

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



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 31, 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: **GREEN VALLEY SPECIAL UTILITY DISTRICT  
TCEQ DOCKET NO. 2022-0091-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List



**TCEQ DOCKET NO. 2022-0091-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>GREEN VALLEY SPECIAL</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>UTILITY DISTRICT FOR TPDES</b>	<b>§</b>	<b>ON</b>
<b>PERMIT NO. WQ0015917001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

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 and Requests for Reconsideration in the above-referenced matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Based on the information submitted in the requests and a review of the information available in the Chief Clerk’s file on this application, OPIC recommends the Commission grant the hearing requests of Cibolo Creek Municipal Authority, City of Saint Hedwig, City of Schertz, Patrick and Alicia Wilks, and Shane and Stephanie Ott. OPIC further recommends the Commission refer the issues specified in Section III.I for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny hearing requests submitted by Rolf and Wendy Schaefer and all pending requests for reconsideration.

**B. Background of Facility**

On August 31, 2020, Green Valley Special Utility District (Applicant) applied to the

TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015917001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The draft permit includes an interim I phase with a daily average flow not to exceed 0.10 million gallons per day (MGD), an interim II phase with a daily average flow not to exceed 0.20 MGD, and a final phase with a daily average flow not to exceed 0.40 MGD. The proposed wastewater treatment facility (Facility) will be located at 4060 Stapper Road, Saint Hedwig, in Bexar County, Texas 78512.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 0.5 mg/l total phosphorus (TP), 126 colony-forming unit of E. coli per 100 ml, and 6.0 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 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent would be discharged to Woman Hollering Creek, thence to Martinez Creek, thence to the Lower Cibolo Creek in Segment No. 1902 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for Woman Hollering Creek. The designated uses for Segment No. 1902 are primary contact recreation and high aquatic life use.<sup>1</sup>

### **C. Procedural Background**

The TCEQ received the application on August 31, 2020, and declared it administratively complete on October 30, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on November 13, 2020, in the *San Antonio Express-News* and

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<sup>1</sup> According to the Executive Director (ED)'s Response to Comments (RTC), Segment No. 1902 and 1902A are currently listed on the State's inventory of Impaired and Threatened waters (the 2020 Clean Water Act Section 303(d) list) for bacteria in water.

in the *Austin American Statesman*, and in Spanish on November 25, 2020 in the *Conexion*. An amended NORI was published in English on May 12, 2021, in the *San Antonio Express-News*, and Spanish on May 12, 2021 in the *Conexion*. The ED completed the technical review of the application on February 11, 2021 and prepared the proposed draft permit, which if approved, would establish the conditions under which the Facility must operate. The Notice of Application and Preliminary Decision (NAPD) was published in English on June 30, 2021, in the *San Antonio Express-News*, and in Spanish on June 30, 2021, in *Conexion*. A public meeting was held on September 14, 2021. The public comment period for this application closed on September 14, 2021. The Chief Clerk mailed the ED's Decision and Response to Comments on November 18, 2021. The deadline for filing requests for a contested case hearing was December 20, 2021. The Commission received timely filed hearing requests and requests for reconsideration as discussed below.

## II. APPLICABLE LAW

### A. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30 Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the decision and give reasons why the decision should be reconsidered.

### B. Requests for Hearing

The application was filed after September 1, 2015, therefore, it is 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.

Also, 30 TAC § 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.

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. As stated in 30 TAC § 55.203(c), 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.

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.

For an application filed on or after September 1, 2015, the rules at 30 TAC § 55.211(c)(2)(A)(ii) state that 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 RTC, and that are relevant and material to the Commission's decision on the application. Under 30 TAC § 55.211(c)(2)(B)-(D), a hearing request must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of 30 TAC § 55.201.

### **III. DISCUSSION**

#### **A. Requests for Reconsideration**

The Commission received timely-filed requests for reconsideration from Cibolo Creek Municipal Authority, City of Saint Hedwig, City of Schertz, Michelle Daigle, Martha Kosub, Kathy Lauderdale, and Patrick and Alicia Wilks. These requests for reconsideration raise concerns regarding nuisance odors, water quality, health and safety of the neighbors, potential impact on the environment and wildlife, regionalization, buffer zone requirements, and loss of property value. The TCEQ does not have jurisdiction to consider concerns regarding property value. With respect to the remaining issues, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the application should be denied. OPIC is recommending a contested case hearing on these and other issues as discussed in Section III.I. Therefore, OPIC recommends denial of all pending requests for reconsideration. OPIC further discusses the hearing requests below.

