TCEQ Docket No. 2015-0035-MWD

IN THE MATTER OF THE APPLICATION BY PULTE HOMES OF TEXAS, L.P., FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMIT NO. WQ0015222001	§ § § § § § § §	BEFORE THE TEXAS COMMISION ON ENVIRONMENTAL QUALITY

PROTESTANTS CHRIS & DONNISHA SPICER'S REPLY TO RESPONSES TO HEARING REQUESTS

I. Introduction

The Commission should grant Chris & Donnisha Spicer's hearing requests, and the matter should be referred for a hearing before the State Office of Administrative Hearings (SOAH) to include the issues identified below. Furthermore, the matter should be referred for an expected duration of nine months.

II. Chris & Donnisha Spicer are Affected Persons.

No response was filed objecting to Chris or Donnisha Spicer's status as affected persons. As a general matter, the Executive Director has accurately represented the location of the Spicer's property. Among other considerations, the close proximity of his property to the facility, and the close proximity of his property to the discharge route render him an affected person.

III. Issues for Referral

a. Whether the proposed permit would adversely affect surface water quality.

In his hearing requests, Mr. Spicer repeatedly raised concerns regarding the impact of the proposed discharge on downstream water quality. In recognition of this, both the

Executive Director and OPIC have recommended referring this issue to SOAH, although each characterize the question somewhat differently.[1] Chris & Donnisha Spicer concur with referral of this issue as characterized by the Executive Director.

b. Whether the draft permit is adequately protective of groundwater.

Both OPIC and the Executive Director concur that Mr. Spicer has raised concerns related to groundwater quality appropriate for referral to SOAH. However, the Executive Director attempts to limit this issue solely to impacts upon Mr. Spicer's wells. Mr. Spicer's concerns are not limited solely to his own wells, but rather to wells within the neighborhood.[2] Also, Mr. Spicer's request was not limited to the impact of only the discharged wastewater.[3] Thus, Mr. Spicer requests that the Commission refer a question of "Whether the draft permit is adequately protective of groundwater."

c. Whether the draft permit includes sufficient odor control provisions.

In his hearing requests, Mr. Spicer expressed concerns regarding the impact of the facility on air quality.[4] The Spicers agree with the Executive Director that odor control is an issue appropriate for referral. However, the Spicers disagree with the Executive Director that this issue should be limited to impacts on the Spicer's property. In his

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[1] The issue as identified by the Executive Director largely encompasses issues 5, 8 and 9 as identified by OPIC.

[2] *E.g.* "This polluted water then reaches public drinking water systems and private wells, where it can pose serious public health threats." March 25, 2015 Hearing Request of Chris Spicer.

[3] *E.g.* "I have a big concern with polluted water getting mixed in with my well water as we are on a well system." December 31, 2014 Hearing Request of Donnisha Spicer.

[4] *E.g.* "As shown by the permit request the wind study alone should be enough to stop this request as this would push all air pollutants directly **into our neighborhood**, which again is an already established neighborhood[.]" and "This project will have an huge impact on our way of living and life's not to mention our property value." July 8, 2014 Hearing Request of Chris Spicer.

hearing requests, Mr. Spicer's concerns were clearly not limited to odor impacts solely within the boundaries of his property. Thus, the issue for referral should not be limited to impacts only upon the Spicer's property.

d. Whether the discharge route has properly been characterized.

In his hearing request, Mr. Spicer raised questions as to the location of the discharge route, and whether the discharge route has properly been characterized as a natural watercourse.[5] Also, he has raised questions regarding the dry nature of the discharge route, and the existence of retention ponds along the discharge route. Although the Executive Director and OPIC solely characterize his concerns as property rights issues, these concerns also raise questions as to whether the receiving waters truly constitute a watercourse appropriate for receiving a permitted discharge. On prior occasions, the TCEQ has referred precisely such an issue to SOAH. For example, in The Matter of the Application by DHJB Development, LLC for an Amendment to TPDES Permit No. WQ0014975001, the Commission referred an issue of "Whether the discharge route has been properly characterized."[6] Mr. Spicer asks that the same issue be referred in this case, given that his comments and hearing requests have properly raised this question.

