

TCEQ Hosts a Stakeholder Meeting at their -Headquarters in Austin on August 31, 2022, 1:30-4pm

Do you remember the **Pristine Streams Rulemaking Petition** (a proposed TCEQ rule to prevent new -direct discharge permits into pristine -waterways) that was denied by the TCEQ at its Commissioners Meeting on March 30? (See [LWRA Newsletter, April 29, for a refresher.](#)) A recommendation by the Commissioners that day was the need for more transparency of their permitting process. This Public Meeting was the result.

Linda Fawcett's notes (an abridged unofficial transcript...)

1) **TCEQ staff Gregg Easley** gave a presentation on the various pertinent segments of watershed areas: a brief -description and the TCEQ permits approved for each.

Segment 1415 is the Llano River (Colorado River Basin). Segment 1415 is designated "Aquatic Life Use," and has 4 permits, all direct discharge (no TLAPs). Only two are required to report numeric data: Junction and Llano.

Sampling of Q&A with Easley:

Stephanie Morris (Liberty Hill -riverside landowner who recently led a contested hearing against the City of Liberty Hill's wastewater facility upstream from her):

"December 2021 – March 2021 Liberty Hill was discharging 'only' .07 mg/l of phosphorus during a period of 'decent flow,' that still produced large amounts of algae which the City finally removed, and power-washed the area. But within days the algae came back! The S. San Gabriel is the proverbial 'canary in the coal mine,' clearly showing what happens to pristine streams undergoing wastewater discharge at typical nutrient levels allowed by the TCEQ."

Ruthie Russell (LRWA, Devil's River Conservancy): *"the science says that to prevent algae growth on pristine streams, you need .009 mg/l – much stricter than the current .15mg/l!"*

Brian Zabchik (No Dumping Sewage, Barton Creek Assoc.): *"How did the TCEQ decide on .15mg/l as a phosphorus limit [in wastewater discharges]"?* -Answer: vague.

2) Next, **Peter Schaefer of TCEQ** explained how wastewater applications are screened to determine what (or if) phosphorus limits are needed. Two types of screening:

Numeric criteria - only relevant to managed reservoirs (i.e. lakes, reservoirs, etc)

Narrative screening - relevant to streams... concentration-based limits, looking mostly for phosphorus. Variables determining high, medium or low rating described visual characteristics of the stream segment:

- How much sunlight? (the more sun, the more algae growth.)

- Flow volume: the relationship of the flow volume of the wastewater discharge to the flow volume of the stream (“dilution” level).
- Presence of “impoundments” (gravel bars, cut banks, dams, random barriers) to slow the flow of water in places.
- Attached algae versus floating algae – if either covers parts of the stream – a negative factor.
- If the stream flow is slow, inspectors look within a shorter distance downstream for algae than if the stream is medium to high flow. Example: monitoring three miles downstream from the discharge site (low flow) versus within seven miles downstream (for high flow).
- The history of the permit (did it suffice?) – for permit renewals.

Excerpts from Q&A with Peter Schaefer:

From a developer: *“How does the TCEQ account for other nutrient dumping like fertilizer run-off? Even a profusion of leaves falling into the stream (cyclical: fall and spring) can increase nutrient count. How about stored nutrients from low flow periods being flushed downstream during heavy rain events?”* Answer: TDML (total maximum daily load) is a more complex measurement process that takes into account runoff from farms, forests, urban areas and natural sources (decaying organic matter), the water quality of the entire body of water and assesses all pollutants, not just the discharge pollutant. Resulting management strategies vary from traditional regulatory measures, to agricultural best management practices to prevent run-off, land acquisition (TLAP), infrastructure funding, pollutant trading, etc.

Question: *“Are there any efforts to update the 2010 standards?”* Answer: currently being revised with a new edition expected in 2023.

Brian Zabcik (NDS, BCA): *“Is there a distinction between numeric criteria for reservoirs and narrative criteria for streams? Where do the numbers associated with stream protection come in?”* Answer: We’re working on it ... there are so many variables. **Brian:** *“You’re taking too long to finish stream evaluation both narrative and numeric; at this rate it will not be until 2035 before streams are done.”*

Katherine Romans (Hill Country Alliance): *“Has the TCEQ ever denied a permit based on visuals?”* Answer: Yes, we’ve tried the strategy of demanding the applicant move the location, or we proposed such a low limit (such as .05 mg/l) that the applicant moved on.

Sierra Club rep *"Can you not impose stricter limits during a permit renewal"?*

Answer: (vague) 'not sure.'

3) Next, **Louis Herrin, P.E. and Balthasar Ramirez of the TCEQ** gave a technical presentation on Treatment Technologies. Here are some excerpts:

It's all about phosphorus removal; and there are different wastewater plant processes for "cleaning" waste. Two major types, and both are currently under revision:

1) Biological – older method.

2) Chemical – this is the best for phosphorus removal, required to achieve <0.1 mg/l.

On optimizing existing plants - Realistically, they would have to add chemical methods...there also could be processing or aeration modifications, or new configurations, but all would demand extensive retraining of personnel. One of the big problems today is that plants have LESS WATER to work with (less dilution of waste product), producing more SLUDGE. And older pond systems will need to be completely rebuilt for current guidelines.

Excerpt from Q&A with Herrin & Ramirez:

Question: *"How are these plants/ systems monitored for how they are supposed to work"?* Answer: Self-monitoring. Rebuttal: *"What triggers an inspection"?*

Answer: If there is a complaint, the usual response time is within 24 hours ... Samples taken a minimum of once a week could increase to daily, for example.