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

##### *Cibolo Creek Municipal Authority*

Cibolo Creek Municipal Authority (CCMA) submitted timely comments and hearing requests based on concerns related to its designation as a regional service provider.<sup>2</sup> Texas Water

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<sup>2</sup> Attorney Maris Chambers submitted hearing requests on December 17, 2021, and July 30, 2021.



Code (TWC), Chapter 26, Subchapter C, Regional and Area-Wide Systems, sets out a statutory scheme by which the State's interest in regionalization may be furthered by the designation of regional or area-wide providers. TCEQ rules in Chapter 351, Subchapter F designate CCMA as the governmental entity with authority to develop a regional sewerage system in "that area of Cibolo Creek Watershed, in the vicinity of the cities of Cibolo, Schertz, Universal City, Selma, Bracken, and Randolph Air Force Base." 30 TAC §351.62. Chapter 351 further mandates that any future domestic wastewater permit or any amendments to the existing permits within "the Cibolo Creek regional area" shall be issued only to CCMA. 30 TAC § 351.65.

The ED's RTC contends that the Cibolo Creek regional area, as that term is used in Chapter 351, is limited to the Mid Cibolo Creek Watershed; therefore, Chapter 351 does not apply to this Facility because it would discharge into the Lower Cibolo Creek Watershed. (Response to Comment No. 40).

However, CCMA's December 17, 2021 hearing request challenges the ED's contention that the Lower Cibolo Creek watershed should be distinguished from the Mid Cibolo Creek Watershed for purposes of Chapter 351. The Chapter 351 rules do not tie the designated regional area to specific stream segment numbers. Nor do the rules refer to "the Mid Cibolo Creek watershed" or "Lower Cibolo Creek watershed." From OPIC's perspective, Chapter 351, Subchapter F fails to identify clear boundaries for the Cibolo Creek watershed regional area.

Given the location of the proposed regulated activity, the ambiguous provisions of Chapter 351, Subchapter F, and the resulting uncertainty about the exact confines of this "regional area," CCMAA's "statutory authority over or interest in" regionalization provides a basis for affected person status. As a party charged to develop a regional sewerage system to further the goals of

TWC Chapter 26, CCMA is a governmental entity with an interest in the State's regionalization policy as it pertains to the pending application.

Furthermore, CCMA has an interest in regionalization that is not common to the general public based on the operation of its South Regional Water Reclamation Plant less than 2.5 miles from Applicant's proposed Facility. As acknowledged by all parties, TCEQ uses a threshold of three miles to determine if there is another entity in the vicinity that is willing and able to accept waste from a proposed facility. Separate and apart from its status as a designated regional service provider, CCMA also has standing as an affected person based on regionalization interests because of the location of CCMA's South Regional Water Reclamation Plant.

Moreover, according to the hearing request, CCMA and the City of Schertz jointly own and operate the Woman Hollering Wastewater Treatment Plant, which is located approximately five miles from the proposed Facility. According to the request, this existing facility *does* discharge wastewater into the Lower Cibolo Creek watershed --Segment Nos. 1902 and 1902A of the San Antonio River Basin, the same discharge route proposed by the draft permit. CCMA questions whether the additional discharge of wastewater by Applicant would further degrade water quality in the receiving waters and adversely affect the Woman Hollering Wastewater Treatment Facility's ability to continue its currently-authorized operations. OPIC finds that CCMA's water quality concerns and interest in continued use of the discharge route for the Woman Hollering Wastewater Treatment Facility are issues relevant to this application and provide a further basis for CCMA's affected person status.

In summary, for each reason discussed above, OPIC finds that CCMA has a personal justiciable interest in this matter and qualifies as an affected person under 30 TAC § 55.203(c).

City of Saint Hedwig

The City of Saint Hedwig (Saint Hedwig) submitted timely comments and hearing requests.<sup>3</sup> Saint Hedwig cites to Texas Local Government Code Sections 552.001 and 552.002 in asserting that it has statutory authority over and interest in the issues relevant to the application. The proposed Facility would be located within the City's extra territorial jurisdiction (ETJ). Saint Hedwig raises concerns regarding the potential impact on water quality and agricultural soil upon which its residents rely. Saint Hedwig further questions whether the draft permit meets regionalization requirements.

Municipalities have statutory authority over certain wastewater issues under TWC Chapter 26, Subchapter E. Such entities may conduct inspections and determine compliance with permit requirements. Municipalities also have authority to protect public health under Texas Health & Safety Code (THSC) § 121.003(a). For these reasons, OPIC finds that the City of Saint Hedwig is an affected person under 30 TAC § 55.203(c)(7).

