite sewage facility, which is permitted for a maximum capacity of 4,080 gallons per day.[12]

The Facility would be located at 3802 Joe Drive, Pearland, Brazoria County, Texas. The treated effluent would be discharged to an onsite detention pond, then to a roadside ditch on the west side of Joe Drive, then through a storm sewer, then to Cowart Creek, then to Clear Creek Above Tidal in Segment No. 1102 of the San Jacinto-Brazos Coastal Basin.

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[10] App. Ex. F at 000008.

[11] App. Ex. F at 000008-000009.

[12] App. Ex. F at 000010. The maximum capacity of an onsite sewage facility is 5,000 gallons per day. App. Ex. F at 000010.

The Facility will be an activated sludge process plant operated in the conventional aeration mode. Treatment units will include a bar screen, an equalization basin, two aeration basins, a final clarifier, and a chlorine contact chamber.

The Draft Permit provides for effluent limitations, based on a 30-day average, of 5 milligrams per liter (mg/L) five-day carbonaceous biochemical oxygen demand, 5 mg/L total suspended solids, 2 mg/L ammonia nitrogen, 126 colony-forming units or most probable number of *Escherichia coli* (*E. coli*) per 100 milliliters , and 4.0 mg/L minimum dissolved oxygen.[13]

IV. ISSUES AND ANALYSIS

Through their evidence and briefing, the parties raised the following issues:

- Whether the Application is accurate and complete.

- Whether the Draft Permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code section 26.0282 and the general policy to promote regional or area-wide systems under Texas Water Code section 26.081.

- Whether the Draft Permit is protective of surface water quality and the existing uses of the receiving waters, in accordance with applicable Texas Surface Water Quality Standards.

[13] Admin. Record, Tab C at 000005.

- Whether the Draft Permit complies with applicable antidegradation requirements.

- Whether the Draft Permit complies with nuisance odor requirements.

A. ACCURACY AND COMPLETENESS OF THE APPLICATION

1. Accuracy of the Application

TCEQ's application form asks the following question: "Is or will the treated wastewater discharge to a city, county, or state highway right-of-way, or a flood control district drainage ditch?"[14] Applicant answered "no" to that question.[15] The County presented evidence that the ditch was within the county's right-of-way and that the storm sewer was owned by the County.[16] Applicant's expert Dr. Lauren Ross testified that the fact that the discharge flows through the right of way creates a different relationship between the effluent and human exposure than would result if the discharge were into something else.[17] However, when Dr. Ross was asked if she could identify anything in the Draft Permit that was incorrect because of that answer, she responded:

> I can't think of anything in the permit itself that would have changed. I mean, they might have gone in, for example, and changed the allowable bacteria counts of the chlorination. I mean, there might have been something like that that they could have added. They might have added a special provision that would require, and I have seen this in some

[14] Admin. Record, Tab D at Cullen RV 012.

[15] Admin. Record, Tab D at Cullen RV 012.

[16] County Ex. 13 at 4-5.

[17] Transcript (Tr.) at 104.

> wastewater permits, particular permissions against power outages and failures.
>
> There are some issues that they certainly could put in a permit that -- that they might have considered given a high concern around the potential for affecting human health in a very direct way.[18]

The County argues that Applicant inaccurately answered this question because after the initial discharge into a detention pond, the discharge route continues to a ditch in its right-of-way and stormwater facilities.[19] The County points to evidence that Applicant was aware both that the ditch was in a right-of-way and that the County owned the stormwater facilities.[20] OPIC agrees with the County.[21]

The ED argues that the Draft Permit accurately describes the proposed discharge route.[22] So, regardless of Applicant's answer to the question, the correct route was evaluated, including the portion of the route in the County's right-of-way.

Applicant contends that the discharge route was clear from the remainder of the Application, including statements on the same page as that answer.[23] In other words, it argues that even if it should have answered that question differently—something it does not concede—there is no harm. Additionally, the Draft Permit

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[18] Tr. at 106.

[19] County Closing at 4-5.

[20] County Closing at 6; Tr. at 158-59 (admitting that Mr. Gupta was aware that the County owns and maintains rights-of-way for its roads, including Joe Drive, the location of the roadside ditch).

[21] OPIC Closing at 7.

[22] ED's Reply at 2.

