

TCEQ DOCKET NO. 2022-0610- MWD

**APPLICATION OF THE CITY OF
BRYAN FOR TPDES PERMIT NO.
WQ 0015930001**

**§ BEFORE THE TEXAS COMMISSION
§ ON
§ ENVIRONMENTAL QUALITY**

**THE CITY OF BRYAN’S RESPONSE TO REQUEST FOR RECONSIDERATION AND
REQUESTS FOR CONTESTED CASE HEARING**

The City of Bryan (“Bryan”) respectfully submits this response to the request for reconsideration of the Executive Director’s decision filed by Mary Louise Sims and the requests for contested case hearing filed by Georgianne Ku and David and Margaret Gail Hyden. This response also addresses requests that seek a public hearing rather than a contested case hearing. For the reasons set forth in this response, Bryan requests that the request for reconsideration and the contested case hearing requests be denied and that the Commission issue Bryan the requested permit. If the Commission decides to grant any of the hearing requests, Bryan requests that the issues be limited as set out in this response.

I. BACKGROUND

The City of Bryan has applied for a new Texas Pollutant Discharge Elimination System Permit No. WQ00159300001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 6 million gallons per day in the interim phase and an annual average flow not to exceed 12 million gallons per day during the final phase. The plant will be located east of the City on a 75-acre tract of undeveloped land owned by the City of Bryan. The plant is needed to serve growth that is occurring on the City’s east side and to relieve flow on the City’s existing plant that has experienced peak wet weather flows in excess of its peak 2-hour limit.

The plant will be designed using the activated sludge treatment method and will consist of process units including headworks (bar screen and grit removal), aeration basins, waste sludge holding tanks, belt press sludge dewatering, final clarifiers, UV disinfection, and cascade aeration. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the

facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

II. PROCEDURAL HISTORY

TCEQ received the application for a new TPDES permit on September 25, 2020, and declared it administratively complete on January 14, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in English on January 20, 2021 in *The Eagle* and in Spanish on January 22, 2021 in *La Voz Hispana*. The application was determined to be technically complete on May 21, 2021. The Applicant published the Notice of Application and Preliminary Decision in English on September 9, 2021 in *The Eagle*, and in Spanish on September 10, 2021 in *La Voz Hispana*. A public meeting on the application was held on January 13, 2022. The public comment period ended on January 20, 2022. The Executive Director issued his Response to Comments on February 28, 2022. No changes to the draft permit were made based on the Executive Director's review of the comments.

III. LAW APPLICABLE TO REQUESTS FOR RECONSIDERATION AND HEARING REQUESTS

This application was filed after September 1, 2015; therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55.

Requirements of the Commission's rules implementing House Bill 801 and Senate Bill 709 relevant to the requests for a contested case hearing in this case include:

- the request must be filed no later than 30 days after the chief clerk mails the Executive Director's decision and response to comments;
- the request must be based only on the requestor's timely comments;
- the request should, to the extent possible, specify any of the Executive Director's responses to the requestor's comments that the requestor disputes;
- the request must request a "contested case hearing"; and
- documents filed with the chief clerk before the public comment deadline that do not request reconsideration or a contested case hearing shall be treated as public comment.¹

¹ 30 TAC § 55.201.

In determining whether a requestor is an affected person, the Commission may consider the following:

- The merits of the underlying application and supporting documentation in the commission's administrative record including whether the application meets the requirements for permit issuance;
- The analysis and opinions of the executive director; and
- any other expert reports affidavits opinions or data submitted by the executive director, the applicant, or hearing requestor.²

IV. RESPONSES TO INDIVIDUAL REQUESTS

Request for Reconsideration: Mary Louise Sims

Ms. Sims' request for reconsideration of the Executive Director's decision should be denied because it identifies no relevant legal requirement that the Executive Director failed to consider or erred in considering in reviewing the application and developing his recommendation. Ms. Sims asserts that the Executive Director's failure to perform a site visit resulted in improper vetting of information submitted in the City of Bryan's application but fails to identify the specific information she contends was not properly vetted. Ms. Sims expresses generalized concerns about erosion and flooding which the Executive Director stated in his response to comments were beyond TCEQ's jurisdiction in processing a wastewater discharge permit.³ She characterizes the Executive Director's response identifying the local floodplain administrator as an appropriate person to address flooding concerns as "politics." This mischaracterization of the Executive Director's effort to provide useful information provides no evidence of a failure to consider a relevant legal requirement.

