

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN INTERIM ORDER concerning the application by Port of Corpus Christi Authority of Nueces County for Texas Pollutant Discharge Elimination System Permit No. WQ0005253000; TCEQ Docket No. 2019-1156-IWD.

On November 6, 2019, the Texas Commission on Environmental Quality (Commission) considered during its open meeting the requests for a contested case hearing and requests for reconsideration concerning the application by Port of Corpus Christi Authority of Nueces County for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005253000. The Commission received timely hearing requests that were not withdrawn from Senator Lois Kolkhorst, City of Port Aransas, Mustang Island II Home Owners Association, Port Aransas Conservancy (PAC), Ecological Sciences Communication Initiative, and numerous individuals. The Commission received two timely requests for reconsideration from Steven Charles Pusateri and Kenneth Teague. All of the requests were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the requests filed by the Applicant, the Executive Director, and the Office of Public Interest Counsel; the replies filed by the City of Port Aransas and PAC; all timely public comment; and the Executive Director's Response to Comments.

After an evaluation of all relevant filings, the Commission determined that City of Port Aransas, the Port Aransas Conservancy, Mary Abell, Pete Arzola, Phillip Bartlett, Stacey Bartlett, Margo Branscomb, Cara Denney, Aldo Dyer, Morgan Faulkner, Mark Grosse, Jack Guenther, Sr., Jack Guenther, Jr., Valerie Guenther, Cathy Harshman, Bill Johnson, Kathy Mays Johnson, Kenneth Jones, James Harrison King, Tammy King, Sally Marco, Beth Owens, Kelly Owens, Dan Pecore, Cameron Pratt, Susan Simpson, Edward Steves, Nancy Steves, Sam Steves, Sarah Steves, Denise Tompkins, Diana Vondra, and Lauren Wilson qualify as affected persons, as provided by

applicable law. The Commission determined that the hearing requests of Frances Bird and Robert Tipps should be referred to SOAH for an affectedness determination. The Commission found that the remaining hearing requesters did not demonstrate their qualifications as affected persons as required by applicable law and the Commission determined to deny those hearing requests. The Commission also determined to deny the requests for reconsideration.

The Commission next determined whether the requests for hearing raised disputed issues of fact or mixed questions of fact and law that were raised by an affected person during the comment period and are relevant and material to its decision on the application. The Commission determined that the following issues meet those requirements and directed that they be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing: a) Whether the proposed discharge will adversely impact: the marine environment, aquatic life, and wildlife, including birds and endangered or threatened species, spawning eggs, or larval migration; b) Whether the proposed discharge will adversely impact the health of the requesters and their families, including whether fish and other seafood will be safe for human consumption; c) Whether the proposed discharge will adversely impact recreational activities, commercial fishing, or fisheries in Corpus Christi Bay and the ship channel; d) Whether the application, and representations contained therein, are complete and accurate; e) Whether the Applicant substantially complied with applicable public notice requirements; f) Whether the draft permit is consistent with the Texas Coastal Management Programs goals and policies; g) Whether the modeling complies with applicable regulations to ensure the draft permit is protective of water quality, including utilizing accurate inputs; h) Whether the Executive Director's antidegradation review was accurate; and i) Whether the draft permit includes all appropriate and necessary requirements. The Commission specified a maximum duration for the contested case hearing of 180 days from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The requests for a contested case hearing filed by City of Port Aransas, the Port Aransas Conservancy, Mary Abell, Pete Arzola, Phillip Bartlett, Stacey Bartlett, Margo Branscomb, Cara Denney, Aldo Dyer, Morgan Faulkner, Mark Grosse, Jack Guenther, Sr., Jack

Guenther, Jr., Valerie Guenther, Cathy Harshman, Bill Johnson, Kathy Mays Johnson, Kenneth Jones, James Harrison King, Tammy King, Sally Marco, Beth Owens, Kelly Owens, Dan Pecore, Cameron Pratt, Susan Simpson, Edward Steves, Nancy Steves, Sam Steves, Sarah Steves, Denise Tompkins, Diana Vondra, and Lauren Wilson are hereby GRANTED;

2. The hearing requests of Frances Bird and Robert Tipps are REFERRED to SOAH for an affectedness determination;
3. All other hearing requests and the requests for reconsideration are hereby DENIED;
4. The following issues are referred to SOAH for a contested case hearing on the application:
 - a) Whether the proposed discharge will adversely impact: the marine environment, aquatic life, and wildlife, including birds and endangered or threatened species, spawning eggs, or larval migration;
 - b) Whether the proposed discharge will adversely impact the health of the requesters and their families, including whether fish and other seafood will be safe for human consumption;
 - c) Whether the proposed discharge will adversely impact recreational activities, commercial fishing, or fisheries in Corpus Christi Bay and the ship channel;
 - d) Whether the Application, and representations contained therein, are complete and accurate;
 - e) Whether the Applicant substantially complied with applicable public notice requirements;
 - f) Whether the draft permit is consistent with the Texas Coastal Management Programs goals and policies;
 - g) Whether the modeling complies with applicable regulations to ensure the draft permit is protective of water quality, including utilizing accurate inputs;
 - h) Whether the Executive Director's antidegradation review was accurate; and
 - i) Whether the draft permit includes all appropriate and necessary requirements.
5. All issues not identified as being referred to SOAH in Ordering Provision No. 4 are hereby DENIED;
6. The maximum duration of the hearing is SET at 180 days from the first day of the preliminary hearing to the date the proposal for decision is issued by the SOAH; and

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY



Jon Niermann, Chairman

11/21/19

Date Signed