

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

October 24, 2016

Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: Honey Holdings I Ltd.; Proposed TPDES Permit No. WQ0005155000;
Docket No. 2016-1284-IWD

Dear Ms. Bohac:

Attached for filing please find an original and seven copies of the Executive Director's Response to Hearing Requests in the above referenced matter. Please feel free to contact me at linda.horn@tceq.texas.gov or (512) 239-0676 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Horn", written over the printed name and title.

Linda Horn
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ PERMIT NO. WQ0005155000

APPLICATION BY	§	BEFORE THE TEXAS
HONEY HOLDING I, LTD. FOR	§	COMMISSION ON
TCEQ PERMIT NO. 0005155000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to hearing requests on the application by Honey Holding I, Ltd. for TCEQ permit number WQ0014778001 and on the Executive Director's preliminary decision. The Office of the Chief Clerk (OCC) received one timely hearing request from Ernie F. and Patsy W. Battle.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ's Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Attached for Commission consideration is a satellite map of the area.

I. Background

A. Description of Facility

Honey Holdings I Ltd. operates Honey Solutions, a honey supply facility, located on the north frontage road at 11711 Interstate 10 East, approximately 2 miles east of the intersection of Interstate 10 and State Highway 146 South, in Baytown, Chambers County, Texas 77523.

Honey Holding I Ltd., which operates Honey Solutions, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005155000 to authorize the discharge of honey container washwater at a daily average flow not to exceed 5,000 gallons per day via Outfall 001.

The Applicant intends to discharge treated washwater from the washing of drums and totes that contain residual honey. Washing of the totes and drums will be conducted indoors. The washwater enters the drain which is connected to an underground storage tank. Washwater will then be pumped into

the treatment system that will be located at the East end of the facility via a pipeline. The treatment system will include a screen filter, settling tank, and a pH adjustment tank. The treated washwater will be conveyed through a pipe to the proposed discharged point 001. Stormwater will not comingle with the washwater.

B. Procedural Background

The TCEQ received the application on January 25, 2015, the application was declared administratively complete on April 15, 2015 and technically complete on June 3, 2015. The Applicant published the Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) in English in the Baytown Sun on June 4, 2015. On October 27, 2015, the Applicant published the Notice of Application and Preliminary Decision for a New TPDES Permit (NAPD) in English in the Baytown Sun.

The public comment period ended on November 30, 2015. The ED's Response to Public Comment was filed on June 20, 2016. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

II. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. This application is subject to the HB 801 requirements.

A. Responses to Requests

"The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests" 30 TAC § 55.209(d).

According to 30 TAC § 55.209(e), 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.

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. As noted in 30 TAC § 55.201(c):

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was 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.

According to 30 TAC § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely 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 public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." The factors to consider in making this determination are found in 30 TAC § 55.203 and are as follows:

(a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (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.

D. Referral to the State Office of Administrative Hearings

30 TAC § 50.115(b) details how the Commission refers a matter to the State Office of Administrative Hearings: “When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(c) further states:

The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.

III. Evaluation of Hearing Requests

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d).

The hearing requestors submitted a timely written contested case hearing (CCH) request that included contact information and raised disputed issues. The hearing requestors identified their personal justiciable interest in the application that is not common to the general public. In addition, the requestors indicated that their property is adjacent to the facility site.

The ED recommends finding that the requestors substantially complied with 30 TAC §§ 55.201(c) and (d).

B. Whether the Requestors Meet the Affected Person Requirements

The Executive Director reviewed all of the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ernie and Patsy Battle are affected persons because they have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issues the Battles raised are included in the factors delineated in 30 TAC § 55.203.

According to the hearing request, Ernie and Patsy Battle own property adjacent to and downstream of the Applicant's facility. They are concerned that due to the gentle slope at the discharge location, the wastewater will pool in front of their property and create stagnant water which could lead to mosquito infestations, overgrown weeds, and bad odors. Although the requestors provided a Lufkin address in their hearing request, the adjacent landowner list and map provided by the Applicant confirm that the requestors have a property interest in the adjacent property.

Ernie and Patsy Battle identified a personal judiciable interest that is not in common to the general public and identified a reasonable relationship between their concerns and the discharge authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Ernie and Patsy Battle are affected persons.

B. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director analyzed the issues raised in the hearing request that it has recommended granting in accordance with the regulatory criteria and provides the following recommendations regarding whether the issues can be referred to SOAH if the Commission grants the hearing requests. Except where noted, all issues were raised during the public comment period, and none of the issues were withdrawn.¹ All identified issues are considered disputed unless otherwise noted.

Issue 1. Whether the discharge of treated honey washwater into the roadside ditch will cause pooling and stagnant water and result in offensive odors.

¹ In the ED's Response to Comments, the ED interpreted the requestors' concerns about pooling water to be related to flooding, and the ED responded accordingly. After additional consideration of the hearing request, as noted below, the ED finds that some of the concerns raised by the requestors are covered by the agency's applicable rules and statutes.

This is an issue of fact that is relevant and material to a decision on the application pursuant to 30 TAC § 307.4(b)(1). The ED recommends the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 2. Whether the discharge of treated honey washwater into the roadside ditch will cause pooling and stagnant water that will result in a public health hazard from mosquito infestation.

This is an issue of fact that is relevant and material to a decision on the application pursuant to Texas Water Code § 26.041. The ED recommends the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 3. Whether the discharge of treated honey washwater into the roadside ditch will cause pooling and stagnant water and result in overgrown weeds.

This is an issue of fact. However, it is not relevant and material to a decision on the application. The ED recommends the Commission **not** refer this issue to SOAH if it grants the hearing request.

VII. Duration of the Contested Case Hearing

Should there be a contested case hearing on this application, the ED recommends that the duration for the hearing be nine months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Ernie and Patsy Battle are affected persons and grant their hearing request.
2. The Executive Director strongly recommends referring the matter to Alternative Dispute Resolution for a reasonable period prior to referral to SOAH.

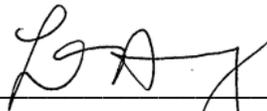
3. If referred to SOAH, the ED recommends referring Issues 1 and 2 as identified by the Executive Director.

Respectfully submitted,
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

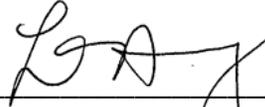
By:  _____

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on October 24, 2016, the Executive Director's Response to Hearing Requests for Honey Holding I, Ltd., TCEQ Permit No. WQ0005155000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Linda Horng, Staff Attorney
Environmental Law Division
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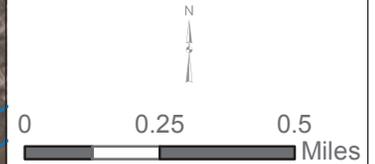
Honey Holdings I, Ltd., WQ0005155000

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

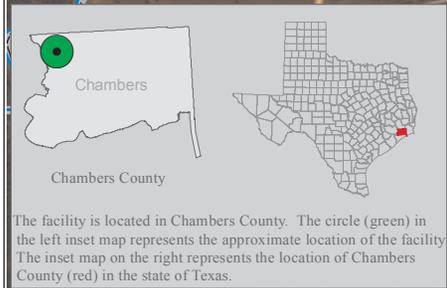


Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 10/13/2016



- Discharge Route
- Ernie and Patsy Battle Property
- Honey Holdings Facility
- Discharge Point
- Water Bodies
- 1 Mile Radius
- County Boundary



The facility is located in Chambers County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Chambers County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

**MAILING LIST
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DOCKET NO. 2016-1284-IWD; PERMIT NO. WQ0005155000**

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REQUESTER(S)

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