

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*

October 11, 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: WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 19  
TCEQ DOCKET NO. 2013-1597-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 cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**DOCKET NO. 2013-1597-MWD**

<b>WILLIAMSON COUNTY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MUNICIPAL UTILITY</b>	<b>§</b>	
<b>DISTRICT NO. 19</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TPDES PERMIT</b>	<b>§</b>	
<b>NO. WQ0015000001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**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 January 20, 2011, Williamson County Municipal Utility District No. 19 (Applicant) applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) permit. The permit would authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The proposed wastewater treatment plant (WWTP) would be located just west of Ronald Reagan Boulevard, approximately 2.5 miles north of the intersection of Ronald Reagan Boulevard and Highway 29 in Williamson County. The treated effluent would be discharged to an unnamed tributary, then to Soves Branch, then to the North Fork of the San Gabriel River in Segment No. 1251 of the Brazos River Basin.

TCEQ declared the application administratively complete on March 4, 2011. The first newspaper notice was published March 13, 2011 in the *Williamson County Sun*, and

a Spanish language version was published March 31, 2011 in *El Mundo*. The second newspaper notice was published October 14 and 25, 2012 in the same newspapers. On May 14, 2013, the TCEQ held a public meeting in Georgetown, and the public comment period closed at the end of the meeting. The Executive Director's (ED) response to comments (RTC) was mailed July 25, 2013.

The deadline to submit a hearing request was August 26, 2013. The TCEQ timely received hearing requests from: 1941 Limited, City of Georgetown, City of Liberty Hill, City of Round Rock, Mike and Pam Goolsby, Brian Massey, and James and Minnie Sansom. For the reasons stated herein, OPIC respectfully recommends the Commission grant the hearing requests of Georgetown, Liberty Hill, Round Rock, Brian Massey, and James and Minnie Sansom.

## **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**

#### **A. Whether the requestors are affected persons**

##### 1941 Limited

Hearing requestor 1941 Limited (1941) states that the proposed facility is located approximately one mile from 1941's property, and 1941 owns the property immediately adjacent to the property proposed to be served by the facility. According to a map prepared by ED staff, 1941's property is not adjacent to the proposed plant site and is not on the discharge route. 1941 states that it is concerned about groundwater quality, aquatic life, algae blooms, regionalization, nuisance odor, and Applicant's lack of WWTP operator experience.

This hearing requestor states that the likely impact of the proposed plant is to degrade the quality of area water supply wells. However, 1941 does not claim to own any water supply wells. Therefore, 1941's concern for groundwater quality does not qualify as a personal justiciable interest.

Regarding regionalization, 1941 has not asserted any statutory authority over regional wastewater issues. 1941 has also not distinguished its interest in regionalization from an interest common to members of the general public. Therefore, 1941's interest in regionalization does not qualify as a personal justiciable interest.

Regarding 1941's remaining concerns, including water quality, nuisance odor, and Applicant's lack of WWTP experience, OPIC finds that 1941 lacks the proximity

necessary to establish a personal justiciable interest which stems from those concerns and is distinct from interests common to the general public.

An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by an application.<sup>1</sup> An interest common to members of the general public does not qualify as a personal justiciable interest.<sup>2</sup> OPIC finds that 1941 has failed to establish a personal justiciable interest in this matter and therefore does not qualify as an affected person.

Georgetown, Liberty Hill, and Round Rock

The cities of Georgetown, Liberty Hill, and Round Rock are all protesting this application and seeking a contested case hearing. The cities have submitted substantially similar hearing requests, and OPIC will therefore collectively analyze their requests. As indicated on the ED's map, the discharge route is within Georgetown city limits, and Georgetown's extraterritorial jurisdiction (ETJ) is within one mile of the proposed plant site. For Liberty Hill, both the city limits and the ETJ are within one mile of the proposed plant site. Round Rock's ETJ is approximately 7 miles from the proposed plant site, and Round Rock's public water supply intakes on Lake Georgetown are approximately 10 miles downstream from the proposed discharge point.

In addition to other concerns, all three cities have raised the issue of regionalization. State policy is to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to prevent pollution and maintain and enhance the quality of state water.<sup>3</sup> To determine whether a city qualifies as an affected person, we must consider the city's statutory authority over

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<sup>1</sup> 30 TAC § 55.203(a).

