

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niemann, *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*

May 13, 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: TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION  
TCEQ DOCKET NO. 2016-0590-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,

A handwritten signature in black ink, appearing to read "Rudy Calderon".

Rudy Calderon, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**MAILING LIST**  
**TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION**  
**TCEQ DOCKET NO. 2016-0590-MWD**

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FOR ALTERNATIVE DISPUTE  
RESOLUTION

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TCEQ Alternative Dispute Resolution,  
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REQUESTERS:

Rebecca Barker  
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Robstown, TX 78380-5897

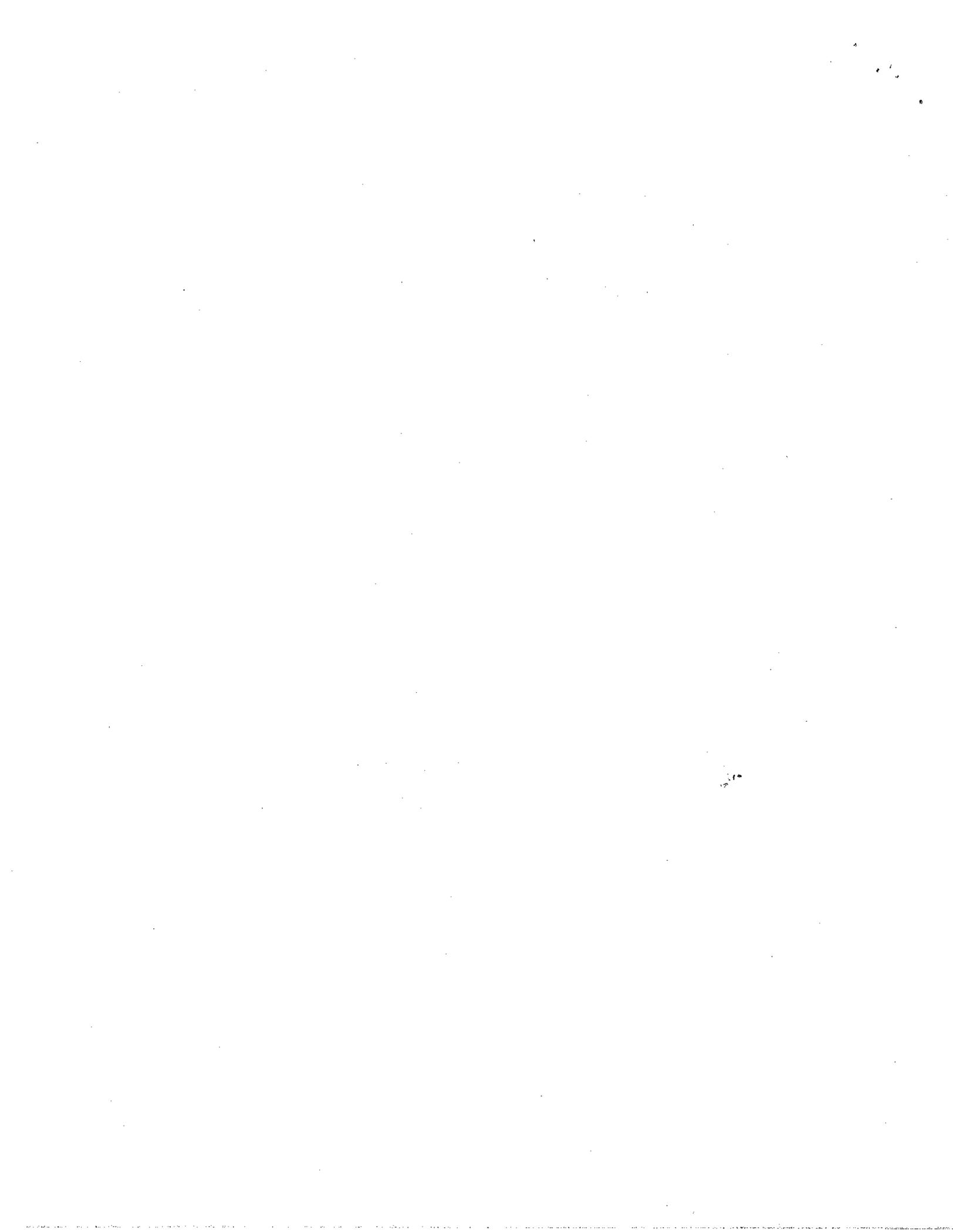
John Raymond Hamrick  
385 Sea Bass Dr.  
Palacios, TX 77465-6009

