

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Erin E. Chancellor, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 8, 2023

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: **IN THE MATTER OF THE APPLICATION HARRIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO. 542 FOR PERMIT NO.  
WQ0015312001  
TCEQ DOCKET NO. 2023-0280-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 "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2023-0280-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>HARRIS COUNTY MUNICIPAL</b>	<b>§</b>	
<b>UTILITY DISTRICT NO. 542 FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>AMENDMENT TO TPDES</b>	<b>§</b>	
<b>PERMIT NO. WQ0015312001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**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 (“TCEQ” or “Commission”) files this Response to Request for Hearing in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

The TCEQ Chief Clerk’s office received one timely hearing request from Mary Jo and Rusty Stavinoha. For the reasons discussed herein, OPIC respectfully recommends denial of their hearing request.

**B. Background of Facility**

Harris County Municipal Utility District No. 542 (“Applicant” or “HCMUD”) applied to TCEQ for a major amendment to Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0015312001 (the “Permit”) to authorize an increase in the discharge of treated wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The wastewater treatment facility (the “Facility”) is currently in operation.

The Facility is located in Harris County at 20901½ Rosehill Church Road. The treated effluent is discharged to the HCMUD drainage channel, then to Willow Creek, then to Spring

Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the HCMUD drainage channel and limited aquatic life use for Willow Creek. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use.

The existing Facility consists of concrete basins with mechanical bar screens, influent and aeration basins, clarifiers, sludge holding tanks, chlorine contact basins, and an effluent measuring basin. The expansion would add three aeration basins, one clarifier, two sludge holding tanks, and a chlorine contact basin to the Facility. The effluent limitations for the final phase of the draft permit, based on a 30-day average, are 7 milligrams per liter (“mg/l”) five-day biochemical oxygen demand, 15 mg/l total suspended solids, 2 mg/l ammonia nitrogen, 63 colony forming units of *e. coli* per 100 ml, and 4 mg/l minimum dissolved oxygen. Additionally, the effluent is required to contain a chlorine residual of at least 1.0 mg/l after a detention time of 20 minutes. The permittee must also dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual.

### **C. Procedural Background**

TCEQ received HCMUD’s application on May 11, 2021. On July 14, 2021, the Executive Director (“ED”) declared the application administratively complete. The Notice of Receipt and Intent to Obtain Water Quality Permit Amendment was published in Spanish on August 1, 2021 in *El Perico*, and in English on August 4, 2021 in the *Houston Chronicle dba Cypress Creek Mirror*. The ED completed the technical review of the application on June 14, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment was published in Spanish on June 26, 2022 in *El Perico*, and in English on July 6, 2022 in the *Houston Chronicle dba Cypress Creek Mirror*. The public

comment period closed on August 5, 2022. No timely public comments were received; therefore, the ED did not author a Response to Comments.

## II. APPLICABLE LAW

HCMUD's 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 Title 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 person'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.

30 TAC § 55.201(d).

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.

30 TAC § 55.203(d).

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. Determination of Affected Person Status**

Mary Jo and Rusty Stavinoha jointly submitted a hearing request on June 30, 2022, which was during the public comment period. The entirety of the request reads as follows: "I request a public hearing." The Stavinohas did not submit any comments or other requests to the Commission. According to the map prepared by the ED's staff, their property is located approximately fifteen and a half miles away from the Facility.

For a number of reasons, OPIC must recommend denial of this hearing request. First, while the Stavinohas have requested a hearing, they have not explained how and why they believe that they will be adversely affected by the Facility in a manner not common to members of the general public as required by 30 TAC § 55.201(d)(2). Second, the Stavinohas did not file comments with the Commission during the public comment period. To be considered an affected person, a requestor must have timely submitted comments on the application, and the request must be based only on that person's timely comments. TWC § 5.115(a)(a-1)(2)(B); 30 TAC § 55.201(c). Finally,

the address provided by the Stavinohas is miles away from the Facility. The intervening distance diminishes any likelihood that they would be affected by the Facility or its regulated activity in a way that is not common to the general public. Therefore, in consideration of the above, OPIC must respectfully recommend denial of the hearing request of Mary Jo and Rusty Stavinoha.

