

DOCKET NO. 2015-0988-MWD

**APPLICATION BY ARBOR WAY, INC. § BEFORE THE TEXAS COMMISSION
FOR RENEWAL OF WASTEWATER § ON
PERMIT WQ0014649-001 § ENVIRONMENTAL QUALITY**

RESPONSE TO HEARING REQUESTS

To the Honorable Commission:

Arbor Way, Inc. (“Arbor”) files this response to hearing requests and would respectfully show the following:

I.

Background

Arbor filed an application to renew permit number WQ0014649-001 (the “Permit”) by depositing the renewal application in the US Mail on June 2, 2014, more than 180 days before the expiration of the Permit as required by 30 TAC §§305.65 and 305.71(c). The Permit authorizes Arbor to dispose of treated domestic wastewater effluent at a daily average flow not to exceed 0.038 million gallons per day (“MGD”) in the Interim I Phase, 0.125 MGD in the Interim II Phase and 0.430 MGD in the Final Phase via surface irrigation of 170 acres (all phases) of a golf course in accordance with the terms of the Permit and Chapter 26 of the Texas Water Code. The Permit prohibits discharge of pollutants into water in the State.

The Permit was originally issued on August 8, 2006, and was renewed on July 5, 2011, for a term that expired on December 1, 2014. The Permit requires Commission approval of any plans and specifications for the treatment facilities prior to commencing construction of those facilities. The wastewater treatment facilities that are authorized under the Permit have not been constructed yet and the irrigation facilities that will be used to irrigate the treated effluent have not been modified yet for use under the Permit.

Arbor is requesting continuation of the same requirements and conditions of the Permit. Arbor intends to construct the permitted facilities within the next year in order to serve a proposed residential development in the area to be served by the facilities authorized under the Permit. Arbor is not applying to increase the quantity of wastewater authorized to be discharged under the Permit or to change the pattern or place of discharge. Arbor has no negative compliance history.

The Executive Director of the Commission filed a response to comments on May 7, 2015, which addressed the issues raised in the hearing requests and comments filed during the comment period.

II.

Response to Hearing Requests

Three individuals filed hearing requests related to Arbor's application to renew the Permit (the "Requestors") during the comment period.¹ The three individuals appear to be affected parties based upon the facts set forth in their hearing requests. None of the requests have been withdrawn. Arbor disputes all of the issues raised by the Requestors, which can be summarized as follows:

- Concern about raw water irrigation runoff from the existing golf course irrigation system;
- Concern about irrigation of raw water on private property and in public right of ways;
- Concern about the impact of the permitted effluent storage ponds on wildlife;
- Concern about the possibility of treated effluent being used for firefighting;
- Concern about the possibility of treated effluent being used for irrigation of private property;
- Concern about the unsightliness of the permitted facilities; and
- Concern about the possibly reduction in property values.

Arbor disputes the alleged facts set forth by the Requestors as not being true or being irrelevant to the renewal of the Permit. Further, Arbor disputes that the Requestors bases for requesting a contested case hearing are not supported by the laws application to renewal of the Permit. None of these issues warrant referral of Arbor's application for renewal of the Permit to a contested hearing. If this application were referred to a public hearing based upon the issues asserted by Requestors, Arbor believes that such a hearing would take no more than four days to complete.

However, this application should not be referred to a contested case hearing. Doing so would be a waste of resources in order to address issues that do not warrant a contested case hearing. Under TEXAS WATER CODE 26.028(d),

¹ Another individual filed comments on Arbors' application to renew the Permit but did not request a hearing (See letter of Brad Krall, dated December 22, 2014).

the commission, at a regular meeting **without the necessity of holding a public hearing**, may approve an application to renew or amend a permit if

(1) the applicant is not applying to: (A) increase significantly the quantity of waste authorized to be discharged; or (B) change materially the pattern or place of discharge;

(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and

(4) the commission determines that an applicant's compliance history under the method for using compliance history developed by the commission under Section 5.754 raises no issues regarding the applicant's ability to comply with a material term of its permit.

(emphasis added). These criteria are repeated in the Commission's rules in 30 TAC §55.201(i)(5) relating to the right of an individual to a contested case hearing. Arbor's application for renewal of the Permit satisfies all of the criteria set forth in §26.028(d) and in §55.201(i)(5), and the Commission has the authority to approve renewal of the Permit without a public hearing or a contested case hearing.

Arbor agrees with the Response to Comments filed by the Executive Director on May 7, 2015, and provides the following response to the concerns raised by the Requestors.

A. Irrigation Runoff and Irrigation On Private Property And In Public Right Of Ways

Requestors complain that runoff from the current golf course irrigation system, which uses raw water from Lake Travis, travels on to their properties or into holding ponds and overflows into Lake Travis. Requestors also complain that irrigation spray from the current golf course irrigation system, which uses raw water from Lake Travis, is dispersed on to their properties and onto public right-of-way. They assert that the same will happen to the treated wastewater effluent when it is irrigated onto the golf course. The Permit prohibits the discharge of pollutants into waters of the State. Arbor has yet to construct any facilities to either treat wastewater or constructed or modified any irrigation facilities to apply treated effluent to the golf course irrigation area. The Permit requires that plans and specifications for any such facilities be

approved by the Commission before construction begins and contains provisions to prohibit and prevent runoff from the irrigation areas and prohibits irrigation of land outside the permitted area. A public hearing should not be granted on these bases.

B. Impact On Wildlife

Requestors complain that storing treated wastewater effluent in holding ponds will harm wildlife. The use of effluent holding ponds to store treated wastewater effluent prior to application by irrigation is a well accepted and approved practice. Nearly every water quality permit that authorizes irrigation of treated wastewater effluent on land authorizes the construction of these types of ponds. Wildlife impact of the sort asserted by Requestors simply does not occur. The Permit requires that Arbor treat domestic wastewater to a level that is suitable for surface irrigation. A public hearing should not be granted on this basis.

C. Effluent for Firefighting and Irrigating Private Property

Requestors complain that treated wastewater effluent may be used for firefighting purposes and to irrigate private property outside the permitted area. They assert that these things will happen to the treated wastewater effluent because that is how the raw water in the golf course holding ponds is currently used. The Permit prohibits the discharge of pollutants into waters of the State. Arbor has yet to construct any facilities to either treat wastewater or constructed or modified any irrigation facilities to apply treated effluent to the golf course irrigation area. The Permit requires that plans and specifications for any such facilities be approved by the Commission before construction begins and contains provisions to prohibit and prevent use of treated effluent for firefighting purposes or for irrigation of land outside the permitted area. A public hearing should not be granted on these bases.

D. Unsightliness and Reduction in property values.

Requestors complain that the permitted facilities will be unsightly and cause a reduction in property values. Neither of these issues are relevant and material to the decision on the application for renewal of the Permit. A public hearing should not be granted on these bases.

III.
Conclusion

Arbor requests that the Commission deny the hearing requests filed by Requestors for the reasons set forth above and approve the renewal of the Permit.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent via facsimile, regular mail, as indicated to all parties of record on this the 31st day of August, 2015.



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