

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 9, 2016

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: CITY OF WHITE OAK  
TCEQ DOCKET NO. 2015-1706-MWD**

Dear Ms. Bohac:

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

Sincerely,

  
Isabel G. Segarra Treviño, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2015-1706-MWD**

**IN THE MATTER OF THE  
APPLICATION BY THE CITY OF  
WHITE OAK FOR A MAJOR  
AMENDMENT TO TPDES PERMIT  
NO. WQ0010940001**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

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

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Background of Facility**

City of White Oak (City or Applicant) has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010940001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,100,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day.

The City of White Oak Wastewater Treatment Facility (Facility) is an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim phase include two bar screens, two oxidation ditches, four final clarifiers, two sludge drying beds, a belt filter press, two sludge holding tanks, and an ultraviolet disinfection chamber. Treatment units in the Final phase will include a bar screen, two oxidation ditches, five final clarifiers, two sludge drying beds, a belt filter press, two sludge holding tanks, a cascade aerator, and two ultraviolet disinfection

chambers. The Facility has been in operation since the 1960's and is currently operating in the Interim phase.

Sludge generated from the Facility is hauled by a registered transporter and disposed of at a TCEQ permitted landfill, Pine Hill Landfill, Permit No. 1327B, in Gregg County, Texas. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The draft permit updates the Standard Permit Conditions, Sludge Provisions, Other Requirements, and Biomonitoring sections to reflect current regulatory requirements. Total Dissolved Solids monitoring has been added to the draft permit. The daily maximum bacterial limit has been changed from 394 Colony-Forming Units (CFU) or Most Probable Number (MPN) per 100 ml to 399 CFU or MPN per 100 ml, based on the U.S. Environmental Protection Agency approved portions of the 2014 Texas Surface Water Quality Standards.

The plant site is located 1,500 feet east of State Highway 42 and 3,800 feet south of U.S. Highway 80, in Gregg County, Texas 75693. The treated effluent is discharged to Hawkins Creek; thence to Sabine River above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River Basin. The unclassified receiving water use is limited aquatic life use for Hawkins Creek. The designated uses for Segment No. 0505 are high aquatic life use, public water supply, and primary contact recreation. Segment No. 0505 of the Sabine River Basin is currently listed for bacteria on the State's inventory of impaired and threatened waters pursuant to federal Clean Water Act § 303(d).

## **B. Procedural Background**

The TCEQ received the application on October 2, 2014, and declared it administratively complete on November 21, 2014. The Notice of Receipt of Application and Intent to Obtain a

Water Quality Permit Amendment was published in English on December 5, 2014, in Gregg County in the *Longview News-Journal* newspaper. The Executive Director's (ED) staff completed the technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment was published in English on June 11, 2015, in Gregg County in the *Longview News-Journal* newspaper. Alternate language publication was not required for this application. The public comment period ended on July 13, 2015. The Chief Clerk mailed the ED's Decision and Response to Public Comment on September 14, 2015 and the deadline for filing requests for a contested case hearing was October 14, 2015.

The TCEQ Chief Clerk's office received timely requests from Kelly and Sophia Gossage, Walter Edward Kowali, and Gregg Williams. As discussed below, OPIC recommends granting the hearing requests of Walter Edward Kowalik and Gregg Williams. Further, OPIC recommends denying Kelly and Sophia Gossage's hearing request.

## II. APPLICABLE LAW

A person may request the TCEQ reconsider the ED's decision on an application or hold a contested case hearing on an application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEX. WATER CODE (TWC) § 5.556). The requirements of House Bill 801 only apply to applications declared administratively complete on or after September 1, 1999. The TCEQ declared the City's application administratively complete on November 21, 2014. Therefore, the City's application is subject to the procedural requirements of House Bill 801.

TCEQ rules require that a person seeking a hearing must substantially comply with the following: (1) give the name, address, daytime telephone number, and, where possible, fax number

of the person who filed the request, (2) identify the requestor's personal justiciable interest affected by the application, including a written statement describing the requestor's location or distance in relation to the proposed facility or activity, and, how or why the requestor believes he or she will be 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 comment period and that are the basis of the hearing request, and (5) provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

Only affected persons are granted contested case hearings. TWC § 5.556(c). 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." 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors considered in determining whether a person is affected 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 and safety of the person, and on the 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.

30 TAC § 55.203(c).

The Commission shall grant an affected person's timely filed contested case hearing request if the request: (1) raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application, (2) is timely

filed with the Chief Clerk, (3) is made pursuant to a right to hearing authorized by law, and (4) complies with the request for reconsideration and contested case hearing requirements. 30 TAC § 55.211(c). Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

### **III. DISCUSSION**

Kelly and Sophia Gossage, Walter Edward Kowalik, and Gregg Williams submitted timely hearing requests, that were not withdrawn, that substantially comply with the procedural requirements of 30 TAC § 55.201(d).