**A. Whether Issues Were Raised in the Hearing Request of an Affected Person**

OPIC recommends that the Commission find that the requestors do not qualify as affected persons and deny their hearing request. The request contains no discussion of any substantive issues; therefore, no issues were raised in the hearing request of an affected person.

**B. Whether Issues Raised in the Hearing Request Remain Disputed**

As discussed above, the hearing request did not raise any issues. Therefore, no disputed issues exist for Commission consideration in this matter.

**D. Whether the Disputed Issues Are Issues of Fact**

There are no disputed issues. Therefore, no issues of fact exist for Commission consideration in this matter.

**E. Whether Issues Were Raised by the Requestors During the Comment Period**

The hearing request submitted by requestors did not contain any issues. Therefore, no issues were raised by requestors during the public comment period in this matter.

**F. Whether the Hearing Request is Based on Issues Raised in Public Comments Which Have Not Been Withdrawn**

The requestors did not submit public comments during the public comment period; therefore, the request is not based on issues raised in public comments. Further, because the Commission received no public comments in this matter, no comments have been withdrawn.

**G. Issues That are Relevant and Material to the Decision on the Application**

The requestors did not raise any issues in their request that are relevant and material to the Commission's decision on this Application.

**H. Issues Recommended for Referral**

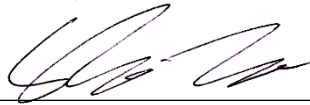
OPIC respectfully recommends that the hearing request be denied, and no issues be referred to the State Office of Administrative Hearings ("SOAH").

**IV. CONCLUSION**

For the reasons discussed above, OPIC finds Mary Jo and Rusty Stavinoha have not demonstrated that they qualify as affected persons. Therefore, OPIC respectfully recommends denial of their hearing request.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

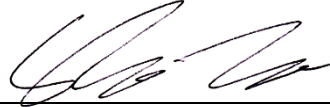
By:  \_\_\_\_\_

Sheldon P. Wayne  
Assistant Public Interest Counsel  
State Bar No. 24098581  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-3144 Phone  
(512) 239-6377 Fax



**CERTIFICATE OF SERVICE**

I hereby certify that March 8, 2023, 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 on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



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Sheldon P. Wayne

**MAILING LIST**  
**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 542**  
**TCEQ DOCKET NO. 2023-0280-MWD**

FOR THE APPLICANT

via electronic mail:

Sherri Sloan, Vice President  
Harris County MUD No. 542  
c/o Allen Boone Humphries Robinson  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

Mariana Cuellar, P.E.  
LJA Engineering, Inc.  
3600 West Sam Houston Parkway South  
Suite 600  
Houston, Texas 77042  
[mcuellar@lja.com](mailto:mcuellar@lja.com)

Ashley Broughton, P.E.  
LJA Engineering, Inc.  
3600 West Sam Houston Parkway South  
Suite 600  
Houston, Texas 77042  
[abroughton@lja.com](mailto:abroughton@lja.com)

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison "Cole" Malley, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0600 Fax: 512/239-0606  
[harrison.malley@tceq.texas.gov](mailto:harrison.malley@tceq.texas.gov)

Venkata Kancharla, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3342 Fax: 512/239-4430  
[venkata.kancharla@tceq.texas.gov](mailto:venkata.kancharla@tceq.texas.gov)

Ryan Vise, Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-4000 Fax: 512/239-5678  
[pep@tceq.texas.gov](mailto:pep@tceq.texas.gov)

FOR ALTERNATIVE DISPUTE  
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0687 Fax: 512/239-4015  
[kyle.lucas@tceq.texas.gov](mailto:kyle.lucas@tceq.texas.gov)

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3300 Fax: 512/239-3311  
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

Mary Jo and Rusty Stavinoha  
20845 Rosehill Church Road  
Tomball, Texas 77377