

**TCEQ DOCKET NO. 2022-0326-MWD**

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

**REPLY TO HEARING REQUESTS/REQUESTS FOR RECONSIDERATION RESPONSES**

Affected Parties Michael S. Haynes and Carolyn J. Moebius (hereinafter, the “Parkview Parties”), by and through undersigned counsel, hereby submit this Reply to the Office of Public Interest Counsel’s (“OPIC’s”) Response to Requests for Hearing and Requests for Reconsideration, the Executive Director’s (“ED’s”) Response to Hearing Requests and Requests for Reconsideration, and the Applicant’s Response to Hearing Requests, each filed on April 25, 2022.

There remains significant work to be done on the sufficiency of the Application before the factually disputed issues recommended by the ED and OPIC should be referred to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing. The Parkview Parties have filed Requests for Reconsideration outlining these various errors. We urge the Commissioner’s to require the ED to reconsider its decision to approve such an incomplete Application.

Furthermore, we understand that the Texas Commission on Environmental Quality (“TCEQ”) and the applicant have been working to revise the Application when commentators have pointed out errors, as for instance, when TCEQ reclassified Maxwell Creek as a perennial stream rather than the stated intermittent flow with no perennial pools following comments from the Texas Park and Wildlife Department. *See* ED’s Response to Comment 36. However, revisions to the Application have been significant and the public must be afforded an opportunity to inspect the revised Application with a new public notice and comment cycle.

If the Application is not corrected prior to referral to SOAH, and the public is not granted an opportunity to review the corrected Application, then the public will be placed in the disadvantaged position of having to take on the technical role of TCEQ at a contested case hearing. The Parkview Residents welcome the opportunity for SOAH to resolve the contested issues of fact identified by the ED and OPIC, but the Application should first be corrected and completed, as required by law and policy. This would also serve judicial economy because certain issues would become moot if rectified in the Application.

If the Commissioners determine that the most expeditious route to resolving the issues with the Application is through SOAH, then Parkview Parties respectfully request that the Commissioners refer the factual issues recommended by both OPIC and the ED, as combined and summarized below:

1. Whether the draft permit is protective of wildlife and wildlife habitats (ED Issue 1; OPIC Issue 5)
2. Whether the draft permit is protective of human health and safety (ED Issue 2; OPIC Issue 4)
3. Whether the draft permit adequately controls nuisance odors (ED Issue 3; OPIC Issue 7)
4. Whether the Applicants substantially complied with all notice requirements (ED Issue 4; OPIC Issue 11)
5. Whether the proposed facility will impact the requestors' use and enjoyment of their property (ED Issue 5)
6. Whether the Applicants complied with Texas Water Code §§ 26.081 and 26.0282 and TCEQ's regionalization policy (ED Issue 6; OPIC Issue 8)
7. Whether the draft permit will impact surface and/ or ground water quality (ED Issue 7; OPIC Issues 1, 3)
8. Whether the design of the proposed facility is adequate to ensure required water quality will be achieved (OPIC Issue 2)
9. Whether the proposed discharge will create excessive algal growth (ED Issue 8)
10. Whether the Applicants completed the application adequately and sufficiently (ED Issue 9; OPIC Issue 10)
11. Whether the anti-degradation review complies with TCEQ's rules (ED Issue 10; OPIC Issue 6)
12. Whether the Applicants are legal entities (ED Issue 11)
13. Whether the proposed facility complies with applicable siting requirements in Chapter 309 of the TCEQ's rules, specifically as related to flooding (ED Issue 12, referring to RTC 18)
14. Whether the draft permit includes adequate provisions to control vectors (ED Issue 13)
15. Whether draft permit's monitoring requirements comply with the TCEQ's rules (ED Issue 38)
16. Whether the Applicants' compliance history raises any issues regarding the Applicants' ability to comply with the material terms of the permit that warrant denying or altering the terms of the draft permit (ED Issue 45; OPIC Issue 9)
17. Whether the proposed nutrient limits comply with TSWQS (ED Issue 46; OPIC Issue 1)



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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 9, 2022, this Reply was filed with the TCEQ Office of the Chief Clerk, and an electronic copy was served to the Applicant, the Executive Director, and the Public Interest Counsel.

\_\_\_\_\_/s/\_\_\_\_\_  
Amanda Soler