

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

June 3, 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: **SIGMAPRO PROPERTIES, LLC**
TCEQ DOCKET NO. 2022-0531-MWD

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Petition to Revoke 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. 2022-0531-MWD

PETITION BY 1817 LACEY, LTD.	§	BEFORE THE
TO REVOKE TPDES PERMIT NO.	§	TEXAS COMMISSION ON
WQ0015722001 ISSUED TO	§	ENVIRONMENTAL QUALITY
SIGMAPRO PROPERTIES, LLC	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO
PETITION TO REVOKE**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this response to the petition to revoke filed by 1817 Lacey, Ltd. in the above-referenced matter.

I. BACKGROUND

On August 30, 2018, SigmaPro Properties, LLC (SigmaPro) applied to the TCEQ’s Water Quality Division for a new permit to discharge 9,500 gallons of wastewater per day. The application was declared administratively complete on October 8, 2018. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in a newspaper of general circulation in Tarrant County in English and in Spanish on October 20, 2018. On October 22, 2018, the Chief Clerk mailed the NORI to interested persons and landowners as identified in the application. The Chief Clerk mailed the Combined NORI and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) to interested persons and landowners as identified in the application on January 17, 2019. The NORI and NAPD were published in a newspaper of general circulation in Tarrant County in English on January 26, 2019, and in Spanish on February 9, 2019. The comment period for the application ended on March 11, 2019. No comments were submitted to the TCEQ and the Executive Director (ED) signed TPDES Permit No. WQ0015722001 on March 21, 2019. No motions to overturn the ED’s decision to issue the permit were submitted to the TCEQ.

II. PETITION TO REVOKE PERMIT NO. WQ0015722001

On April 21, 2022, 1817 Lacey, Ltd. (Petitioner or Lacey) petitioned the TCEQ to revoke SigmaPro's Permit No. WQ0015722001. Petitioner argues that the permit should be revoked because SigmaPro provided TCEQ with false information on the adjacent landowner map and the sheet attached to the map included with its application, depriving Lacey, an adjacent landowner, of required notice of the application. Petitioner contends that because SigmaPro made a false or misleading statement in their formal application, good cause now exists for permit revocation based on the failure to disclose fully all relevant facts. Furthermore, Petitioner argues that because SigmaPro did not identify Lacey as an adjacent landowner, Lacey was not provided the required notice and was denied to opportunity to engage in public participation with respect to the application.

III. APPLICABLE RULES

A. Permit Revocation

“A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given.”¹ Good cause for revocation includes “the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time.”²

Additionally, the Commission may revoke an original permit if the Commission finds after notice and hearing that the permit holder or applicant “made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees.”³

Revocation of a permit may be requested by a “person affected by the issuance of a permit or other order of the commission.”⁴ Affected persons “may initiate proceedings

¹ 30 Texas Administrative Code (TAC) § 305.66(a).

² 30 TAC § 305.66(a)(4); see also Texas Water Code § 7.302(b)(5).

³ 30 TAC § 305.66(f)(3).

⁴ 30 TAC § 305.66(d).

for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.”⁵ “In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission.”⁶

B. Notice

When mailed notice is required,⁷ the Chief Clerk shall mail notice to “the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map,”⁸ among others. The map submitted with an application for a wastewater discharge permit must include “a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons.”⁹ TCEQ is required to mail out notice to this group of people once the ED has declared the application administratively complete,¹⁰ and again when the ED has declared the application technically complete.¹¹

IV. DISCUSSION

As a preliminary matter, in order to petition for the revocation of a permit, the petition must be brought by a “person affected by the issuance of a permit or other order of the commission.”¹² Petitioner argues that it is affected by the issuance of SigmaPro’s permit because it is an adjacent landowner and is therefore impacted by the regulated activity and is personally affected by the issuance of the permit. OPIC agrees.

Petitioner contends Lacey, not Closner Equipment Co Inc as identified in the application, is—and since 2005 has been—the owner of Lot 4 depicted on the adjacent

⁵ *Id.*

⁶30 TAC § 305.68(a).

⁷ 30 TAC § 39.551(b)(1) and 30 TAC § 39.418(b)(2); 30 TAC § 39.551(c)(2).

⁸ 30 TAC § 39.413(1).

⁹ 30 TAC § 281.5(6).

¹⁰ 30 TAC § 39.418(b)(2).

¹¹ 30 TAC § 39.419(c).

¹² 30 TAC § 305.66(d).

landowner map.¹³ According to the petition to revoke and its attachments, Petitioner's property is located directly across the street from SigmaPro's facility, and the discharge route runs through the length of Petitioner's property.¹⁴ Petitioner questions the suitability of the discharge route and states discharge from the facility has created ponding on Petitioner's property and has also created nuisance odors. According to Attachment E of SigmaPro's application, part of the property purported to be owned by Petitioner lies within the 150-foot nuisance odor buffer zone around the facility.¹⁵

SigmaPro's misidentification of the owner of Petitioner's property may constitute good cause grounds for permit revocation as a "misrepresentation of material fact" or a "false or misleading statement in connection with" its original application under the rules. The record raises questions as to whether all required landowners were included in SigmaPro's application materials. Furthermore, if Petitioner had been identified on the adjacent landowner's list, Petitioner would have been given notice of SigmaPro's application and would have been provided with a meaningful opportunity to participate in the application process as an affected landowner. In her affidavit attached to Lacey's petition, Mabel Simson, part owner of Lacey, states she would have contested the application if Lacey had received proper notice.

Therefore, OPIC recommends the Commission refer the matter to the State Office of Administrative Hearings (SOAH) to allow the interested parties an opportunity to present evidence on whether there is good cause to revoke Permit No. WQ0015722001, and whether all relevant notice requirements have been met.

V. ISSUES RECOMMENDED FOR REFERRAL

Because there may be conflicting facts within the record, OPIC recommends the following issues be referred to SOAH for a contested case hearing:

1. In relation to Permit No. WQ0015722001, did SigmaPro misrepresent a material fact by not including Petitioner's landowner information in the application materials?

¹³ *Petition to Revoke*, Exhibit A, p. 55.

¹⁴ *Petition to Revoke*, Exhibit A, p. 54.

¹⁵ *Petition to Revoke*, Exhibit A, p. 62.

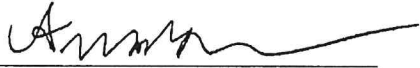
2. In relation to Permit No. WQ0015722001, have the notice requirements of 30 TAC §§ 39.413 and 39.551(c) been correctly fulfilled?

VI. CONCLUSION

OPIC recommends the Commission find that Petitioner is an affected person and refer this matter to SOAH for the parties to present evidence on whether there is good cause to revoke SigmaPro's permit and whether there was sufficient mailed notice for the ED to approve Permit No. WQ0015722001.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, the original of the Office of Public Interest Counsel's Response to Petition to Revoke TPDES Permit 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

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