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[5] See December 30, 2014 hearing request: "I have not given Pulte Homes of Texas permission in the past, present or future allowing Pulte Homes of Texas to use any part of my legally owned property to shed non-mother nature water shed onto my property." "The requested permit No. WQ0015222001 will be dumping polluted waste water directly onto my property." July 8, 2014 hearing request: "I have had a chance to review the permit request and see where the photos don't even show our homes, which seeing how we are right next to it shows an [sic] deliberate intent to mislead the proximity of the project to our house."

[6] TCEQ Docket No. 2013-2228-MWD.

e. Whether the proposed permit will adversely impact use and enjoyment of property or create nuisance conditions.

The Executive Director acknowledges that an issue related to the use and enjoyment of property should be referred to SOAH,[7] and this issue is included within several issues recommended for referral by OPIC. Importantly, in raising this issue, Mr. Spicer expressed concern for impacts upon properties within his neighborhood, without limitation to his own property.[8] Thus, this issue should not be limited solely to a consideration of the Spicer's property.

f. Whether the permit adequately protective in light of impacts by flooding conditions on the facility, and impacts of the permit upon flood conditions.

Both the Executive Director and OPIC recommend referring issues related to whether the facility location will interfere with the floodplain.[9] Contrary to Applicant's recommendation, this issue is relevant pursuant to 30 TAC § 309.13(a), and thus should be referred to SOAH.

Notably, many of the issues raised by Mr. Spicer related to flooding relate to other issues above. For example, the location of the facility within a floodplain is dealt with above. Likewise to the degree that flooding will contaminate downstream properties falls within the consideration of impacts on the use and enjoyment of downstream properties.

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[7] ED Issue No. 10, OPIC Issue No.

[8] See July 8th, 2014 hearing request, expressing concern related to air contaminants moving into "*our* neighborhood," saying that "*our* neighborhood is in the 100 year floodplain," and that "[i]n the summer when the creek is dry, the discharge will sit still and the smell will impact *our* quality of life."

[9] OPIC Issue 3, ED Issue 6.

Furthermore, the presence and location of water goes towards whether the Applicant has accurately characterized the discharge route. Moreover, pursuant to 30 TAC § 309.12, the suitability of a site is a relevant consideration for the Commission's issuance of a permit, including whether design and operational features minimize contamination of surface water in light of factors such as climatological conditions. Contrary to Applicant's indication, the explicit limitations of 30 TAC § 309.13 are not the only considerations relevant to this question of suitability.[10]

g. Whether the photographs of the proposed facility site and outfall location submitted with Pulte Homes' application complied with the requirements found in question 3 in Domestic Administrative Report 1.1 of the application.

The Spicers concur with the Executive Director that the accuracy and completeness of the application presents an issue appropriate for referral, specifically with regard to Mr. Spicer's allegations that photographs included within the application were misleading.

IV. DURATION OF HEARING

In consideration of the complexity of the case, and the issues involved, the Spicers concur with the recommendation of the Executive Director and OPIC for a hearing duration of nine months.

[10] 30 TAC 309.14(b).

V. PRAYER

For the reasons stated above, Protestants respectfully pray that the Commission grant Chris and Donnisha Spicer's hearing requests with regard to the issues listed above, as well as any other issues recommended for referral by the Executive Director or the Office of the Public Interest Counsel. The Spicers further requests that the matter be referred to SOAH with an expected duration of nine months.

Sincerely,

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CERTIFICATE OF SERVICE

By my signature, below, I certify that on the 20th day of April 2015, a true and correct copy of Chris & Donnisha Spicer's Reply to Responses to Hearing Requests set out above was served upon all parties on the attached service list in the manner indicated.

Eric Allmon

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