Ms. Sims also asserts that the Executive Director failed to properly address concerns about potential seepage of wastewater into groundwater wells. Responding to commentors other than Ms. Sims who raised this concern, the Executive Director noted that TCEQ's Water Quality Division is charged with reviewing applications and drafting permits that will be protective of human health and the environment and has determined that the effluent limits of the draft permit that protect surface water will ensure that groundwater will not be impacted by the discharge.⁴

² 30 TAC § 55.203(d).

³ Executive Director's Response to Public Comment at Response 4.

⁴ Executive Director's Response to Public Comment at Response 15.

This demonstrates that the Executive Director gave appropriate consideration to this issue.⁵ The draft permit provides additional protection against potential contamination of groundwater wells through Other Requirement 4. This provision prohibits Bryan from constructing any wastewater treatment plant unit within 250 feet from any private water well.

Requests for public hearing

The following persons filed comments that included a request for a “public hearing”: Neil Ryan Gallagher, Jenny Gallagher, Anne Cecile Daleon, Mary Louise Sims, Glynda Bricker, Bobbie Meyer, and Kenneth Davis. None of these comments requested a “contested case hearing” even though TCEQ’s notice expressly provided that a request for a contested case hearing must include the statement “I/we request a contested case hearing.” All of these persons had an opportunity to participate in the public meeting held on the City of Bryan’s application on January 13, 2022. Following issuance of the Executive Director’s decision and response to comments, none of these commentors, other than Mary Louise Sims, filed a request for reconsideration or a request for a contested case hearing. Pursuant to 30 TAC § 55.201(f), the filings of these commentors should be treated as public comments.

Requests for contested case hearing

Ms. Georgianne Ku

Ms. Ku’s request for a contested case hearing was filed on October 10, 2021 before the Chief Clerk mailed the Executive Director’s decision and response to comments. Her request shows her address to be in Washington State, fails to provide the requestor’s distance relative to the proposed facility, and makes no effort to show how or why she will be affected by the proposed facility in a manner different from the general public. Instead, Ms. Ku expresses only generalized concern about “the likelihood and detrimental effects of wastewater flooding on groundwater, surface water and plant life” on behalf of others.

Accordingly, Ms. Ku’s request is both untimely and legally deficient. It was not filed with the Chief Clerk within 30 days after issuance of the Executive Directors decision and response to comments as required by 30 TAC § 55.201(a). It provides no information showing that she has a personal justiciable interest in a legal right duty, privilege, power, or economic interest affected

⁵ 30 TAC § 309.13(c).

by the application for which she requests a contested case hearing as required by 30 TAC 55s.203(a). Additionally, Ms. Ku's request expresses only generalized concerns and identifies no concrete and particularized injury the proposed facility will cause to her personally.

David and Margaret Gail Hyden

Bryan does not dispute that the Hydens own property used for a cattle operation adjacent to the City of Bryan's proposed plant site and Brushy Creek below the proposed point of discharge. However, proximity alone does not confer affected person status. The Commission may also consider other factors including those identified in Texas Water Code § 5.115 (a-1)(1) and 30 TAC § 55.203(d).

Based on these factors, as set out more fully below, the Commission should find that the Hydens are not affected persons. In the alternative, the Commission should limit the issues for consideration in a contested case hearing. The Hyden's request identifies seven issues they wish to be referred for a contested case hearing. A review of those issues—applying the 30 TAC § 55.203(d) factors—provides a basis for determining the Hydens are not affected persons and denying their request for a contested cases hearing; or, in the alternative, limiting the issues referred for hearing.