City of Schertz

The City of Schertz (Schertz) submitted timely comments and hearing requests.<sup>4</sup> CCMA and Schertz jointly own and operate the Woman Hollering Wastewater Treatment Facility. This plant is located approximately five miles from the proposed Facility. Woman Hollering Wastewater Treatment Facility is authorized to discharge wastewater into the same discharge route as the route proposed under the draft permit. Schertz expresses concern that Applicant's additional discharge of wastewater will adversely affect the water quality of the receiving waters, thereby potentially threatening the availability of the discharge route for continued use by Woman

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<sup>3</sup> Attorney Maris Chambers submitted identical hearing requests on December 17, 2021, and September 14, 2021.

<sup>4</sup> Attorney David Klein submitted identical hearing requests on December 17, 2021, and July 30, 2021.

Hollering Wastewater Treatment Facility. Schertz also cites to Texas Local Government Code Sections 552.001 and 552.002 in asserting that it has statutory authority over and interest in issues relevant to the application. The proposed service area for the Facility would be located within Schertz's corporate boundaries and possibly within the certificated area where Schertz provides sewer service.

Considering that the proposed Facility's service area is in Schertz's corporate boundaries and that the Woman Hollering Wastewater Treatment Facility potentially could provide service, Schertz has an interest in regionalization that should be considered under TWC Section 26.0282. Schertz is also a governmental entity with statutory authority over issues relevant to the application. Further, Schertz's water quality concerns and interest in continued use of the discharge route for the Woman Hollering Wastewater Treatment Facility provide a basis for affected person status. Therefore, OPIC finds that the City of Schertz qualifies as an affected person under 30 TAC § 55.203(c).

Patrick & Alicia Wilks

Patrick and Alicia Wilks (the Wilks) submitted a timely hearing request on December 17, 2021 through their attorney, Lauren Ice.<sup>5</sup> Their hearing request states that the Wilks own two contiguous tracts located less than one-quarter mile downstream of the proposed discharge point. The Wilks are concerned about potential impacts on the health of their families, livestock, and wildlife in the area. The Wilks are also concerned about any potential impact on the use and enjoyment of their property. These concerns are interests that are protected by law under which

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<sup>5</sup> Mr. Wilks submitted written comments on May 11, 2021, and oral comments at the public meeting on September 14, 2021.

this application will be considered, and a reasonable relationship exists between those interests and regulation of the Facility.

The Affected Landowners' Map provided in the application shows the Wilks as Map ID number 4. The map prepared by the ED also demonstrates that the Wilks are in close proximity to the Facility and the proposed discharge route runs through their property. Based on the Wilks' concerns and their proximity to the Facility and the discharge route, OPIC finds that the Wilks have a personal justiciable interest in this matter that is not common to the members of the general public. Therefore, OPIC recommends the Commission find Patrick and Alicia Wilks are affected persons in this matter.

Shane & Stephanie Ott

Shane and Stephanie Ott (the Otts) submitted identical hearing requests during the public comment period.<sup>6</sup> Their hearing requests raise concerns regarding water quality, erosion and potential impact on the surrounding land, nuisance conditions including noise, light, odors, and impacts on property value. TCEQ does not have jurisdiction to consider concerns regarding loss of property value and nuisance conditions caused by noise and light, but the remaining concerns are interests that are protected by the law under which this application will be considered, and a reasonable relationship exists between those interests and regulation of the Facility. The map prepared by the ED demonstrates that the Otts are in close proximity to the Facility, downstream and adjacent to the downstream discharge route. Based on the Otts' concerns and their proximity to the Facility and the discharge route, OPIC finds that the Otts have a personal justiciable interest

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<sup>6</sup> Shane Ott and Stephanie Ott submitted two separate but identical hearing requests on June 6, 2020. The Otts submitted one combined hearing request on September 14, 2021.

in this matter that is not common to the members of the general public. Therefore, OPIC recommends the Commission find Shane and Stephanie Ott are affected persons in this matter.

Rolf Schaefer & Wendy Schaefer

Rolf and Wendy Schaefer (the Schaefers) submitted hearing requests during the comment period.<sup>7</sup> Mr. Schaefer's hearing request raises concerns regarding potential impact on the river ecosystem, air pollution, noise, and odors. Ms. Schaefer's hearing request raises similar concerns regarding noise and odors. The Schaefers' hearing requests state that they live 3.4 miles away from the proposed Facility. The map prepared by the ED confirms that their location is relatively distant from the Facility. Based on this distance information, OPIC cannot find that operation of the Facility would have a likely impact on the Schaefers' interests. Therefore, OPIC must conclude that the Schaefers are not affected persons and must recommend denial of their hearing requests.