4) Advice from **Anthony Tatu (TCEQ Environmental Lawyer)** answering a question about Contested Case Hearings:

A hearing request must be in writing and timely. It can be online. It is based on the requestor's comments – that you are convincingly identified as the "affected person." From then on, all subsequent comments are subject to legal scrutiny as to how and if the "affected person" is affected. To be "uncommonly affected" by the perpetrator usually involves location/proximity, and has an environmental group on board with the plaintiff.

PUBLIC COMMENTS:

1) **Brian Zabcik** (NDS, BCA): *The Barton Creek Association was founded to protect the Barton Creek Watershed, so no permits are found on Barton Creek. Almost had one last*

year – Longbranch section of Barton Creek – but failed when the applicant withdrew. Many other groups have fought but not always won – like Onion Creek (against Volterra Associates) and Dripping Springs. All these new permits on pristine rivers are because of new population pressure. Liberty Hill is the ‘poster-child case’ – at one time the San Gabriel was classified as completely pristine. Our conclusions are that the TCEQ does not flat-out forbid any application, approves almost all as is, and won’t follow up once permitted. THIS MUST CHANGE.

2) **Daniel Wheelis** (Hill Country landowner) – Landowners are the primary -stewards of the Hill Country and this is primarily a landowner effort. The State is CAUSING landowners to *become* part of the wastewater process. Riverfront acreage is worth \$1000/foot (on each side) – a tremendous investment by Texans, and the State of Texas is fouling the rivers!! THE STATUS QUO IS NO GOOD ANYMORE. Let us use the potential authority of the TCEQ to set the rules.

3) **Julie Lewey** (Nueces River Basin Assoc) We have two issues with the CRP programs on Hondo and Seco Creeks. The segments below the discharge have enormous amounts of degradation picked up by stations downstream. TCEQ does not routinely monitor discharge downstream from the dumpsite. Also frustrating, numeric data will not change a permit because the current screening methods are only narrative.

4) **Robin Gary** – (Watershed Association/Wimberley) It seems the applicant gets to interact more with the TCEQ than the landowners do.

5) **Steve Mendoza** (Environmental engineer – Barton Creek area). Other facts affect nutrients: “the solution to pollution is dilution.” It’s not just the treatment plants, but the naturally occurring nutrient levels of the pristine streams.

6) **Ruthie Russel** (DRC, LRWA) The science says we have to NOT sustain over .009 mg/l – and no current permits require this. The economy generated by pristine streams is in danger and it is also unconscionable to endanger your neighbors downstream. Past mistakes do not justify continuance of poor protection. The TCEQ IS NOT DOING ENOUGH.

7) **Connie Baron** (Mayor pro-tem, City of Blanco) The City of Blanco is working with the transition from a discharge-only plant to a TLAP. It was a “come to Jesus” moment that precipitated this change. Why spend \$\$\$ facing a contested case for something not good for the river! Do the right thing for your neighbors downstream. But if someone discharges upstream from us, we have no more \$\$\$ to fight it. The City’s economy would be direly affected. Therefore, the TCEQ needs to protect us. Protect the Blanco!

8) **Scott Norman** (Executive Director, Texas Association of Builders). We are against a flat-out TCEQ prohibition against discharge. Only the Texas Legislature can do that. We also can't stop the immigration of new people to Texas and they need housing.

9) **Stephanie Morris** (landowner on the South San Gabriel who is battling the City of Liberty Hill over its wastewater plant's causing exponential algae growth downstream/ruining the river.). Since 2008 we've known about the low, low amount of phosphorus level needed in pristine streams, but the TCEQ allows for grossly going over that level with all existing permits.

10) **David Tuckfeld** (lawyer for the City of Dripping Springs). There are other alternatives to blanket prohibition. Dripping Springs has a permit, but no actual discharge (a TLAP). My personal view is that [the environment -movement's] big motive is [simply] to stop development.

11) **Trey Larry** (lawyer who works for cities/developers). We seek a balance of science and policy. Development also brings \$\$\$ to the economy. The Texas Legislature has never entertained total prohibition. Jobs bring folks here who need affordable housing.

12) **David Price** (a land developer who also represents some ecological organizations' concerns). I am one half of Volterra [Associates]* (promotes zero discharge). I have an economic analysis useful to builders. TLAPs will be granted at least (a) year(s) before a discharge permit. Time is money. Another point: why use potable water to irrigate a landscape? People are moving here to destroy what they are moving here for. Many of the new landowners are willing to pay for alternative solutions [to preserve the pristine qualities of the Hill Country.] *Volterra is an economic consultancy specializing in the economic and social impact of development projects and transport infrastructure.

13) (Didn't hear name): I'm OK with the TCEQ denying the blanket prohibition of discharge permits, but then they must find and support alternatives to protecting the pristine streams! We need to engage in SMART DEVELOPMENT until we get new technology!

14) **Ruthie Russel** (LRWA, DRC), Post-meeting rebuttal (by email to the TCEQ): However [the builders], their arguments were weak. Their comments that 'no discharge' will interfere with affordable housing and high-density development is ridiculous. Do you put affordable housing on river banks worth an average of \$1000 per foot? Does high density housing even belong along these special creeks? Of course not! Builders of this caliber should just build somewhere else – there is plenty of room in Texas (though water availability should always be considered first). This is a 'no brainer.' Preserving pristine streams trumps all other concerns. Thank you for allowing free discourse on these topics and I pray we can truly save the last pristine streams in Texas. As stated earlier you have the power to just-say-no.