

TCEQ DOCKET NO. 2015-0663-MWD

APPLICATION BY NASH § BEFORE THE TEXAS COMMISSION
FM 529, LLC. FOR § ON
TDPE PERMIT NO. WQ0015264001 § ENVIRONMENTAL QUALITY

PROTESTANT HANELORE DOMAHIDI'S REPLY TO RESPONSES TO
REQUEST FOR CONTESTED CASE HEARING

COMES NOW, HANELORE DOMAHIDI ("Protestant") and files this Reply to Applicant's Response to Hearing Requests; Executive Director's Response to Hearing Requests and Request for Reconsideration; and The Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration regarding the application for Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0015264001, and respectfully shows the following:

I. Introduction

The Commission should grant Protestant'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. Protestant is an Affected Person.

As a general matter, the Executive Director has accurately represented the location of the Protestant's property. Among other considerations, the close proximity of her property to the facility, and the close proximity of her property to the discharge route render her an affected person. Only the Applicant objected to Protestant's status as an affected person. Both the Executive Director and the Office of Public Interest Counsel ("OPIC") determined that Protestant is an affected person, and the Commission should find that Protestant is an affected person.

III. Issues for Referral

Protestant generally agrees with the issues for referral set out in the Executive Director's and OPIC Responses. There are two issues, however, on which there is disagreement, both of which should be referred.

a. The need for the wastewater treatment plant and compliance with the State's regionalization policy should be referred. The Executive Director's response to comments recommend that this issue be referred for hearing. *See* Issue 12 at p. 10 in the Executive Director's Response. OPIC states that this issue was not raised in the comment period. This is incorrect. The Executive Director's March 24, 2015 Response to Public Comment states that this issue was raised in the comments. *See* Comment 3 and Response 3, pp. 6-7, (excerpt attached as "Excerpt 1"). The Executive Director is correct in identifying this issue as appropriate for the contested case process. Therefore, the Commission should refer this issue to SOAH.

b. The cumulative impact of wastewater discharges from the Nash and Pulte facilities should be referred.

OPIC correctly identifies the scope of this issue, OPIC's Issue No. 8 in its response. *See* OPIC Response to Hearing Request at pp. 11-12 (excerpt attached as "Excerpt 2"). As OPIC notes, the issue is related to the regionalization issue above, which the Executive Director recommended for referral.

Moreover, the Executive Director's response, *See* Issue 21, p. 12 of the Executive Director's Response, does not address the primary issue raised, i.e. whether the permit limits adequately considered the cumulative impacts to the receiving water. This is not a flooding issue, as mischaracterized by the Executive Director, but a water quality concern that is directly

relevant to TCEQ's consideration to grant the permit as correctly described in the OPIC Response recommending referral of this issue. As OPIC stated: "If these permit applications are considered independently, permit conditions may allow for wastewater discharges that exceed South Mayde Creek's receiving capacity." OPIC Response at pp. 11-12. This issue should be referred to SOAH as part of the contested case proceeding.

IV. DURATION OF HEARING

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

V. PRAYER

For the reasons stated above, Protestants respectfully prays that the Commission grant Hanelore Domahidi's hearing request 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. Protestant further requests that the matter be referred to SOAH with an expected duration of nine months.

Respectfully submitted,



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CERTIFICATE OF SERVICE

By my signature, below, I certify that on the 22nd day of June 2015, a true and correct copy of Hanelore Domahidi’s Reply to Applicant’s Response to Hearing Requests; Executive Director’s Response to Hearing Requests and Request for Reconsideration; and The Office of Public Interest Counsel’s Response to Requests for Hearing and Requests for Reconsideration set out above was served upon all parties on the attached service list in the manner indicated.



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EXCERPT 1

unnamed tributary of South Mayde Creek. Using the information listed in the application, the ED does not anticipate any adverse impact to the receiving stream resulting from the proposed discharge.

A comparison to a real-life example might be helpful to show how the proposed discharge could impact water levels in the creek. The proposed permitted Final phase permitted flow, 1,000,000 gallons per day, is similar to 26 standard water hoses (5/8 inch x 50 feet) operating at 60 pounds per square inch. This would be the equivalent of a stream flow of 1.5 cubic feet per second.

Comment 2:

Hanlore Domahidi and Christopher Spicer commented that the proposed wastewater treatment facility will adversely affect the property values of homes in the surrounding area.

