

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

October 7, 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: **GRIMES CO. WATER RECLAMATION, LLC**
TCEQ DOCKET NO. 2016-1461-MWD

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2016-1461-MWD

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION BY GRIMES CO.	§	
WATER RECLAMATION LLC,	§	TEXAS COMMISSION ON
FOR RENEWAL OF TEXAS LAND	§	
APPLICATION PERMIT	§	ENVIRONMENTAL QUALITY
NO. WQ0015032001	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST FOR RECONSIDERATION AND HEARING REQUEST**

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this Response to Hearing Request in the above-referenced matter.

I. INTRODUCTION

Grimes Co. Water Reclamation LLC (GCWR or Applicant) has applied to the TCEQ for a renewal of its Texas Land Application Permit (TLAP), which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 34,000 gallons per day (gpd) in the Interim I Phase, a daily average flow not to exceed 68,000 gpd in the Interim II Phase, and 80,000 gpd in the final phase via surface irrigation of 57 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into water in the state. The irrigated crops shall include Coastal Bermuda grass and Winter Wheat.

The wastewater treatment facility and disposal site will be located at 7063 Clark Road, Plantersville, in Grimes County, Texas 77363. The wastewater treatment facility and disposal

site will be located in the drainage basin of Spring Creek, in Segment No. 1008 of the San Jacinto River Basin.

The GCWR Wastewater Treatment Facility will consist of an activated sludge process plant using the extended aeration mode in all phases. Treatment units in the Interim I phase will include flow equalization/pre-aeration basin, two trains consisting of two aeration basins, two final clarifiers, and aerated sludge holding tank. Treatment units in the Interim II phase will add another flow equalization/pre-aeration basin, two trains consisting of two aeration basins, two final clarifiers and an aerated sludge holding tank. The Final Phase facility will add one more equalization/pre-aeration basin. The wastewater treatment facility has not been constructed.

The TCEQ received GCWR's application to renew its TPDES permit on August 26, 2015 and declared it administratively complete on October 20, 2015. The notice of receipt and intent to obtain a water quality permit (NORI) was published on October 28, 2015 in the *Navasota Examiner*; the notice of application and preliminary decision (NAPD) was published on March 16, 2016 in the *Navasota Examiner*. The comment period ended on April 15, 2016. The Executive Director's decision and Response to Comments was mailed July 6, 2016, extending the deadline for requests for reconsideration or contested case hearing thirty calendar days to August 5, 2016.¹ Dee Collins filed a request for reconsideration on August 2, 2016 and hearing requests on November 16, 2015, March 25, 2016, and August 2, 2016. Since this application was administratively complete after September 1, 1999, it is subject to the procedural requirements of House Bill 801 (76th Legislature, 1999).

¹ 30 TAC §55.201(a)

After reviewing the requests and information available in the Chief Clerk's Office, OPIC recommends that the Commission deny Dee Collins' request for hearing and request for reconsideration because the Applicant is not applying to increase the quantity or pattern of waste to be discharged, water quality will be maintained, public participation and comment requirements have been observed, and the Applicant's compliance history does not indicate an inability to comply with a material term of the permit.

II. REQUEST FOR RECONSIDERATION

A. Applicable Law

House Bill 801 created the request for reconsideration as a procedural mechanism which allows the Commission to review and reconsider the Executive Director's decision on an application without a contested case hearing. Following the Executive Director's technical review and issuance of the Executive Director's decision and response to comments, a person may file a request for reconsideration or a request for contested case hearing, or both. TEXAS WATER CODE §5.556; 30 TEXAS ADMINISTRATIVE CODE ("TAC") §55.201(e).

Any person may file a request for reconsideration of the executive director's decision. 30 TAC 55.201(e). The request for reconsideration must state the reasons why the Executive Director's decision should be reconsidered. 30 TAC 55.201(e). Responses to requests for reconsideration should address the issues raised in the request. 30 TAC §55.209(f).

B. Basis of Request

Dee Collins' request for reconsideration of the Executive Director's decision is based upon a series of perceived deficiencies with respect to notice, inaccuracies in the application

materials, failure to comply with federal mandates, and potential nuisance conditions and water quality degradation resulting from operations. Dee Collins also raises concerns related to human health and safety and the health and safety of wildlife, increased traffic, and a general failure to meet rural community-friendly practices and values.

C. Discussion

The existing permit was submitted on August 26, 2015, and is a renewal of a previous TLAP which authorized the disposal of treated domestic wastewater of identical volume on the same land application area as designated in the current application. It is therefore, in commission parlance, a no increase renewal. A technical review vetting the concerns related to the health and safety of terrestrial and aquatic life—as well as protection of water quality—was completed before issuance of the initial permit. Although we sympathize with the concerns Dee Collins raises related to protectiveness of the permit, the request does not state why the proposed facility and application area are incapable of complying with the permit terms and adequately protecting against nuisance conditions. OPIC therefore cannot recommend denial of the permit authorization based on the issues raised by Dee Collins.

III. HEARING REQUEST

A. Requirements of Applicable Law

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). 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 application. 30 TEXAS ADMINISTRATIVE CODE (TAC) § 55.201(d). Under 30 TAC § 55.203(a), 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." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors 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.

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, pursuant 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 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.

III. DISCUSSION

A. Right to a Contested Case Hearing

Texas Water Code §26.028(d) and 30 TAC §55.201(i) provide that no right to a hearing exists for certain water quality discharge applications to renew or amend a permit if:

(A) the applicant is not applying to:

- (i) increase significantly the quantity of waste authorized to be discharged; or
- (ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

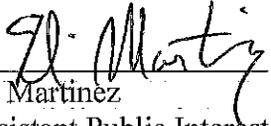
Under the current application, Applicant would not increase the quantity of waste to be discharged from its existing permit and effluent limitations and monitoring requirements would remain the same as the existing permit requirements. The facility has been permitted but has not yet been operated so there is no available information indicating the facility will not comply with its permit. Further, the executive director has filed a response to comments that addresses all timely and significant public comment, and the applicant's compliance history over the last five years is listed as "high." OPIC therefore finds that no right to a hearing exists on the proposed renewal.

IV. CONCLUSION

For the reasons outline above, OPIC recommends that the Commission deny Dee Collins' request for reconsideration and find that no right to a hearing exists for the proposed permit.

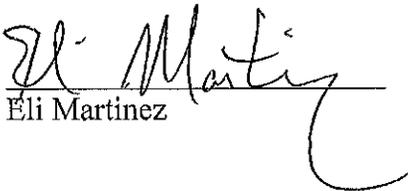
Respectfully submitted,

Vic Mcwherter
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2016, the original and seven true and correct copies of the Office of the Public Counsel's Response to Request for Reconsideration and Hearing Request 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 or by deposit in the U.S. Mail.


Eli Martinez

MAILING LIST
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TCEQ DOCKET NO. 2016-1461-MWD

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