1. Whether the proposed wastewater treatment plant is within a 100-year flood plain. 30 Tex. Admin. Code § 309.13(a).

The Executive Director addressed this concern in his response to comments.⁶ His response states that “TCEQ does not prohibit the location of the wastewater treatment facility in a floodplain, as long as the facility design adheres to TCQ rules.” He also notes that the City of Bryan's proposed plant will be subject to plans and specifications review prior to construction and that part of this review will include “adherence to 30 TAC § 217.35, relating to the One Hundred Year Flood Plain Requirements.” The Executive Director points out that Bryan's draft permit requires that the facility design must provide protection from inundation during a 100-year flood event.⁷

⁶ Executive Director's Response to Public Comment at Response 20.

⁷ City of Bryan Draft Permit, Other Requirements, Item No. 5, p. 34.

2. Whether the proposed wastewater treatment plant is located on or will have a negative impact on wetlands. 30 TEX. ADMIN. CODE 309.13(b).

The City of Bryan's sworn application indicates that no wetland or any part of a wetland will be filled due to the construction of the planned facility.⁸ The Hydens' hearing requests makes no assertion that Bryan's application proposes to construct any wastewater treatment plant unit in wetlands. At most, the request asserts that "the City's site and facilities are located "*near a potential* wetland." Even if this vague and unsupported assertion were correct, it would not raise a relevant legal issue under TCEQ's rules which provide that "a wastewater treatment unit may not be located in wetland."⁹ Accordingly, the Hydens' assertion that that the site and facilities are "near a potential wetland" does not create a contested case issue under TCEQ's rules.

3. Whether the proposed wastewater treatment plant meets the requirement to abate and control a nuisance of odor. 30 Tex. Admin. Code § 309.13(e).

The Executive Director specifically addressed the Hydens' odor concerns in his response to comments.¹⁰ This response notes that Bryan addressed potential odor issues by meeting the buffer zone requirements of 30 TAC § 309.13(e) through ownership of the buffer zone area for both phases of the draft permit. Further, the Executive Director notes that Bryan's plant will use the activated sludge process which is not expected to produce effluent with an offensive odor. The Hydens' request makes no allegation and provides no information concerning a failure to meet the requirements to abate and control potential nuisance odors from the proposed facility that would support referral of this issue to a contested case proceeding.

4. Whether the Application violates the TCEQ's Tier 1 and Tier 2 antidegradation requirements. 30 Tex. Admin. Code § 307.5(b).

Through his response to comments the Executive Director specifically addressed the Hydens' claim that Bryan's application fails to satisfy TCEQ's antidegradation policy.¹¹ This response notes that an antidegradation review was performed in accordance with 30 Texas Administrative Code § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards. The Tier 1 review preliminarily determined that existing water quality uses

⁸ City of Bryan Application, Domestic Technical Report 1.1, Section 5.A.

⁹ 30 TAC § 309.13(b).

¹⁰ Executive Director's Response to Public Comment at Response 16.

¹¹ Executive Director's Response to Public Comment at Response 21.

will not be impaired by the granting of Bryan's requested permit. The Tier 2 review preliminarily determined that no significant degradation of water quality is expected in Wickson Creek which has a presumed high aquatic life use and that existing uses will be maintained and protected. Although the Executive Director's response notes that the preliminary determinations can be re-examined and may be modified if new information is received, his response was subsequent to receipt of the Hydens' comments including the affidavit of their expert offering his opinions on the antidegradation issue. Because the Executive Director's response to comments specifically notes that no changes were made to the draft permit in response to comments received, the Executive Director must have concluded the opinions of the Hydens' expert did not justify a change in the antidegradation analysis. Accordingly, there is no basis to refer this issue to a contested case hearing.

5. Whether the proposed wastewater treatment plant is designed to minimize possible contamination of water in the State. 30 Tex. Admin. Code § 309.12.