[23] App. Reply at 3 (citing App. Ex. D at 000015).

expressly provides that it does not grant the right to use public or private property for conveyance of wastewater along the discharge route.[24] Applicant must still obtain any necessary easements or access rights.[25]

The ALJ finds that any inaccuracy from Applicant's failure to indicate that the discharge route included the County's right-of-way did not render the Application inaccurate, given that the proposed discharge route, including the roadside ditch, was evident.[26]

2. Completeness of the Application

The County next argues that the Application was incomplete because Applicant failed to provide certain information about its proposed wastewater flows. As part of showing need, an applicant is required to provide information that would serve as a basis for estimating wastewater flow volume.[27] In this case, that information would include the number of RV spaces and the anticipated square footage of office and warehouse space. An applicant must submit information in terms of Living Unit Equivalents (LUEs), which are standard units of water quantity

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[24] ED Ex. ED-SB-3 (Draft Permit) at 0319 ("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. . . . It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.").

[25] App. Reply at 4.

[26] Given this, the ALJ does not need to address Applicant's arguments that a) the question only asks about the initial receiving water and not the entire discharge route, b) that most of the water will remain in the detention pond, so discharge generally will not follow the entire route; and c) that the phrase "to a city, county, or state highway right-of-way" means "to a city highway right-of-way, county highway right-of-way, or state highway right-of-way" rather than "to a right-of-way of a city, county, or state highway." App. Closing at 13.

[27] ED Ex. ED-SB-1 at 0311.

and demand.[28] The County argues that Applicant's failure to provide this information meant that it failed to provide "all information reasonably required by the Commission" under Texas Water Code section 26.027(b).

a) Evidence

Applicant supplemented the Application on May 22 and 23, 2025, to provide information about flows.[29] In particular, Applicant indicated that its plans are for the RV Resort to expand to 112 LUEs at 40 gallons per LUE. In addition to the LUEs, there will be four restrooms at 20 gallons per connection, 112 showers at 10 gallons per LUE, and seven laundry washing machines at 200 gallons per unit, totaling 8,000 gallons per day, or 0.008 million gallons per day.[30] Applicant's engineer, Shelley Young, based her calculations on 40 gallons per day per RV spot, with an additional 10 gallons per day per spot for the proposed showers,[31] which is the calculation method under the onsite sewage facility rules found at 30 Texas Administrative Code chapter 285.[32]

The County's expert Dr. Ross also calculated flows. However, she calculated those flows based on 30 Texas Administrative Code chapter 217, which sets out the design criteria for domestic wastewater services. She testified that under 30 Texas

[28] ED Ex. ED-SB-1 at 0311.

[29] ED Ex. ED-SB-1 at 0313.

[30] ED Ex. ED-SB-1 at 0311.

[31] App. Ex. F at 000008-000009; App. Ex. H.

[32] Tr. at 116. This testimony counters the County's argument that the numbers in the hydraulic flow sheet "are not supported by data calculations, or supporting information to explain the calculations." County Closing at 9.

Administrative Code section 217.32(a)(3), trailer park flows are based on assuming 2.5 people per trailer and flow rates of 50 to 60 gallons per day.[33] Using the lower flow amount, she predicted that the flow rate would be 12,625 gallons per day, over 1.5 times larger than the requested 8,000 gallons per day.[34]

ED permit coordinator Sonia Bhuiya testified that TCEQ estimates the amount of wastewater flow volume using the same table Dr. Ross used, which is found in 30 Texas Administrative Code section 217.32(a)(3).[35] She testified that she uses this table as a base to see if the numbers make sense. If the flows do not meet the rules, then she "confirm[s] with our plans and specification engineers if the values provided in the application are suitable to proceed with the draft permit."[36]

b) Argument and Analysis

The County first objects to the timing of Applicant's supplement, noting that the hydraulic flow information was not provided until the ED's witnesses requested it while preparing their prefiled testimony. Because the information about flows was unavailable when the County drafted its prefiled testimony, it did not have the opportunity to review these numbers when preparing its prefiled testimony.[37]

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[33] County Ex. 1 at 15.

[34] County Ex. 1 at 16.

[35] ED Ex. ED-SB-1 at 314.

[36] ED Ex. ED-SB-1 at 314.

[37] County Closing at 8.

Nevertheless, at hearing, the County did not ask to present supplemental testimony because of the new information, nor did it explain how its prefiled testimony would have changed if it had Applicant's flow information. After all, Dr. Ross testified about her own calculations and the basis for them. The County did not show harm from the failure to provide the hydraulic flow chart.

