

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 23, 2022

Laurie Gharis, 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 HOLLIDAY**
TCEQ DOCKET NO. 2021-1213-MWD

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2021-1213-MWD

**APPLICATION BY CITY OF
HOLLIDAY FOR RENEWAL OF
TEXAS POLLUTANT
DISCHARGE PERMIT NO.
WQ0014674001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

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

To the Members of the Texas Commission on Environmental Quality:

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

I. INTRODUCTION

A. Summary of position

Before the Commission is the application by City of Holliday (City or Applicant) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ14674001. The Commission received a timely comment and request for a contested case hearing from Charles A. Finnell. For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter and therefore deny the hearing request.

B. Background of facility

On August 13, 2020, Applicant applied to the TCEQ for a renewal of the existing TPDES Permit No. WQ0014674001 that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.20 million gallons per day (MGD). The City of Holliday wastewater treatment facility (Facility) is an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, a grit chamber, an oxidation ditch, a final clarifier,

three sludge drying beds, and a chlorine contact chamber. The existing wastewater treatment facility serves the City of Holliday.

The effluent limits in the draft permit, based on a 30-day average, are 20 mg/l Biochemical Oxygen Demand – five day (BOD5), 20 mg/l Total Suspended Solids (TSS), Report mg/l Ammonia-Nitrogen (NH3-N), 126 Colony-Forming Units (CFU) or Most Probable Number (MPN) of E. coli per 100 milliliters, and 4.0 mg/l minimum Dissolved Oxygen (DO). The effluent shall contain a chlorine residual in the range of 1.0 to 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). The pH must be in the range of 6.0 to 9.0 standard units.

The facility is located one-mile northeast of the City of Holliday on the north extension of College Street, approximately 0.25 miles north of the intersection of U.S. Highway 82 and U.S. Highway 277, in Archer County, Texas 76366. The treated effluent is discharged to an unnamed tributary, thence to Holliday Creek, thence to Lake Wichita in Segment No. 0219 of the Red River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 0219 are primary contact recreation and high aquatic life use.

C. Procedural background

TCEQ received the application on August 13, 2020. On October 21, 2022, the ED declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on November 12, 2020, in the *Arche County News*. The ED staff completed the technical review of the application on January 21, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in English on April 15, 2021, in the *Archer County News*. The public comment period closed on May 17, 2021. The Chief Clerk mailed the ED's Decision and Response to Comments

(RTC) on July 7, 2021. The deadline for filing requests for a contested case hearing was August 6, 2021. The Commission received a timely comment and a request for a contested case hearing from Charles A. Finnell.

II. APPLICABLE LAW

The application was filed after September 1, 2015 and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that 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;
- (2) identify the requestor'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 by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

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. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be 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;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

III. DISCUSSION

A. Right to hearing

As a threshold matter, Texas Water Code (TWC) § 26.028(d) states that the Commission may approve an application to renew a permit without a public hearing under certain conditions. *See also* 30 TAC §§ 50.113(d)(4), 55.211(d)(4). Commission Rule 55.201(i)(5) provides that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if:

- (A) the applicant is not applying to increase significantly the quantity of waste to be discharged or 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.

30 TAC § 55.201(i)(5); *see* TWC § 26.028(d).

Applying these requirements to the application under consideration, first, because this application is for renewal of an existing permit, the draft permit would not increase the quantity of waste that could be discharged, or change the pattern or place of discharge, from the existing permit.

Second, effluent limitations and monitoring requirements would remain the same as existing permit requirements. Thus, the activity to be authorized by the renewal permit will maintain the quality of waste authorized to be discharged.

Third, the public was provided notice of the right to request a public meeting on this application, and TCEQ received only one request for a public meeting. The ED denied the public meeting request on May 24, 2021. Because the ED is only required to hold a public meeting if there is a substantial or significant degree of public interest in the application, the required opportunity for a public meeting has been given.

Fourth, within the RTC, the ED has considered and responded to all timely and significant public comments.

Finally, Applicant's compliance history for the previous five years raises no issues regarding Applicant's ability to comply with a material term of the permit. As of September 1, 2020, the most recent compliance history rating date available, the City has a 0.21 (satisfactory) customer, respondent, owner/operator rating and a 0.31 (satisfactory) regulated entity rating for this facility. Also, the Applicant's compliance history report shows no enforcement actions initiated or pending within the previous five years. Given the Applicant's satisfactory compliance history, OPIC concludes the relevant compliance history raise no issues regarding Applicant's ability to comply with a material term of the permit.


In sum, OPIC finds that because each requirement contained in 30 TAC § 55.201(i)(5) has been satisfied, no right to a contested case hearing exists in this case.¹

IV. CONCLUSION

The Office of Public Interest Counsel respectfully recommends the Commission find there is no right to a contested case hearing on this matter and therefore deny Charles Finnell's hearing request.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By:  _____

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¹ If the commission finds a right to hearing exists, OPIC finds that the hearing request does not have enough information to determine if Mr. Finnell is an affected person in this matter.

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, the original of the Office of Public Interest Counsel's Response to a 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.



Pranjal M. Mehta

**MAILING LIST
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DOCKET NO. 2021-1213-MWD; PERMIT NO. WQ0014674001**

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