<sup>2</sup> *Id.*

<sup>3</sup> See TEX. WATER CODE § 26.081(a).

or interest in the issues relevant to the application.<sup>4</sup> As providers of public drinking water and processors of domestic wastewater, the three cities have a unique interest in the issue of regionalization, and regionalization is an issue which is relevant to this application. Furthermore, the cities' interest in regionalization is protected under the Texas Water Code.<sup>5</sup> When considering the issuance of a permit to discharge waste, the TCEQ is required to consider need and the availability of existing or proposed regional waste collection, treatment, and disposal systems.<sup>6</sup> For these reasons, OPIC finds that the cities of Georgetown, Liberty Hill, and Round Rock all qualify as affected persons.

*Mike and Pam Goolsby*

Mike and Pam Goolsby are concerned about property value, air quality, and groundwater quality. The ED's map shows the Goolsbys' property is within a mile of the proposed plant site, but their property is not adjacent to the proposed plant site, and not on the proposed discharge route. Because the Goolsbys do not reside adjacent to the proposed plant site or on the proposed discharge route, OPIC finds they lack the proximity necessary to establish a personal justiciable interest which is distinct from interests common to the general public. Without a personal justiciable interest, the Goolsbys cannot qualify as affected persons.

*Brian Massey*

Brian Massey is concerned about human and animal health impacts, property value, odor, algae blooms, drinking water safety, and water quality. According to the ED's map, Mr. Massey's property is just beyond one mile from the proposed plant site

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<sup>4</sup> See 30 TAC § 55.203(c)(6).

<sup>5</sup> See TEX. WATER CODE § 26.0282.

<sup>6</sup> *Id.*

and on the discharge route. Because of Mr. Massey's location on the proposed discharge route, his concerns regarding health impacts, odor, algae blooms, and water quality should be considered personal justiciable interests which are not common to the general public. Also, these interests are protected by the law under which this application will be considered, and a reasonable relationship exists between the interests and the regulation of a wastewater treatment plant. Finally, the proximity of Mr. Massey's property to the proposed discharge route increases the likelihood of impacts to his health, safety, and use of property. Therefore, OPIC finds that Brian Massey qualifies as an affected person.

*James and Minnie Sansom*

James and Minnie Sansom are concerned about surface and groundwater quality and drinking water safety. They also favor an alternative discharge route. As indicated by the ED's map, the Sansoms reside within a mile of the proposed plant site, and their property is on the proposed discharge route within one mile downstream of the proposed discharge point. Because of the Sansoms' location on the proposed discharge route, their concern regarding water quality should be considered a personal justiciable interest which is not common to the general public. Also, the Sansoms' concern for water quality is an interest which is protected by the law under which this application will be considered, and a reasonable relationship exists between that interest and the regulation of a wastewater treatment plant. Finally, the proximity of the Sansoms' property to the proposed discharge route increases the likelihood of impacts to their health, safety, and use of property. Therefore, OPIC finds that James and Minnie Sansom qualify as affected persons.

**B. Which issues raised in the hearing requests are disputed**

All of the issues raised in the hearing requests are disputed.

**C. Whether the dispute involves questions of fact or of law**

All of the disputed issues involve questions of fact.

**D. Whether the issues were raised during the public comment period**

All of the issues were raised during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a public comment which has been withdrawn**

The hearing requests are not based on issues raised solely in a public comment which has been withdrawn.

**F. Whether the issues are relevant and material to the decision on the application**

Groundwater Quality

Liberty Hill and the Sansoms have raised the issue of groundwater quality. The TCEQ regulates the siting of wastewater treatment plants in relation to springs, water wells, and aquifer recharge zones.<sup>7</sup> This issue is therefore relevant and material to the Commission's decision on the application.

Aquatic Life

Georgetown, Liberty Hill, Round Rock, and Mr. Massey have raised the issue of impacts on aquatic life. Aquatic Life must be protected under the TCEQ's Chapter 307 Texas Surface Water Quality Standards. This issue is therefore relevant and material to the Commission's decision on the application.

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<sup>7</sup> See 30 TAC § 309.13.

Surface Water Quality

Georgetown, Liberty Hill, Round Rock, Mr. Massey, and the Sansoms have all raised water quality issues, including algae blooms and contact recreation. Water quality is an issue addressed by the Chapter 307 Texas Surface Water Quality Standards, and the issue is therefore relevant and material to the Commission's decision on this application.