Additionally, the ALJ finds that failure to calculate the flow amount following 30 Texas Administrative Code section 217.32(a)(3) is not fatal to an application. Ms. Bhuiya testified that an application's failure to follow the design rule for calculating flows does not lead to automatic denial. Staff will confirm that the flows set out in the application are suitable and then proceed.[38]

The County also argues that because the calculation of hydraulic flows did not follow the proper rule, the Facility will necessarily discharge more than 8,000 gallons per day. However, the Draft Permit only authorizes 8,000 gallons per year. Even if Applicant incorrectly estimated the flows, it may not discharge more than that amount without violating the Draft Permit. The ALJ will not assume that Applicant will violate a permit.

B. REGIONALIZATION

Texas Water Code section 26.081(a) sets out the state's policy in favor of regionalization:

[38] ED Ex. ED-SB-1 at 314.

> The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

To analyze regionalization, TCEQ requires an applicant to provide information regarding whether any wastewater treatment plant or collection system within three miles of the proposed plant has sufficient existing capacity to accept the additional volume of wastewater that is proposed.[39] For this reason, applicants are required to provide copies of all correspondence with the owners of the existing facilities within three miles of the proposed facility concerning connection to their system.

Relatedly, under Texas Water Code section 26.0282, the Commission has the authority to deny or alter the terms of a proposed permit based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems.

The issue of need is related to, but distinct from, the regionalization inquiry. To obtain a permit, an applicant must demonstrate a need for its proposed facility by

[39] ED Ex. ED-SB-1 at 0310.

showing that no other wastewater treatment facilities in the area could provide service.[40]

The County argues that the "use of a regional facility makes sense for the project" because six wastewater outfalls are located within three miles of the proposed system, and the closest facility, the City of Pearland, has a certificate of convenience and necessity boundary only 550 feet from the proposed discharge location.[41] The County also argues that Applicant's difficulty maintaining its onsite sewage facilities in compliance with the relevant laws and regulations makes using a regional facility preferable.[42]

Applicant, however, presented evidence that it contacted the six neighboring providers to request service.[43] All providers either did not respond or denied the request.[44] The City of Pearland, the owner of the closest facility, refused service noting that its "position has been not to provide service outside the city limits."[45] The ED presented evidence that TCEQ's regionalization policy does not require it to deny an application because there is a facility or collection system within three miles.[46]

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[40] ED Ex. ED-SB-1 at 0310.

[41] County Closing at 14.

[42] County Closing at 14.

[43] Admin. Record, Tab D at 000116-000124.

[44] App. Ex. F at 000010.

[45] Admin. Record, Tab D at 000118.

[46] ED Ex. ED-SB-1 at 0311.

The County does not dispute that the neighboring providers did not agree to provide service. TCEQ's policy does not require them to provide service. An argument that it makes sense for the other providers to provide service even though those providers did not agree to do that cannot be the basis for denying the Application. The Draft Permit should not be denied or altered based on need or regionalization.

C. SURFACE WATER QUALITY AND ANTIDEGRADATION

The Facility's proposed discharge is subject to the Texas Surface Water Quality Standards (TSWQS) found in title 30, chapter 307 of the Texas Administrative Code. The TSWQS identify appropriate uses for the state's surface waters (e.g., aquatic life, recreation, and public water supply) and establish narrative and numerical water quality standards to protect those uses. TCEQ has standard procedures for implementing the TSWQS, referred to as the Implementation Procedures (IPs), which are approved by the United States Environmental Protection Agency (EPA).[47] The TSWQS and IPs are used in reviewing permit applications.

TCEQ has not adopted numeric criteria for nutrients in streams and rivers, so they are evaluated based on the general narrative criteria for nutrients and the antidegradation rules. Among those narrative criteria are the requirements that the water be maintained in an aesthetically attractive condition[48] and a prohibition on

[47] 30 Tex. Admin. Code § 307.2(e).

[48] 30 Tex. Admin. Code § 307.4(b)(4).

excessive algal growth that impairs an existing, designated, presumed, or attainable use.[49]

The TSWQS also require that proposed wastewater discharges undergo an antidegradation review. Antidegradation review is divided into two tiers. Tier 1 requires that "[e]xisting uses and water quality sufficient to protect those existing uses must be maintained."[50] Tier 2 is more stringent and generally prohibits the lowering of water quality by more than a de minimis amount for waters that exceed fishable/swimmable quality, unless it can be shown that lowering is necessary for important economic or social development.[51]

The County raises three arguments about surface water quality. First, it argues that Applicant has not shown that lowering of water quality is necessary for important economic or social development under Tier 2 antidegradation rules. Next, it argues that the ED failed to address the impacts of the proposed discharge on downstream ammonia or nitrate concentrations.[52] Third, it argues that the ED failed to consider what effect conveying the discharge through an enclosed storm sewer pipe would have.