#### **A. Determination of Affected Person Status**

For a hearing requestor to be an affected person, the request must be based on an interest that is protected under the law governing the permit application. 30 TAC § 55.203(a). The TCEQ administers wastewater discharge permit applications pursuant to its authority under TWC § 26.027(a). As further explained below, OPIC finds that Walter Edward Kowalik and Gregg Williams are affected persons. Further, because OPIC was unable to locate the property of Kelly and Sophia Gossage in relation to the Facility and its discharge route, OPIC recommends denial of their request.

Kelly and Sophia Gossage

Kelly and Sophia Gossage are concerned that increased effluent discharge will worsen existing flooding issues and, therefore, affect the Gossages use and enjoyment of their land. The Gossages operate a ranch and cattle operation on their land. The flooding concerns expressed in this request are general in nature. Also, while the Gossages describe the location of their ranch, OPIC was not able to locate the Gossages' ranch on any of the maps provided by the Applicant or the ED. From the description provided by the Gossages, it appears that they are over one mile downstream from the discharge outfall. Therefore, OPIC finds Kelly and Sophia Gossage are not affected persons.

Walter Edward Kowalik

Walter E. Kowalik is concerned about the debris left on his property after flooding events and the damage this debris has caused to a bridge within his property. Mr. Kowalik states that his property, as of the date of his hearing request, was under water. While general concerns about flooding are beyond the Commission's jurisdiction on this application, specific issues about the location of a facility, the suitability of the site characteristics, and the proper functioning of a discharge route can be addressed under 30 TAC Ch. 309, Subchapter B. 30 TAC § 309.10(b). Mr. Kowalik's property is slightly over one mile from the Facility and discharge outfall, along the discharge route along Hawkins Creek. Given Mr. Kowalik's location along the discharge route and the nature of his concerns, OPIC finds that Mr. Kowalik is an affected person.

Gregg Williams

Gregg Williams is concerned about the characterization of the receiving waterways and their ability to hold additional effluent discharge. Additionally, Mr. Williams is concerned about debris that has been deposited in the bed of Hawkins Creek on his property. While general

concerns about flooding are beyond the Commission's jurisdiction on this application, specific issues about the location of a facility, the suitability of the site characteristics, and the proper functioning of a discharge route can be addressed under 30 TAC Ch. 309, Subchapter B. 30 TAC § 309.10(b). Mr. Williams states that he is the manager and a member of AGLYN Number One, LLC and AGLYN Number Two, LLC. These properties are located less than a mile from the Facility and discharge outfall, and are along the discharge route. Given Mr. William's location relative to the discharge route and the nature of his concerns, OPIC finds that Mr. Williams is an affected person.

**B. Issues Raised in the Hearing Request**

The hearing requesters raise the following issues:

1. Whether the characteristics of the Facility are suitable because of the improper function of the discharge route and inability of the discharge route to contain additional effluent.
2. Whether the effluent discharge will affect neighboring landowner's use of their property.
3. Whether the effluent discharge will worsen existing flooding conditions in the area.
4. Whether the removal of debris along Hawkins Creek will improve flooding conditions in the area.

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**C. Issues Raised in the Comment Period**

Issues must be raised during the comment period and must have not been withdrawn. 30 TAC §§ 55.201(c) & (d)(4), 55.211(c)(2)(A). All the issues raised by the requesters were raised during the comment period and not withdrawn.

**D. Disputed Issues**

There is no agreement between the requesters and the ED on the issues raised in the hearing requests.

**E. Issues of Fact**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). Issues No. 1–4 are issues of fact.

**F. Relevant and Material Issues**

Issues No. 1–2, concerning the characterization of the discharge route and use of property are relevant and material to the Commission’s decision on this application. 30 TAC Ch. 309, Subchapter B. Issues Nos. 3–4 are not relevant and material because they are beyond the Commission’s jurisdiction to review this water quality application.

**G. Issue Recommended for Referral**

OPIC recommends referring Issues No. 1–2 in § III. B to SOAH for a contested case hearing.

**H. Maximum Expected Duration of Hearing**

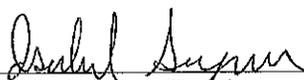
Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC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

**IV. CONCLUSION**

For the reasons set forth above, we recommend granting the hearing requests of Walter Edward Kowalik and Gregg Williams. Further, OPIC recommends denying the hearing request of Kelly and Sophia Gossage.

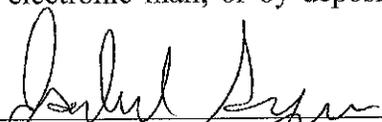
Respectfully submitted,

Vic McWherter  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2016 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Isabel G. Segarra Treviño

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TCEQ DOCKET NO. 2015-1706-MWD**

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