

TCEQ DOCKET NO. 2022-0326-MWD

APPLICATIONS BY HARRINGTON § BEFORE THE TEXAS
TURNER ENTERPRISES LP AND § COMMISSION ON
RESTORE THE GRASSLANDS LLC § ENVIRONMENTAL QUALITY

APPLICANTS' RESPONSE TO HEARING REQUESTS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicants Harrington Turner Enterprises LP and Restore The Grasslands LLC ("Applicants") file their Response to Hearing Requests and shows as follows:

I. Introduction and Procedural History

Applicants have applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0016003001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 200,000gallons per day (the "Application"). The wastewater treatment facility ("WWTF") will be located approximately 0.4 miles northwest of the intersection of North Murphy Road and Rolling Ridge Drive, in Collin County, Texas.

The Application was submitted on May 26, 2021, and was declared administratively complete on August 25, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit ("NORI") was published in English in The Collin County Commercial Record on September 2, 2021, and in Spanish in The Al Dia on September 1, 2021. The Executive Director ("ED") completed the technical review of the Application on October 18, 2021. A combined Notice of Application and Preliminary Decision ("NAPD") and Public Meeting was published in English in The Collin County Commercial Record on October 28, 2021, and in Spanish in The Al Dia on November 3, 2021. A public meeting was held on December 6, 2021, via webcast. The public comment period ended on December 6, 2021. The ED determined that above-referenced

Application meets the requirements of applicable law. Subsequently, a number of parties filed requests for reconsideration and for a contested case hearing. As more fully set forth below, a reconsideration or contested case hearing is not warranted in this matter and the Application should be granted.

II. Applicable Law

A. Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the TCEQ reconsider the ED's decision and state the reasons why the TCEQ should reconsider the ED's decision. The TCEQ will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

B. Requests for Contested Case Hearing

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining the "requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TEX. ADMIN. CODE § 55.251(b)—(d).

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." 30 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. *See* 30 TEX. ADMIN. CODE § 55.256(b). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (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, safety, and 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.

30 TEX. ADMIN. CODE § 55.256(c).

The TCEQ shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with the requirements of section 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. *See* 30 TEX. ADMIN. CODE § 55.255(b).

III. Analysis of the Hearing Requests

A. Requests for Reconsideration

The requests for reconsideration do not expressly state the reasons why the TCEQ should reconsider the ED's decision. Accordingly, the requests should be denied.

B. Requests for Contested Cases Hearing

Over 300 proposed parties have requested a contested case hearing on various bases. None of the requests for contested case hearing meet the legal requirements of an affected person. None of the requests for contested case hearing identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the requests have not shown that any person would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the Application.

Therefore, the requests do not meet the definition of an “affected person” and all of the hearing requests should be denied.

IV. Public Policy Concerns

The requests should additionally be denied pursuant to public policy concerns. The WWTF is being constructed to serve Applicant’s proposed single-family development. The land is located between the cities of Parker and Murphy. Applicant believes both cities could accept the wastewater flows into their respective wastewater systems and provide wastewater treatment service. However, both cities have objected to the density of the proposed development and refused to provide the property with wastewater services. Essentially, the cities have indicated that they will not provide wastewater service unless the density of development is no more than 1 lot per gross acre of the land. On information and belief, each of the cities has solicited the opposition of the Application from local residents. The opposition is not based on any issue contained in the Application, but because of the “density of development” and the projected average price of the homes to be constructed and served by the WWTF. The requests for a contested case hearing area nothing more than an effort to delay and hopefully prevent the development of Applicant’s property.

V. Conclusion

WHEREFORE, Applicant requests that both the requests for reconsideration and requests for contested case hearing be denied and that the Application be granted.

Respectfully submitted,

COATS | ROSE

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, the original of Applicant's Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed on the attached mailing list either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.



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