

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 27, 2013

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

RE: WALTON TEXAS, L.P.
TCEQ DOCKET NO. 2013-1280-MWD

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2013-1280-MWD

WALTON TEXAS, L.P.	§	BEFORE THE
RANCH AT CLEAR FORK	§	
CREEK WASTEWATER	§	TEXAS COMMISSION ON
TREATMENT PLANT	§	
PERMIT NO. WQ0014439001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing requests in the above-referenced matter.

I. Background

On August 2, 2012, Walton Texas, L.P. (Applicant) applied to the TCEQ for a renewal of its Texas Pollutant Discharge Elimination System (TPDES) permit. The permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The wastewater treatment plant would be located approximately 7,00 feet southwest of the intersection of State Highway 21 and Farm-to-Market Road 2720 in northwest Caldwell County. The treated effluent would be discharged to an unnamed tributary, then to Clear Fork Plum Creek, and then to Plum Creek in Segment No. 1810 of the Guadalupe River Basin.

TCEQ declared the application administratively complete on August 17, 2012. The first newspaper notice was published September 6, 2012 in the *Lockhart Post-Register*. The second newspaper notice was published November 1, 2012 in the same

newspaper. On March 26, 2013, the TCEQ held a public meeting in Lockhart, and the public comment period closed at the end of the meeting. The Executive Director's (ED) response to comments (RTC) was mailed May 30, 2013.

The deadline to submit a hearing request was July 1, 2013. The TCEQ timely received hearing requests from Sandra Abernathy, Mary Barnes, Carlton Carl, Don Chesser, Janet Christian, Dee Dee Cortez, Joan Gonzalez, Wayne Hancen, Jessica Hannan, Kennis Howard, Eric Marsh, Liz McGinty, Alfredo Munoz, Bob Parker, Carol Peters, Walter Reinhard, Rod Siefel, Dianne Stevenson, Marcella Strahan, Roy Strahan, and Pat Wilkins. For the reasons stated herein, OPIC respectfully recommends the Commission deny all of the hearing requests.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;

- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;

- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis of Hearing Requests

Sandra Abernathy submitted an individual hearing request and stated that the discharge route runs through her property. She stated that she grows and bails hay on this property for income. Ms. Abernathy is concerned that the effluent will cause the creek to flood her hay field and destroy her hay crop.

The remainder of the hearing requestors signed a petition which was submitted by Sallie Ann Satagaj. Ms. Satagaj subsequently submitted a letter explaining that she meant to request a public meeting, not a contested case hearing. OPIC considers Ms. Satagaj's hearing request to be withdrawn. However, Ms. Satagaj's withdrawal does not function to withdraw the hearing requests of the remaining signatories to the petition. Minus Ms. Satagaj, the hearing request petition is signed by twenty people, and because the petition does not qualify as a group hearing request,¹ OPIC considers those twenty people to have pending individual hearing requests.

A. Right to Contested Case Hearing

Under 30 TAC § 55.211(c)(2)(C), a hearing request shall be granted if the request is made pursuant to a right to hearing authorized by law. Therefore, the Commission must determine as an initial matter whether a right to hearing exists on this application. As provided by 30 TAC § 55.201(i)(5), there is no right to a contested case hearing on a renewal application under Texas Water Code Chapter 26 if:

¹ See 30 TEX. ADMIN. CODE § 55.205.

- (A) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consideration and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

Texas Water Code § 26.028(d) allows the Commission to approve the renewal application without holding a hearing if all of these criteria are met. After review of the hearing requests, the application, and the ED's Statement of Basis/Technical Summary and Preliminary Decision, OPIC finds the renewal application satisfies each of these requirements.

The Applicant is not applying to increase the quantity of waste authorized to be discharged from the Ranch at Clear Fork Creek wastewater treatment plant or materially change the pattern or place of discharge. The application therefore satisfies §55.201(i)(5)(A).

As required by § 55.201(i)(5)(B), this renewal will maintain the quality of waste authorized to be discharged. The current permitting action is for renewal only, and the quality of waste authorized to be discharged remains unchanged.

The published notices regarding this application informed the public of the opportunity for a public meeting, and on March 26, 2013, the TCEQ conducted a public meeting in Lockhart. Therefore, § 55.201(i)(5)(C) has been satisfied.

Section 55.201(i)(5)(D) requires TCEQ to consider and respond to all timely received and significant public comment. The ED's RTC document indicates that this criterion has been met.

For the previous five years, the TCEQ compliance history database indicates that Walton Texas, L.P.'s rating is "o" and classification is "unclassified". The rating and classification for the wastewater treatment plant are the same. The o rating and the unclassified classification result from the facts that Applicant has no other sites besides this wastewater treatment plant, and the plant has not been constructed. Given this situation, it appears the Applicant's compliance history raises no issues regarding its ability to comply with a material term of the permit, and thus § 55.201(i)(5)(E) is satisfied.

OPIC finds the Applicant's permit renewal application satisfies the requirements of Texas Water Code § 26.028(d) and 30 TAC § 55.201(i)(5), no right to a contested case hearing exists on this application, and the Commission may approve the application without a hearing.

IV. Conclusion

Applicant seeks renewal of an existing permit with no changes. As a result, there is no right to a contested case hearing on this application. In accordance with Texas Water Code § 26.028(d) and 30 TAC § 55.201(i)(5), we conclude the Commission may approve this permit renewal without holding a hearing. Therefore, OPIC respectfully recommends the Commission deny all of the hearing requests.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2013, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.


Garrett Arthur

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TCEQ DOCKET NO. 2013-1280-MWD

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