

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*

December 13, 2021

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: **STUDIO ESTATES, L.L.C.**  
**TCEQ DOCKET NO. 2021-1216-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink that reads "Eli Martinez".

Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**TCEQ DOCKET NO. 2021-1216-MWD**

**IN THE MATTER OF STUDIO  
ESTATES, LLC'S APPLICATION  
FOR WATER QUALITY PERMIT  
NO. WQ0015933001**

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO  
REQUEST 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 Request for Hearing in the above-referenced matter and respectfully shows the following.

**I. Introduction**

**A. Summary of Position**

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing request of the Guadalupe-Blanco River Authority (GBRA). The requestor is an affected person based on the concerns they have raised and their statutory authority over the issues relevant to the application. OPIC further recommends the Commission refer the issue listed in Section II.H for a contested case hearing at the State Office of Administrative Hearings ("SOAH") with a maximum duration of 180 days.

**B. Description of Facility**

Studio Estates, L.L.C. (Applicant) has applied for a proposed new TPDES Permit No. WQ0015933001 to authorize the discharge of treated domestic wastewater at a daily

average flow not to exceed 0.075 million gallons per day (MGD) in the Interim phase and a daily average flow not to exceed 0.15 MGD in the Final phase. The proposed wastewater treatment plant would serve office buildings, restaurants, warehouses, and grocery/retail stores.

The facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim phase would include a bar screen, a flow equalization basin, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. Treatment units in the Final phase would include a bar screen, a flow equalization basin, two aeration basins, two final clarifiers, two sludge digesters, and two chlorine contact chambers. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.075 MGD and a Final volume not to exceed a daily average flow of 0.15 MGD. The effluent limitations in the Interim phase of the draft permit, based on a 30-day average, are 20 milligrams per liter (mg/l) five-day biochemical oxygen demand (BOD<sub>5</sub>), 20 mg/l total suspended solids (TSS), 126 colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* (E. Coli) per 100 milliliters (ml), and 3.0 mg/l minimum dissolved oxygen (DO). The effluent limitations in the Final phase of the draft permit, based on a 30-day average, are 10 mg/l BOD<sub>5</sub>, 15 mg/l TSS, 126 CFU or MPN of E. coli per 100 ml, and 4.0 mg/l minimum DO. The effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The facility would be located approximately 1.03 miles southeast of the intersection of Goforth Road and Niederwald Strasse Road, in Hays County, Texas 78640.

The treated effluent would be discharged to Brushy Creek, thence to Soil Conservation Service (SCS) Site 14 Reservoir, thence to Brushy Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Brushy Creek. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use.

In accordance with 30 TAC § 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action and determined that numerical and narrative criteria to protect existing uses would be maintained. This review preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination was performed.

### **C. Procedural Background**

The TCEQ received the application on October 1, 2020, and declared it administratively complete on December 18, 2020. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in on January 13, 2021, in the *Daily Record* and in Spanish on January 12, 2021, in *La Prensa Comunidad*. The application was determined technically complete on March 15, 2021.

The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on May 6, 2021, in the *Daily Record* and in Spanish on May 18, 2021, in *La Prensa Comunidad*. The comment period for this application closed on June 17, 2021. The Executive Director's Response to Comments (RTC) was mailed on August 10,

2021. The hearing request period ended September 9, 2021. A timely hearing request was filed by GBRA.

## **II. Request for Hearing**

### **A. 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, 84<sup>th</sup> Leg., R.S. (2015). Under Title 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 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 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.

30 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. 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 purposes 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.

30 TAC § 55.203(d).

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(d).

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

On June 4, 2021, the Commission received a hearing request from GBRA. GBRA's hearing request raises the concerns that the proposed parameter limitations reflected in the draft permit are not protective of water quality, and that the proposed limits are inconsistent with similar permits issued in the area and the best practices and goals of the Plum Creek Watershed Protection Plan. Concerns related to water quality are protected under the law under which the application will be considered.