**C. Issues Raised in the Hearing Requests of Affected Persons**

The affected persons discussed above raised the following issues:

1. Whether the draft permit complies with TCEQ's regionalization policy (Raised by CCMA, City of Saint Hedwig, City of Schertz);
2. Whether the draft permit would be protective of water quality and the uses of the receiving waters under the applicable Texas Surface Water Quality Standards, including applicable antidegradation review requirements (Raised by CCMA, City of Saint Hedwig, City of Schertz, Patrick & Alicia Wilks, Shane & Stephanie Ott);
3. Whether the draft permit would be protective of the health of requestors and their families, livestock, and wildlife in the area (Raised by Patrick & Alicia Wilks);

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<sup>7</sup> Rolf Schaefer submitted a hearing request on June 15, 2021. Wendy Schaefer submitted two identical hearing requests on June 15, 2021.

4. Whether the draft permit contains adequate provisions to protect the requestors' use and enjoyment of property (Raised by Patrick & Alicia Wilks);
5. Whether the draft permit contains adequate provisions to prevent nuisance conditions caused by odors, noise, and light (Raised by the CCMA, City of Saint Hedwig, City of Schertz, Patrick & Alicia Wilks, Shane & Stephanie Ott);
6. Whether the draft permit complies with buffer zone requirements found in 30 TAC Chapter 309 (Raised by CCMA, City of Saint Hedwig, City of Schertz);
7. Whether the draft permit would cause soil erosion or any impact on the surrounding land (Raised by Shane & Stephanie Ott);
8. Whether the application properly demonstrated a need for the final phase of the draft permit, and whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282 (Raised by CCMA, City of Saint Hedwig, City of Schertz);
9. Whether the application is complete and included original photographs of the proposed location of the Facility and treatment units, a map to identify the proposed service area for the Facility, and a sewage sludge solids management plan (Raised by CCMA, City of Saint Hedwig, City of Schertz);
10. Whether the Applicant has, or should be required to have, an approved pretreatment program (Raised by City of Saint Hedwig, City of Schertz);
11. Whether the Facility will adversely affect air quality (Raised by Patrick & Alicia Wilks);
12. Whether the Applicant substantially complied with all applicable notice requirements (Raised by Patrick & Alicia Wilk); and

13. Whether the proposed Facility will negatively affect nearby property values (Raised by Patrick & Alicia Wilks, Shane & Stephanie Ott).

**D. Issues Raised in the Hearing Requests Remain Disputed**

There is no agreement between the hearing requestors and the ED on the issues raised in the hearing requests; therefore, they remain disputed.

**E. Whether the Disputed Issues Are 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). The issues listed above are issues of fact.

**F. Issues Raised by the Affected Persons During the Comment Period**

All of the issues were raised by the affected persons during the public comment period.

**G. The Hearing Requests are Based on Issues Raised in Public Comments Which Have Not Been Withdrawn**

The hearing requests are all based on timely comments that have not been withdrawn.

**H. Issues That are Relevant and Material to the Decision on the Application**

The affected persons raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A), as well as issues that are not relevant and material. 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. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).



### Regionalization

It is state policy to encourage regionalization, and TCEQ must consider regionalization when deciding whether to issue a discharge permit. TWC §§ 26.081(a), 26.0282. Therefore, Issue No. 1 is relevant and material to the Commission's decision on this application.

### Water Quality, Antidegradation Review, Health Effects, and Protection of Wildlife

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapter 307 and 309. These responsibilities include ensuring compliance with the Texas Surface Water Quality Standards. The purpose of these standards is to "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. Also, "[a] permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality." 30 TAC § 307.2(d)(5)(D). Additionally, surface waters must not be toxic to humans from ingestion, consumption of aquatic organisms, or contact with the skin. 30 TAC § 307.4(d). Therefore, Issues 2 and 3 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

### Nuisance Odors, Noise, and Light; Use and Enjoyment of Property

The affected persons raised concerns regarding nuisance odors. Shane and Stephanie Ott also raised concerns regarding noise and light. Noise and light conditions are not addressed by the statutes and rules applicable to this proposed wastewater discharge permit. However, odor is specifically addressed by TCEQ regulations concerning the siting of domestic wastewater plants. 30 TAC § 309.13. The Commission's rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors prior to construction. 30 TAC § 309.13(e) Furthermore, the wastewater permit does not allow the permit

holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of their property. Therefore, to the extent the issues address odors and other conditions within the Commission's jurisdiction, Issues 4 and 5 are relevant and material to a decision on this application.

