

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: **PARADISE ISD**  
**TCEQ DOCKET NO. 2022-0274-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, appearing to read "Amanda D. Pesonen", with a long horizontal flourish extending to the right.

Amanda D. Pesonen  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2022-0274-MWD**

**APPLICATION BY  
PARADISE ISD FOR TPDES  
PERMIT NO. WQ0013439001**

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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 Paradise ISD for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013439001. The Commission received a timely comment and request for a contested case hearing from Mr. Billy Paddock. 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 May 11, 2021, Paradise ISD (Applicant) applied to the TCEQ for a renewal of TPDES Permit No. WQ0013439001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day (gpd). The existing facility is located at 338 School House Road, Paradise, in Wise County, Texas 76073.

Treatment units at the facility include an equalization basin, grinder pumps, a flow splitter box with bar screens, two aeration basins, two final clarifiers, two aerobic digesters, and two chlorine contact chambers. The facility is in operation.

The treated effluent is discharged to an unnamed tributary, thence to West Fork Trinity River below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 0810 are primary contact recreation, public water supply, and high aquatic life use.

The effluent limitations 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 *E. coli* per 100 milliliters, and 2.0 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.

### **C. Procedural Background**

TCEQ received the application on May 11, 2021. On June 24, 2021, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on June 30, 2021, in the *Wise County Messenger*. The Notice of Application and Preliminary Decision (NAPD) was published in the *Wise County Messenger* on October 13, 2021. The public comment period closed on November 12, 2021. The Chief Clerk mailed the ED's Decision and Response to Comments ("RTC") on January 11, 2022. The deadline for filing requests for a contested case hearing was February 10, 2022. The Commission received a timely comment and request for a contested case hearing from Mr. Billy Paddack.

## 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) section 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, 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. The facility is currently operating, and no change to the existing permit is requested by Applicant.

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 the TCEQ received only one request for a public meeting. 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, 2021, Applicant's customer, respondent, owner/operator compliance history rating was 8.69, and the facility's regulated entity compliance history rating was also 8.69. The Commission classifies a compliance history rating of 8.69 as Satisfactory. OPIC observes an enforcement action was initiated against Applicant in 2020 and was resolved by Agreed Order on July 20, 2021 (TCEQ Docket No. 2020-0203-MWD-E). At the time that action was initiated, both Applicant and the facility had Satisfactory compliance history ratings of 0.31 based on compliance history components from September 1, 2015, through August 31, 2020. OPIC concludes the relevant compliance history raises 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.

#### 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 Mr. Billy Paddack's hearing request.

Respectfully submitted,

Vic McWherter  
Public Interest Counsel

By: 

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#### CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, the original of 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.

  
Amanda D. Pesonen



**MAILING LIST**  
**PARADISE INDEPENDENT SCHOOL DISTRICT**  
**DOCKET NO. 2022-0274-MWD; PERMIT NO. WQ0013439001**

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