Ricky Jackson  
17933 Easy St.  
Jonestown, TX 78645-9661

Bill Martin  
675 Firefly Dr.  
Canyon Lake, TX 78133-6519

Glen Allen Mears  
502 Porpoise Dr.  
Palacios, TX 77465-1959

Dale Rocarek & Peggy Redmond  
67 Lobster Ln.  
Palacios, TX 77465



**TCEQ DOCKET NO. 2016-0590-MWD**

**IN THE MATTER OF THE  
APPLICATION OF TRI-COUNTY  
POINT PROPERTY OWNERS  
ASSOCIATION FOR TPDES  
PERMIT NO. WQ0015399001**

**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 shows the following.

**I. Introduction**

**A. Background of Facility**

Tri-County Point Property Owners Association (Tri-County or Applicant) has applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) Permit, No. WQ0015399001, that will authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day (gpd). The facility was previously permitted under TPDES Permit No. WQ0012880001. The facility site is located approximately 12,000 feet southwest of the intersection of State Highway 35 and Five Mile Branch, Jackson County, Texas.

The Tri-County facility is an activated sludge process plant operated in the extended aeration mode. Treatment units will include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The facility is in operation.

The effluent limitations in the draft permit, based on a 30-day average, are 20 mg/l five-day biochemical oxygen demand (BOD<sub>5</sub>), 20 mg/l total suspended solids (TSS), report mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 126 colony-forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 2.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged to an unnamed drainage ditch; thence to a small lake; thence to a salt marsh; thence to Carancahua Bay Segment No. 2456 of the Bays and Estuaries. The unclassified receiving water uses are minimal aquatic life use from the unnamed drainage ditch and high aquatic life use for the small lake. The designated uses for Segment No. 2456 are exceptional aquatic life use, oyster waters, and primary contact recreation.

## **B. Procedural Background**

TCEQ received the application on June 17, 2015, and declared it administratively complete on September 23, 2015. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 28, 2015 in the *Jackson County Herald Tribune*. The application was determined technically complete on October 23, 2015. The Notice of Application and Preliminary Decision (NAPD) was published on December 16, 2015 in the *Jackson County Herald Tribune*. On March 8, 2016, the ED filed his Response to Public Comment, and on March 10, 2016, the Chief Clerk mailed notice of the ED's Decision and Response to Comments. The deadline to request a contested case hearing was April 11, 2016.

TCEQ received timely comments and requests for a contested case hearing from Rebecca Barker, John Raymond Hamrick, Ricky Jackson, Bill Martin, Glen Allen Mears, and Dale Rocarek and Peggy Redmond.

## **II. Applicable Law**

The ED declared this application administratively complete on September 23, 2015. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the 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).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application.

*30 TAC § 55.201(d).*

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.* Governmental entities with authority under state law over issues

contemplated by the application may be considered affected persons. *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).*

A group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

*30 TAC § 55.205(a).* The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. *Id.*

The Commission shall grant an affected person's timely filed hearing request if:

(1) the request is made pursuant to a right to hearing authorized by law; and (2) the request 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. *30 TAC § 55.211(c).*

Accordingly, 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**

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

##### Rebecca Baker

According to a map provided to OPIC by the ED and the location provided Ms. Bakers hearing request, Ms. Baker is not an adjacent landowner nor does her property lie on the discharge route. In her hearing request, Ms. Baker does not give a property address within Jackson County. Rather, she lists her address as being in Robstown, Texas which lies approximately 120 miles away. Additionally, Ms. Baker fails to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Ms. Baker may seek to cure these defects in her hearing request at a preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that Rebecca Baker does not qualify as an affected person and should not be granted a contested case hearing.

##### John Raymond Hamrick

According to a map provided to OPIC by the ED and the location provided by Mr. Hamrick's hearing request, Mr. Hamrick's property is approximately 1 mile from the facility. Mr. Hamrick is not an adjacent landowner nor does his property lie on the

discharge route. In his hearing request, Mr. Hamrick fails to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Mr. Hamrick may seek to cure this defect in his hearing request at a preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that John Raymond Hamrick does not qualify as an affected person and should not be granted a contested case hearing.

Ricky Jackson

According to a map provided to OPIC by the ED and the location provided by Mr. Jackson's hearing request, Mr. Jackson is not an adjacent landowner nor does his property lie on the discharge route. Rather, he provides an address that is more than 6 miles away from the facility. In his hearing request, Mr. Jackson fails to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Mr. Jackson may seek to cure these defects in his hearing request at a preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that Ricky Jackson does not qualify as an affected person and should not be granted a contested case hearing.