The City of Bryan's permit application states that the proposed wastewater treatment facility will be designed to utilize the activated sludge treatment method and identifies this specific units that will be constructed to minimize possible contamination of water in the State. The Executive Director addressed the Hydens' concerns about minimizing possible contamination of water in the State through his response to comments.¹² This response notes that the draft permit contains effluent limits that will meet the requirements of the Texas Surface Water Quality Standards and TCEQ's rules by maintaining the receiving waters' existing uses, thus ensuring that the discharge will be protective of aquatic life, human health, and the environment. The Executive Director's response also notes other provisions of the draft permit designed to ensure proper operation of the facility and to require a "plans and specs" review prior to construction in order to ensure the facility will meet TCEQ's design requirements in Chapter 217 of TCEQ's rules.

The Hydens' request concerning minimizing possible contamination focuses solely on the potential for the discharge from the plant to change the "erosion pattern" in Brushy Creek and other receiving waters but never relates this concern to any potential "contamination of water in the state." The Executive Director correctly notes in his response to comments that TCEQ lacks

¹² Executive Director's Response to Public Comment at Comment at Response 15.

jurisdiction to address erosion issues in the wastewater permitting process.¹³ Accordingly there is no basis for referral of this issue as presented in the Hydens' request to a contested case hearing.

6. Whether the proposed discharge will adversely impact water quality and/or aquatic life.

Through response to comments 14 and 15 the Executive Director clearly and succinctly explains the process by which wastewater applications are reviewed and permits are drafted. This includes development of permit limits and conditions to meet the requirements of the Texas Surface Water Quality Standards thus ensuring that "the discharge will be protective of aquatic life, human health and the environment."¹⁴ As explained in the Fact Sheet and Executive Director's Preliminary Decision, these permit limits and conditions include effluent limitations, sewage sludge requirements, pretreatment requirements and whole effluent toxicity testing. Based on the commission's administrative record and the executive director's analysis and opinion, the Commission can conclude that the Hydens' request related to impacts on water quality and or aquatic life fails to qualify the Hydens as affected persons; or, in the alternative, should not be referred as an issue in a contested case proceeding.

7. Whether the wastewater treatment plant or the requested discharge volume should be denied or altered in consideration of the need for the facility. Tex. Water Code § 26.0282.

The City of Bryan's permit application stated that an additional wastewater treatment plant was needed because Bryan's existing wastewater treatment plant experiences peak wet weather flows in excess of the plant's peak 2-hour discharge capacity and because of the need for expanding treatment capacity on the city's east side that is experiencing growth.¹⁵ Attachment J to The City of Bryan's permit application provides correspondence from the only other wastewater treatment plant within a three mile radius of the proposed facility. The owner of that facility states that its capacity is only 0.025 GPD and that they would not be able to scale to the capacity needed for the expected wastewater flows.

¹³ Executive Director's Response to Public Comment at Comment at Response 4 and 17.

¹⁴ Executive Director's Response to Public Comment at Comment at Response 15.

¹⁵ City of Bryan Application, Domestic Technical Report 1.1, Section 1.A.

The Hydens propose an issue about the need for the proposed facility or the discharge volume without any allegation or information suggesting an absence of need. The Executive Director specifically responded to the Hydens' concerns about the need for the proposed facility stating that the City of Bryan had provided information for its justification of need and noting that there are no plans to alter or deny the proposed discharge limits.

Based on the underlying application and supporting documentation and the analysis of the executive director, the Commission should find the Hydens are not affected persons with regard to this issue or, in the alternative, that this issue should not be submitted for a contested case hearing.

V. CONCLUSION

For the foregoing reasons, the City of Bryan respectfully requests the Commission deny the request for reconsideration, deny the requests for a public hearing, and deny the requests for a contested case hearing. The City of Bryan requests the Commission grant its application for TPDES Permit No. WQ0015930001. Alternatively, if the Commission determines one or more of the hearing requests should be granted and referred for a contested case hearing, Bryan requests the Commission limit the scope of its referral to the specific grounds for which it determines that requestor to be an affected person, and identify the specific and narrow issues to be addressed.

Dated: June 6, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on June 6, 2022, this document was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via electronic mail, electronic submittal, or by deposit in the U.S. Mail.

A handwritten signature in black ink that reads "Jim Mathews". The signature is written in a cursive style with a long, sweeping tail on the letter "w".

Jim Mathews

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