GBRA is a conservation and reclamation district created by the State of Texas to control, store, and preserve the waters of any rivers and streams, including the Guadalupe and Blanco Rivers and their tributaries for all useful purposes.<sup>1</sup> GBRA's ten-county statutory district includes Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt,

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<sup>1</sup> Act of June 19, 1975, 64<sup>th</sup> Leg., R.S., ch. 433, §2, 1975 Tex. Gen. Laws 1149.



Victoria, Calhoun and Refugio Counties.<sup>2</sup> The proposed permit would authorize discharge into a series of waterways in Hays County. GBRA has an interest in protecting the water quality in the rivers and streams within its district that is distinguishable from interests of the general public. OPIC therefore finds that GBRA is an affected person in accordance with 30 TAC § 55.203(a)(7) and recommends its hearing request be granted.

### **C. Issues Raised**

The following issues have been raised:

1. Whether the proposed effluent limitations contained in the draft permit are adequately protective of water quality.
2. Whether the proposed limits are inconsistent with other permits issued in the area and the best management practices and goals of the Plum Creek Watershed Protection Plan.

### **D. 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). All of the issues raised in the hearing request are issues of fact.

### **E. Issues Were Raised by the Affected Person During the Comment Period**

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

### **F. Disputed Issues**

There is no agreement between the requestor and the ED on the issues raised in the hearing request.

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<sup>2</sup> *Id.*

## **G. Relevant and Material Issues**

Issue No. 1 stated above is relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). 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, 248–251 (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.*

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (“Standards”) in 30 TAC Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.” 30 TAC § 307.1. Therefore, the concern raised by GBRA relating to effluent parameters in the draft permit impacting water quality is relevant and material to the Commission's decision on this application.

OPIC finds that Issue No. 2 stated above is not material and relevant to the Commission's decision. As explained in the RTC, the surrounding wastewater treatment plants are a combination of major facilities and minor facilities with effluent limitations required based, in part, on their discharge volume and location. Strict consistency of

effluent limitations amongst the various plants is not relevant to the Commission's decision on this application. Further, adoption of the Plum Creek Watershed Protection Plan's recommendation of 5/5/2/1 limits is voluntary and non-regulatory. Based on the information provided in the RTC, OPIC speculates that the existing two minor facilities with nutrient limitations may have adopted the Plum Creek Watershed Protection Plan standards voluntarily. For these reasons, OPIC cannot recommend referral of Issue No. 2.

#### **H. Issue Recommended for Referral**

OPIC recommends that the following disputed issue of fact raised by GBRA be referred to SOAH for a contested case hearing:

1. Whether the proposed effluent limitations contained in the draft permit are adequately protective of water quality.

#### **I. Maximum Expected Duration of Hearing**

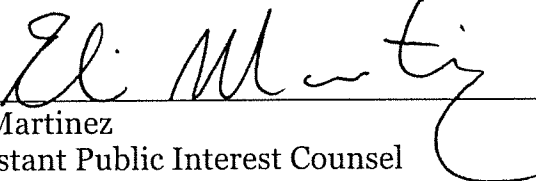
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180<sup>th</sup> day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting 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 recommends that the duration of hearing on this application be stated in the Commission's order as 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

### III. Conclusion

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing request of GBRA and refer the matter to SOAH for a contested case hearing on the issue set forth in Section II.H for a hearing duration of 180 days.

Respectfully submitted,

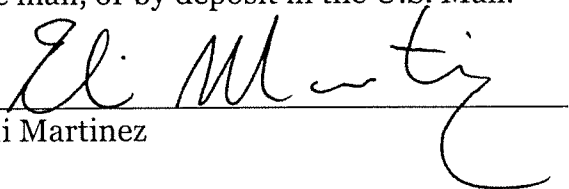
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By:   
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### CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2021, 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.

  
Eli Martinez

**MAILING LIST  
STUDIO ESTATES, L.L.C.  
TCEQ DOCKET NO. 2021-1216-MWD**

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