Regionalization

Georgetown, Liberty Hill, and Round Rock have raised the issue of regionalization. It is state policy to encourage regionalization,<sup>8</sup> and TCEQ must consider regionalization when deciding whether to issue a discharge permit.<sup>9</sup> Regionalization is therefore relevant and material to the Commission's decision on this application.

Odor

Liberty Hill and Mr. Massey have raised the issue of nuisance odors. Odor is specifically addressed by TCEQ regulations concerning the siting of domestic wastewater plants.<sup>10</sup> Therefore, odor is an issue which is relevant and material to the Commission's decision on this application.

Operator Qualifications

Georgetown, Liberty Hill, and Round Rock are concerned that Applicant has no experience operating a wastewater treatment plant. The TCEQ regulates the licensing of

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<sup>8</sup> See TEX. WATER CODE § 26.081(a).

<sup>9</sup> See TEX. WATER CODE § 26.0282.

<sup>10</sup> See 30 TAC § 309.13.

wastewater operators, and this issue is therefore relevant and material to the Commission's decision.<sup>11</sup>

*Drinking Water Safety*

Georgetown, Round Rock, Mr. Massey, and the Sansoms are all concerned about the protection of drinking water. Under the Chapter 307 Texas Surface Water Quality Standards, the TCEQ sets effluent limits to protect the existing uses of a water body, including public drinking water supply. Therefore, this issue is relevant and material to the Commission's decision.

*Plant Design*

Liberty Hill questions whether the design of the plant can adequately treat wastewater. The TCEQ regulates the design criteria for domestic wastewater systems, and this issue is therefore relevant and material to the Commission's decision on this application.<sup>12</sup>

*Health Effects*

Round Rock and Mr. Massey have raised the issue of health effects, for humans and animals. This issue concerns the Texas Surface Water Quality Standards and is therefore relevant and material to the Commission's decision on this application.<sup>13</sup>

*Property Value*

Mr. Massey has raised the issue of decreased property value. The Texas Legislature establishes the jurisdiction of the TCEQ, and the Texas Legislature has not given TCEQ the authority to consider property value. Therefore, this issue is not relevant and material to the Commission's decision.

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<sup>11</sup> See 30 TAC Chapter 30, Subchapter J.

<sup>12</sup> See 30 TAC Chapter 217.

<sup>13</sup> See 30 TAC Chapter 307.

#### **IV. Conclusion**

OPIC finds that Georgetown, Liberty Hill, Round Rock, Brian Massey, and James and Minnie Sansom all qualify as affected persons. We also find that all of these requestors have raised disputed issues of fact that are relevant and material to the Commission's decision on this application. Therefore, OPIC respectfully recommends the Commission grant their hearing requests.

OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

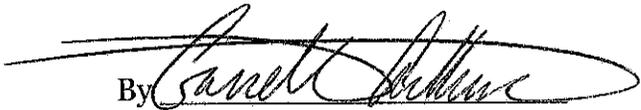
1. Whether the proposed plant or discharge will adversely impact groundwater quality?
2. Whether the proposed plant or discharge will adversely impact aquatic life?
3. Whether the proposed plant or discharge will adversely impact water quality?
4. Whether the proposed plant is consistent with the state policy of regionalization?
5. Whether the proposed plant or discharge will cause nuisance odors?
6. Whether the operator of the proposed plant has or will have the required qualifications?
7. Whether the proposed plant or discharge will adversely impact public drinking water supplies?
8. Whether the proposed plant is or will be properly designed to meet applicable design criteria?
9. Whether the proposed plant or discharge will adversely impact human or animal health?

For the contested case hearing, OPIC recommends a duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By

  
Garrett Arthur

Assistant Public Interest Counsel

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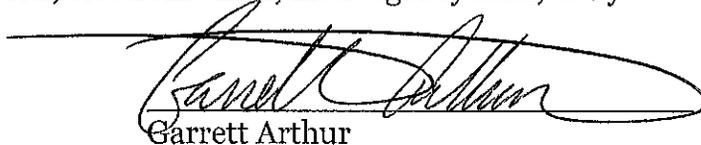
Austin, Texas 78711

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## CERTIFICATE OF SERVICE

I hereby certify that on October 11, 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. 2013-1597-MWD**

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