[49] 30 Tex. Admin. Code § 307.4(e).

[50] 30 Tex. Admin. Code § 307.5(b)(1).

[51] 30 Tex. Admin. Code § 307.5(b)(2).

[52] County Closing at 14.

1. Antidegradation

The County argues that Applicant has not shown that lowering of water quality is necessary for important economic or social development under Tier 2 antidegradation rules. The County suggests that a Tier 2 antidegradation review was required by noting that Segment 1102 has assigned uses of primary contact recreation and high aquatic life use.[53]

The ED's standards reviewer, aquatic scientist Michelle Labrie, testified that she performed a Tier 1 antidegradation review, which was the appropriate review level.[54] Ms. Labrie testified that she followed the IPs when assessing the aquatic life uses of the receiving water. Table 1 of the IPs sets out the aquatic life uses categories for different types of waterbodies. Ms. Labrie testified that Cowart Creek, as an intermittent stream with perennial pools, has a limited aquatic life use, which makes a Tier 1 review appropriate.[55] The onsite detention pond has a limited aquatic life use, and the roadside ditch has a minimal aquatic life use, both of which also call for a Tier 1 review.[56] In her antidegradation review, Ms. Labrie determined that existing water quality uses would not be impaired by discharges authorized under the Draft Permit.[57]

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[53] County Closing at 14-15; ED Ex. ED-ML-5 at 300.

[54] ED Ex. ED-ML-1 at 0005.

[55] ED Ex. ED-ML-1 at 0005-0006, 0010.

[56] ED Ex. ED-ML-5 at 300.

[57] ED Ex. ED-ML-1 at 0006.

Ms. Labrie also testified that Tier 2 applies to waters with exceptional, high, or intermediate aquatic life uses and that no waters with those uses were present in the stream reach she assessed under the IPs.[58] As set out in the IPs, antidegradation review looks at three miles past the discharge, but that distance could be extended if the impact was expected to go farther than that.[59] In her view, Segment 1102 was too far downstream for such a small discharge to impact its aquatic life use.[60]

The ALJ agrees that a Tier 1 review was appropriate for the Application, and that the evidence does not suggest a Tier 2 review was called for by the IPs. Thus, Applicant was not required to show that lowering of water quality is necessary for important economic or social development under Tier 2 antidegradation rules.

2. Ammonia and Nitrate

The County's expert Dr. Ross testified that TCEQ has noted concerns with nitrate concentration in one of Segment 1102's assessment units, located in the final 2.8 miles of the discharge route.[61] The assessment unit is around nine miles downstream of the discharge point. She added that despite these nitrate water quality concerns in the receiving water, TCEQ staff failed to evaluate whether the proposed discharge would impact downstream nitrate concentrations.[62] She also testified that

[58] ED Ex. ED-ML-1 at 0007.

[59] Tr. at 181.

[60] ED Ex. ED-ML-1 at 0007-0008 (citing Table 2 of the IPs, ED Ex. ED-ML-3 at 0031).

[61] County Ex. 1 at 7; Tr. at 77.

[62] County Ex. 1 at 7.

TCEQ has recently identified concerns for ammonia in one of the Cowart Creek assessment units.[63]

ED witness Michelle Labrie testified that because the Draft Permit contains an ammonia nitrogen limit that should be protective, she has no concerns about ammonia and nitrate for the Application.[64] TCEQ staff considers other nutrient limits, such as total phosphorous limits, for a discharge of at least 0.25 million gallons per day, but the discharge authorized by the Draft Permit is only 0.008 million gallons per day.[65] Staff could consider nutrients at lower discharge amount if there were specific concerns about high nutrients in the immediate receiving waters, but there are no such concerns with this Application.[66]

The ALJ finds that evidence noting concern with nitrogen nine miles downstream and evidence also noting concern with ammonia in a portion of Cowart Creek is insufficient to rebut the prima facie demonstration.