Bill Martin

According to a map provided to OPIC by the ED and the location provided by Mr. Martin's hearing request, Mr. Martin is not an adjacent landowner nor does his property lie on the discharge route. In his hearing request, Mr. Martin does not give a property address within Jackson County. Rather, he lists his address as being in Canyon Lake, Texas which lies approximately 170 miles away. Additionally, Mr. Martin fails to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Mr. Martin may seek to cure these defects in his hearing request at a

preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that Bill Martin does not qualify as an affected person and should not be granted a contested case hearing.

Glen Allen Mears

According to a map provided to OPIC by the ED and the location provided by Mr. Mears' hearing request, Mr. Mears' property is approximately 1.5 miles from the facility. Mr. Mears is not an adjacent landowner nor does his property lie on the discharge route. In his hearing request, Mr. Mears fails to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Mr. Jackson may seek to cure this defect in his hearing request at a preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that Glen Allen Mears does not qualify as an affected person and should not be granted a contested case hearing.

Dale Rocarek and Peggy Redmond

According to a map provided to OPIC by the ED and the location provided by Mr. Rocarek and Ms. Redmond in their joint hearing request, the Rocarek/Redmond property is approximately 1.25 miles from the facility. Mr. Rocarek and Ms. Redmond are not adjacent landowners nor does their property lie on the discharge route. In their hearing request, Mr. Rocarek and Ms. Redmond fail to raise a personal justiciable interest that is distinguishable from an interest common to the general public. Mr. Rocarek and Ms. Redmond may seek to cure this defect in their hearing request at a preliminary hearing should the matter be referred for a contested case hearing. Therefore, OPIC has concluded that Dale Rocarek and Peggy Redmond do not qualify as affected persons and should not be granted a contested case hearing.

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

The issues raised in the hearing requests were determined by OPIC to not be of the nature that are personal justiciable to the requestors. The issues included concerns over unfulfilled third party agreements, general health effects on the residents of the community as a whole, and provisions contained in the former permit. The requestors raised these issues as general concerns and did not state how they as individuals would be adversely impacted. OPIC has determined that the requestors failed to assert a personal justiciable interest that is distinguishable from the general public as required by 30 TAC § 55.203(a). Additionally, issues were raised that are outside of the Commission's jurisdiction as it pertains to TPDES permits such as property values and the quality of drinking water currently being provided. The requestors may seek to cure these defects in their requests at a preliminary hearing should the matter be referred for a contested case hearing.

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

All of the issues raised in the hearing request were raised in the comment period and have not been withdrawn. *30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A).*

## **D. Disputed Issues**

There is no agreement between the hearing requestors 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).

**F. Relevant and Material Issues**

The hearing requests raise no issues relevant and material to the Commission’s decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission’s decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–51 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material . . . it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs”). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

**G. Issues Recommended for Referral**

OPIC finds that there are no appropriate issues for referral based on the analysis provided in Section III. A & B.

**H. Maximum Expected Duration of Hearing**

Commission Rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule

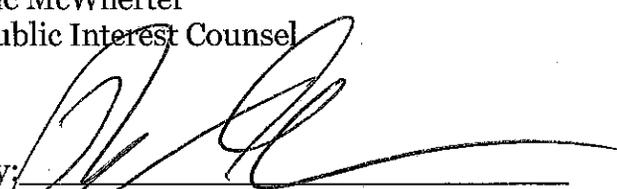
further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. While OPIC recommends no issues for referral, to assist the Commission in stating a date by which the judge is expected to issue a proposal for decision should the Commission decide referral of some issues is appropriate, and as required by 30 TAC § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

#### **IV. Conclusion**

OPIC recommends denying the hearing requests of Rebecca Barker, John Raymond Hamrick, Ricky Jackson, Bill Martin, Glen Allen Mears, and Dale Rocarek and Peggy Redmond. Additionally, OPIC finds that there are no issues appropriate for referral. However, should the Commission decide otherwise, OPIC recommends a hearing duration of nine months in this matter.

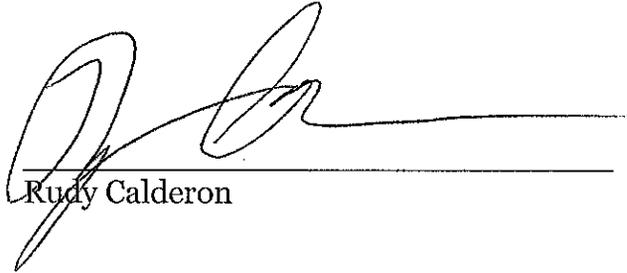
Respectfully submitted,

Vic McWherter  
Public Interest Counsel

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## CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2016 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing were 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.



Rudy Calderon