Response 2:

The TCEQ does not have jurisdiction to review the effect, if any, the location of a wastewater treatment facility and a proposed discharge route might have on the property values of surrounding landowners in reviewing a domestic wastewater discharge permit application. While the Texas Legislature has given the TCEQ the responsibility to protect water quality, the water quality permitting process is limited to controlling the discharge of pollutants into or adjacent to waters in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The TCEQ cannot consider issues such as property value and development when reviewing wastewater applications and preparing draft permits.

Comment 3:

Shari Boothe commented that the proposed wastewater treatment facility should be located at an alternative location. James Riley expressed concern about the proximity of the proposed facility to neighboring homes and another permitted discharge facility within approximately 1000 ft. of each other. Brenda Thompson stated that the proposed facility's discharge, in addition to the Pulte Homes facility, would result in a combined 2 million gallons per day of effluent discharge into Mayde Creek. Additionally,

Christopher Spicer commented that there is no need for the proposed wastewater treatment facility.

Response 3:

The Texas Water Code §26.121, authorizes discharges into waters of the state, provided that the discharger obtains a permit from the Commission. The TCEQ does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. TCEQ's administrative and technical review of a wastewater discharge application only considers the one proposed discharge route and plant site presented in the application.

The Texas Water Code §26.0282, provides that in considering the issuance, amendment or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the draft permit, amendment, or renewal based on consideration of need, including the expected volume and quality of influent and the availability of existing proposed area-wide or regional waste collection treatment, and disposal systems not designated as area wide or regional disposal systems by Commission Order. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater. According to §26.081 of the Texas Water Code, TCEQ has been mandated to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal need of the citizens of the state and to prevent pollution and maintain and enhance the quality of water in the state."

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants.⁴ The applicant is required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can use. The wastewater treatment plant must have sufficient existing capacity to accept the additional wastewater. Nash's permit application indicates that there are other wastewater treatment facilities within a three-mile area surrounding the proposed facility. However, these permitted facilities do not have the capacity or they

⁴ Nash FM 529, LLC Permit Application, Domestic Technical Report 1.1, pages 10 & 11.

EXCERPT 2

307.1. Issues No. 2 and 9 relating to the location of the Facility and site conditions are relevant and material to the Commission's decision. TCEQ rules provide that "[a] wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event." 30 TAC § 309.13(a). Issue No. 3 relating to nuisance odors is relevant and material to the Commission's decision. TCEQ rules provide that a wastewater treatment facility "abate and control a nuisance of odor prior to construction." 30 TAC § 309.13(e). Issues No. 4 and 5 relating to well water contamination are relevant and material to the Commission's decision. TCEQ rules provide for specific distances between wastewater treatment facilities and private and public wells. 30 TAC § 309.13(c). Issues No. 6-7 relating to contamination and environmental impact are relevant and material to the Commission's decision. Chapter 309 of Title 30 of the Texas Administrative Code provides for numerous effluent limitations and standards.

Issue No. 8 relating to the cumulative impacts of the potential wastewater discharges from the proposed Nash Facility and the proposed Pulte Homes of Texas, L.P. facility is relevant and material to the Commission's decision. The Commission has a duty to "develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations." TWC § 5.130(1). This policy is evident in TWC provisions that require water quality planning on a watershed basis. TWC § 26.0136(a). Further, the legislature has established a state policy to encourage regionalization of wastewater treatment facilities. TWC § 26.081. Many of the issues raised by the requesters could be exacerbated if the Pulte Homes permit is issued in conjunction with the Nash permit. For example, many landowners are concerned about problems related to the location of the Facility near homes in low-lying areas prone to flooding. If these permit applications are considered

independently, permit conditions may allow for wastewater discharges that exceed South Mayde Creek's receiving capacity.

Issues No. 10–14 were not raised during the comment period and OPIC does not recommend their consideration. However, if the Commission considers these issues, OPIC finds that only Issues No. 10, 11, 13, and 14 are relevant and material because they pertain to health and safety, and, the laws under which the application is being reviewed. Except for nuisance odors relating to Issue No. 18 and addressed by Issue No. 3, Issues No. 15–21 are not relevant and material because they are beyond the Commission's jurisdiction to review in the context of this wastewater discharge application.

G. Issue Recommended for Referral

OPIC recommends referring Issues No. 1–9 in § III. B to SOAH for a contested case hearing.

H. Maximum Expected Duration of Hearing

Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application will be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

Any person may file a request for reconsideration of the ED's decision. 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than thirty days after the Chief Clerk mails the ED's decision and response to comments. The request must