3. Enclosed Storm Sewer Pipe

The County also argues that the ED failed to consider the impact that conveyance through an enclosed storm sewer pipe and then to an open channel

[63] County Ex. 1 at 7 (citing County Ex. 7 at 2).

[64] ED Ex. ED-ML-1 at 0010.

[65] ED Ex. ED-ML-1 at 0009; Tr. at 183. The County has argued that Applicant's inaccurate flow amounts (discussed in section IV.A.2 above) call this analysis into question. However, even Dr. Ross's estimate of 12,625 gallons per day is well below this threshhold.

[66] Tr. at 182-83.

would have on potential eutrophication.[67] The County notes that Ms. Labrie testified that a discharge flowing for three miles in an enclosed pipe could be impacted differently than a discharge flowing for three miles in an open stream.[68]

But in her testimony, Ms. Labrie was also asked if she was concerned about, among other things, excessive nutrients causing eutrophication. She responded, "No. The proposed flow is very low, and the receiving waters do not have the characteristics that would be associated with a highly nutrient sensitive waterbody. With the existing limits in the permit, the proposed discharge should not result in the above-mentioned concerns."[69]

The ED argues that despite this concern, the County has not presented any modeling or scientific analysis to refute her findings, stating "[g]eneral assertions about nutrient loading and eutrophication, unsupported by empirical data, do not meet the evidentiary standard to rebut a prima facie demonstration."[70] Applicant argues that the same low flow amount that results in nutrient level analysis not being necessary also resolves any eutrophication concerns.

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[67] County Closing at 15.

[68] County Closing at 15 (citing Tr. at 183).

[69] ED Ex. ED-ML-1 at 0008.

[70] ED's Reply at 3.

The ALJ agrees with the ED that merely stating that there could be concerns that should have been examined, particularly in the absence of a rule requiring examination, is not sufficient to rebut the prima facie demonstration.

D. NUISANCE ODOR REQUIREMENTS

The County also argues that the Draft Permit fails to comply with TCEQ's rule requiring all wastewater treatment plant units to be located at least 150 feet from the nearest property line or alternatively to provide a nuisance odor prevention plan or voluntary deed restrictions.

The TCEQ rule found at 30 Texas Administrative Code section 309.13(e) provides three alternative ways to meet the requirement to abate and control nuisance odor "prior to construction." The three methods are buffer zones from the nearest property line (500 feet for lagoons with anaerobic activity; 150 feet for all other wastewater treatment plant units); a nuisance odor prevention request in the form of an engineering report containing specific elements; or evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant.[71] The rule provides that a nuisance odor prevention plan may be submitted either with a permit application or "submitted for [ED] approval after the permitting process is completed."[72]

[71] 30 Tex. Admin. Code § 309.13(e).

[72] 30 Tex. Admin. Code § 309.13(e)(2).

The County contends that although the Application indicates that this requirement would be met via ownership of the 150-foot buffer zone, the evidence shows that three tracts of land not owned by Applicant are within the buffer zone.[73] The County argues that although the ED submitted a revised Draft Permit requiring a nuisance odor prevention plan after the ownership issue became clear, "[a] last-minute nuisance odor plan requirement addition to the Draft Permit does not adequately address the County's concerns regarding impacts . . . on adjacent landowners."[74] In particular, the County is concerned that Applicant's current plan to bury the facilities fails to address ventilation odors.[75]

The ED and Applicant respond that the amendment of the Draft Permit to require a nuisance odor prevention plan is consistent with TCEQ's standard permitting process.

The ALJ agrees. TCEQ's rule at 30 Texas Administrative Code section 309.13(e) expressly provides that review of an odor prevention plan may occur after a permit is issued, and the Draft Permit requires Applicant to obtain approval of a plan before it can begin operation. Issues related to ventilation odors can be addressed after the permitting process is complete but before Applicant is permitted to construct the Facility. The County did not rebut the prima facie demonstration on this issue.

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[73] County Closing at 16.

[74] County Closing at 17.

[75] County Closing at 17.

V. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, and when doing so, must consider the following factors:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits to the various parties of having a transcript; and
- any other factor which is relevant to a just and reasonable assessment of costs.[76]

Additionally, the Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.[77]

No party presented argument about transcription costs. Considering the Commission's factors, the ALJ finds that the transcript was ordered by the ALJ, not requested by either party, and that no party has claimed a financial inability to pay transcript costs. Applicant and the County fully participated in the hearing and benefitted from having a transcript in their briefing. The Schmidts participated less and did not file a brief. The ALJ notes Applicant is seeking a permit for its financial benefit, whereas the protestants are seeking to maintain the status quo. Given the

[76] 30 Tex. Admin. Code § 80.23(d)(1).

