

Comments for SOAH Case (SOAH Docket No. 582-14-3427)

TPDES Permit No. WQ0014975001

September 9, 2015

My name is Lauren Ice and I am speaking on behalf of the Greater Edwards Aquifer Alliance. We are an alliance of fifty-one member organizations, which cumulatively represent more than 25,000 Texans united to advocate for conservation and sustainable management of the Edwards Aquifer ecosystem throughout the twenty-one county Edwards region. These comments are presented today in hopes that we might convince you to reverse your decision of July 1, 2015 to grant the Amendment to TPDES Permit No. WQ0014975001.

GEAA joined the Graham family in contesting the amendment to the DHJB Development, LLC TPDES permit due to concerns about discharging sewage effluent that is not treated to drinking water standards into the Edwards Aquifer watershed, where it will enter the aquifer with no filtration.

The Aquifer Alliance is very concerned about the cumulative impacts of this and additional permits to discharge sewage effluent into this watershed. At this time, we are aware of two additional applications to discharge sewage effluent into this watershed. You are currently considering granting an Amendment to Permit Number WQ0015095001, which would allow the 4S Ranch to amend their current TLAP permit to a TPDES permit to discharge 480,000 gallon/day, as well as a permit for the Cibolo Valley Waste Water District to discharge 500,000 gallons/day into this watershed. Added to the Johnson Ranch permit Amendment to discharge 350,000 gallons/day, you would be permitting the direct discharge of 1.33 million gallons/day of sewage effluent that will flow to Cibolo Creek. The Cibolo Creek is designated as a major recharge feature of the Edwards Aquifer. We are concerned about the impact that this amount of effluent will have if it is allowed to recharge the Edwards Aquifer.

The Texas Commission on Environmental Quality (TCEQ) has named the Edwards Aquifer (EA) as the major aquifer in the state most vulnerable to pollution since the surface and subsurface environments are highly interconnected in karst areas and the physical nature of these terrains allows pollution to travel great distances quickly and with little to no filtration. Actions of individuals on the surface are directly correlated to groundwater quality.

Because urban development occurs (and degrades water quality) in increments on a project-by-project basis, and often without context, we are concerned that the TCEQ is issuing permits without examining what the cumulative impacts of these permits will mean for those who rely on Edwards wells within this area, and for the future of our region in terms of reliance on the Edwards Aquifer as a high quality water supply. The effects are not limited to destruction of rural lands, wildlife habitats, and pristine Hill Country streams and springs. They include severe financial and social costs as well, some of which we are only beginning to understand.

According to the expert testimony of Dr. Lauren Ross, as presented in the Johnson Ranch case, virtually all of the ammonia-nitrogen in wastewater is oxidized to nitrate in the aerated activated sludge treatment process. Therefore, the proposed discharge will contribute an amount of nitrate that will cause adverse impacts to the downstream channel. Because the nitrate concentrations “would likely range from 10 to 30 milligrams per liter,” Dr. Ross determined the effluent nitrate concentration would be 1,500 times greater than the average nitrate concentrations measured in Texas Hill Country streams. Dr. Ross concluded that this nutrient loading will “include significant increases in the amount of vegetation, the occurrence of algae growth and blooms, and a loss of the very clear, high-quality water which would currently be present in the stream during times of flow.”

As Dr. Ross explained, the nutrient loading would degrade the dissolved oxygen and create murky water, stimulate microbial activity, which may be harmful to human health, and produce anoxic dissolved oxygen concentrations during nighttime algae respiration. Under resulting anoxic conditions, bacteria will reduce sulfate, producing black muck and a “rotten egg” odor associated with eutrophic water bodies. Further, vegetation will impede access to the clean and open channel bottom where decaying vegetation, decomposing algae, and anoxic dissolved oxygen concentrations may lead to unpleasant odors and migration of metal ions that would otherwise remain bound to sediments.

Although the Administrative Law Judge did not rule favorably on our contention that this project would have adverse impacts to the Edwards Aquifer, the aforementioned testimony of Dr. Ross describes negative impacts to the Lux and Graham family property that was recognized by the Judge in her ruling. Examining the details of this case, it became apparent that our membership is equally concerned about the lack of respect for the property rights of the Lux and Johnson families as they are about the potential adverse impacts to local groundwater supplies.

On March 9, 2015 State Administrative Law Judge Kathleen Parsley set forth an opinion for denial of the Amendment to the TPDES Permit, stating "that if the permit is issued, the effluent discharge will negatively impact Protestants' use and enjoyment of their property." On June 2, 2015, the Judge amended her decision further in favor of the Lux and Graham families, ruling that not only is the proposed discharge route not a watercourse in accordance with case law, but that it is not Waters of the State of Texas and the Applicant is not entitled to discharge into it.

By approving the amendment to the original land application permit, you are allowing the neighboring subdivision to relegate sewage and drainage infrastructure on to property that they do not own. In essence, you are giving them the right to dump their refuse on to the property of their neighbor, thereby depriving the neighboring property owners of the full use and enjoyment of their land while substantially devaluing their property.

It is not as if this TPDES permit is absolutely necessary for the health and safety of those residing in the Johnson Ranch Subdivision. The subdivision simply seeks to convert their existing TLAP permit to a discharge permit in order to free up land currently used for application of treated sewage from the subdivision so that they could build additional homes on this site.

As of September 7th, 226 individuals have signed a petition, created on September 3rd, calling on you to reverse your decision of July 1, 2015 to grant the Amendment to TPDES Permit No. WQ0014975001. The signers are individuals who recognize that the Lux and Johnson families are being treated unfairly in this matter.

We always hear that Texas is a property rights state. It appears to us that property rights are being apportioned without regard to the true meaning of this standard. In making the decision to ignore the rulings of the Administrative Law Judge in this matter, you seem to be recognizing a very tenuous right over a solid right, agreeing with the former Greater San Antonio Builders Association President, Michael Moore, when he stated at a League of Women Voters of Comal County forum that "Texas is a property rights state. If you don't like what is going on next door to you, you have the right to sell your property and move somewhere else."

We find it very sad that here in Texas a family must spend upwards of \$100,000 to prove that they are entitled to the full use, enjoyment, and value of their property – a contention upheld by the Administrative Law Judge. Even sadder is the fact that the Commissioners of the TCEQ chose to disregard the ruling of the Administrative Law Judge in this case.

We urge you to affirm a true standard of property rights by reversing your decision to grant the Amendment to the TLAP permit for the Johnson Ranch Subdivision.