*Buffer Zone Requirements and Soil Erosion*

30 TAC Chapter 309, subchapter B rules contain location standards for domestic wastewater treatment facilities. Under 30 TAC § 309.12, TCEQ may not issue a permit for new facility unless it finds the proposed facility site, when evaluated in light of the proposed design, construction, or operational features, minimizes possible contamination of water in the state. Under 30 TAC § 309.13(B)-(D), a wastewater discharge permit applicant must demonstrate that the wastewater treatment plant units at its facility will meet applicable siting and buffer zone requirements. Therefore, Issue No. 6 regarding buffer zones is relevant and material to the Commission's decision regarding this application. Though erosion may be viewed as a concern about the proper functioning of an operational feature of the Facility (the discharge route), the Commission has concluded in other proceedings that the issue of erosion is not within TCEQ's jurisdiction.

*Need*

TWC § 26.0282 authorizes the Commission to alter or deny a wastewater discharge permit based on consideration of need. Therefore, Issue No. 8 is relevant and material to a decision on this application.

*Complete and Accurate Application*

The affected persons raise concerns that the application omitted key information, including original photographs, a map clearly identifying the proposed service area, and a sewage sludge

solids management plan. 30 TAC Chapter 281 provides requirements for processing applications for wastewater discharge permits. 30 TAC § 281.5 includes a list of items that are required to be included along with the submittal of wastewater permit applications. 30 TAC § 305.48 details additional items to be included with a wastewater permit application. Also, the rules regarding requirements for sludge disposal methods, sludge disposal sites, and sludge transportation methods are addressed under 30 TAC Chapter 312. Therefore, Issue No. 9 is relevant and material.

Pretreatment Program

The affected persons question whether the Applicant has, or should be required to have, an approved pretreatment program under 40 CFR Part 403. They contend that the application is inconsistent and incomplete in providing the information needed for that determination. Because the TCEQ's Domestic Municipal Wastewater Application contains specific sections and worksheets that address whether a pretreatment program is needed, Issue No. 10 is relevant and material to a decision on this application.

Air Quality

Patrick & Alicia Wilks and Shane & Stephanie Ott raised concerns regarding air quality. Other than concerns about nuisance odor already discussed as Issue 5, issues relating to air quality are not addressed by the statutes and rules that apply to this application. Therefore, Issue No. 11 regarding air quality is not relevant and material to the proceedings on this water quality permit.

Notice Requirements

The TCEQ's Chapter 39 notice rules for a new permit require that the NORI and NAPD be mailed to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk. Therefore, Issue No. 12 regarding notice requirements is relevant and material.

Property Values

TCEQ does not have jurisdiction to consider a proposed wastewater treatment facility's impact on property values. Therefore, Issue No. 13 is not relevant and material.

**I. Issues Recommended for Referral**

For the reasons discussed above, OPIC recommends referral of the following issues to SOAH for a contested case hearing:

1. Whether the draft permit complies with TCEQ's regionalization policy;
2. Whether the draft permit would be protective of water quality and the uses of the receiving waters under the applicable Texas Surface Water Quality Standards, including applicable antidegradation review requirements;
3. Whether the draft permit would be protective of the health of the affected persons and their families, livestock, and wildlife in the area;
4. Whether the draft permit contains adequate provisions to protect the affected persons' use and enjoyment of property;
5. Whether the draft permit contains adequate provisions to prevent nuisance odors;
6. Whether the draft permit complies with buffer zone requirements found in 30 TAC Chapter 309;
7. Whether the application properly demonstrates a need for the final phase of the draft permit, and whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282;

8. Whether the application is complete and included original photographs of the proposed location of the Facility and treatment units, a map to identify the proposed service area for the Facility, and a sewage sludge solids management plan;
9. Whether the Applicant has, or should be required to have, an approved pretreatment program; and
10. Whether the Applicant substantially complied with all applicable notice requirements.

**J. 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, 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 180th 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 estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

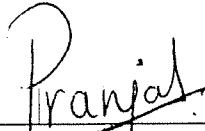
**IV. CONCLUSION**

OPIC recommends the Commission grant the hearing requests of Cibolo Creek Municipal Authority, City of Saint Hedwig, City of Schertz, Patrick and Alicia Wilks, and Shane and Stephanie Ott. OPIC further recommends the Commission refer the issues specified in Section III.I for a contested case hearing at the SOAH with a maximum duration of 180 days. Finally, OPIC

recommends the Commission deny the hearing requests of Rolf and Wendy Schaefer and all pending requests for reconsideration.

Respectfully submitted,

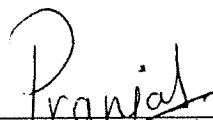
Vic McWherter  
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### CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2022 the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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

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**TCEQ DOCKET NO. 2022-0091-MWD**

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