[77] 30 Tex. Admin. Code § 80.23(d)(2); *see* Tex. Water Code §§ 5.228, .273, .275, .356.

factors, the ALJ finds that Applicant should bear 75% of the transcript costs and the County should bear 25% of the cost.

VI. CONCLUSION

For the reasons stated above, the ALJ recommends that the Application be granted. In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated with the accompanying proposed Order of the Commission.

Signed September 26, 2025.

ALJ Signature:

Rebecca S Smith

Rebecca Smith

Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION
BY CULLEN RV RESORT, LLC
FOR TPDES PERMIT NO. WQ0016309001
SOAH DOCKET NO. 582-25-11243, TCEQ DOCKET NO. 2024-1750-MWD

On , the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Application by Cullen RV Resort, LLC for TPDES Permit No. WQ0016309001. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Rebecca Smith with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on June 17, 2025, via Zoom videoconference.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Applicant filed its application (Application) for a new TPDES permit with TCEQ on March 3, 2023.

2. As originally filed, the Application sought to have TCEQ authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day.

3. The Application was amended on March 6, 2024, to reflect a reduced daily average flow of 8,000 gallons per day and a modified discharge route.

4. As amended, the Application seeks to have TCEQ authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day.

5. TCEQ's Executive Director (ED) declared the Application administratively complete and then technically complete. The ED issued a draft permit (Draft Permit) and made it available for public review and comment.

6. The proposed wastewater treatment facility (Facility) would be located at 3802 Joe Drive, Pearland, Brazoria County, Texas, and would serve the Cullen RV Resort.

7. The Facility will be an activated sludge process plant operated in the conventional aeration mode.

8. Treatment units will include a bar screen, an equalization basin, two aeration basins, a final clarifier, and a chlorine contact chamber.

The Draft Permit

9. The permit will authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day.

10. The Draft Permit provides for effluent limitations, based on a 30-day average, of 5 milligrams per liter (mg/L) five-day carbonaceous biochemical oxygen demand , 5 mg/L total suspended solids , 2 mg/L ammonia nitrogen , 126 colony-forming units or most probable number of *E. coli* per 100 milliliters , and 4.0 mg/L minimum dissolved oxygen .

11. The treated effluent would be discharged to an onsite detention pond, then to a roadside ditch on the west side of Joe Drive, then through a storm sewer, then to Cowart Creek, then to Clear Creek Above Tidal in Segment No. 1102 of the San Jacinto-Brazos Coastal Basin.

12. The unclassified receiving water uses are limited aquatic life use for the on-site detention pond and Cowart Creek and minimal aquatic life use for the roadside ditch.

13. The designated uses for Segment 1102 – Clear Creek Above Tidal are primary contact recreation and high aquatic life use.

14. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English and Spanish in *The Facts* on April 28, 2023, and May 13, 2024.

15. The combined NORI and Notice of Application and Preliminary Decision was published in *The Facts* on May 16, 2024.

16. The comment period for the Application closed on June 17, 2024.

17. TCEQ's Office of the Chief Clerk received timely comments from Brazoria County (the County) and Mark and Sue Schmidt.

18. The ED filed her Response to Public Comments on December 19, 2024.

Proceedings at SOAH

19. Applicant requested a direct referral of the Application to SOAH, and the Commission docketed this matter at SOAH.

20. On April 1, 2025, after notice, a preliminary hearing was convened in this case via videoconference by SOAH ALJ Rebecca S. Smith. Applicant, the ED, the Office of Public Interest Counsel (OPIC), the County, and the Schmidts were named as parties.

21. On April 4, 2025, the ALJ issued the parties' agreed procedural schedule.

22. The hearing on the merits was held at SOAH's hybrid hearings facility on June 17, 2025, before ALJ Smith. Attorneys Cody Faulk and Carlota Hopkins-Baul represented Applicant. Attorneys Stefanie Albright and Sarah Labashosky represented the County. The Schmidts represented themselves. Attorney Aubrey Pawelka represented the ED. Attorney Pranjal Mehta represented OPIC. The record closed on July 31, 2025, with the filing of response briefs.

Accuracy of the Application

23. Even though in the Application, Applicant answered "no" to the question "Is or will the treated wastewater discharge to a city, county, or state highway

right-of-way, or a flood control district drainage ditch?," TCEQ staff understood that the discharge route included a roadside ditch and a storm sewer.

24. The County's expert could not specify how the Draft Permit would have been different had Applicant answered this question differently.

25. The County did not rebut the prima facie demonstration regarding the accuracy of the Application.

26. Applicant's engineer estimated the hydraulic flows for the Application using rules for onsite sewer facilities, rather than the design rules for domestic wastewater facilities found in 30 Texas Administrative Code chapter 217.

27. An applicant's failure to calculate hydraulic flows under the chapter 217 rules does not necessarily lead to denial. Instead, the ED's permit coordinator confirms that the flows in the application are suitable and then proceeds.

28. Regardless of the methodology used to estimate the flows, the Draft Permit does not authorize discharge over a daily average of 8,000 gallons per day.

Regionalization

29. Six wastewater outfalls are located within three miles of the proposed system.

30. Applicant contacted the six neighboring providers to request service. All providers either did not respond or denied the request.

31. A Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by discharge pursuant to the Draft Permit.

32. The Tier 1 analysis complied with 30 Texas Administrative Code section 307.5 and the Implementation Procedures (IPs) for the Texas Surface Water Quality Standards.

33. Because of the distance to Segment 1102 and the small size of the discharge, there is no basis in the record to suggest that a Tier 2 antidegradation review should have been performed.

34. The ammonia nitrogen limits in the Draft Permit will be protective of the receiving waters.

35. Under the IPs, TCEQ staff considers nutrient limits for a discharge of at least 0.25 million gallons per day, but the discharge under the Draft Permit is only 0.008 million gallons per day.

36. Under the IPs, Staff could consider nutrients at lower discharge amount if there were specific concerns about high nutrients in the immediate receiving waters, but there are no such concerns with this Application.

Nuisance Odor

37. The Draft Permit requires Applicant to obtain approval of a nuisance odor plan before it can begin construction.

Transcription Costs

38. The ALJ required that the hearing on the merits be transcribed.

39. No evidence was presented about the parties' ability to pay transcription costs.

40. All parties participated in the hearing on the merits.

41. Applicant and the County benefited equally from having the transcript.

42. Based on the factors set out in 30 Texas Administrative Code section 80.23(d)(1), Applicant should bear 75% of the transcription costs and the County should bear 25%.

II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5 and 26.

2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code section 2003.047.

3. Notice was provided in accordance with Texas Water Code sections 5.115 and 26.028; Texas Government Code sections 2001.051 and .052, and 30 Texas Administrative Code sections 39.405 and .551.

4. Applicant's filing of the Administrative Record established 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. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .117(c)(1), .127(h).

5. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to a matter referred under Section 5.557 of the Texas Water Code; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).

6. If a party rebuts the prima facie demonstration, Applicant and the ED may present additional evidence to support the Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).

7. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

8. The burden of proof is by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).

9. The Application satisfied the requirement to submit an application to the Commission containing all information it reasonably requires. Tex. Water Code § 26.027(b).

10. The Commission may require all reasonable methods to encourage and promote the development of area-wide and regional wastewater systems to protect water quality. Tex. Water Code §§ 26.003, .081.

11. Texas Water Code sections 26.0282 and .081 give the Commission several options that it may exercise to encourage and promote regionalization based

on the evidence presented concerning the need for the permit and the availability of other systems in the geographic area.

12. The Draft Permit should not be denied nor should its terms and conditions be altered based on regionalization or need.

13. The Draft Permit is protective of water quality, including the protection of the health of the requester and the requesters' families, the existing uses of the receiving waters, and groundwater in the area in accordance with applicable regulations including the Texas Surface Water Quality Standards in 30 Texas Administrative Code chapter 307.

14. The submission of a nuisance odor control plan for approval after the permitting process is completed satisfies the nuisance odor requirements of 30 Texas Administrative Code section 309.13(e).

15. No transcript costs may be assessed against the ED or OPIC because TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).

16. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

17. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), a reasonable assessment of hearing transcript costs is that Applicant should bear 75% of the transcript costs and the County should bear the remaining 25%.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Application of Cullen RV Resort, LLC for Texas Pollutant Discharge Elimination System Permit No. WQ0016309001 is granted.

2. Applicant must pay 75% and the County must pay 25% of the transcription costs.

3. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117(f).

4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.

6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Brooke Paup, Chair For the Commission