

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 20, 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: **GREEN RAINDROPS, INC. (APPLICANT)**
TCEQ DOCKET NO. 2023-0324-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 cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2023-0324-MWD

**APPLICATION BY
GREEN RAINDROPS, INC.
FOR TPDES PERMIT NO.
WQ0016089001**

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**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUEST FOR HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Hearing in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

The TCEQ Chief Clerk's office received one timely hearing request from Ricky Collins. For the reasons discussed herein, OPIC respectfully recommends the Commission grant Mr. Collins' hearing request and refer the issues specified in Section III.H for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

B. Background of Facility

Green Raindrops, Inc. (Applicant) applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016089001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 9,900 gallons per day. The proposed wastewater treatment facility (the facility) would serve Magnolia RV Resort. The facility would be located at 1422 County Road 59, in Brazoria County, 77583. The treated effluent would be discharged to

Mustang Bayou, then to New Bayou, then to Chocolate Bay of the Bays and Estuaries in Segment No. 2432 of the Bays and Estuaries.

The facility would be an activated sludge process plant operated in the conventional mode, and the treatment units would include an aeration basin, a final clarifier, a chlorine contact chamber, and a sludge holding tank. The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen.

C. Procedural Background

TCEQ received the application on January 10, 2020, and declared it administratively complete on March 16, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Brazoria County Bulletin* on July 5, 2022. The Executive Director (ED) completed the technical review of the application on May 4, 2022. The Notice of Application and Preliminary Decision (NAPD) was published in the *Brazoria County Bulletin* on September 13, 2022. The public comment period for this application closed on October 13, 2022. The Chief Clerk mailed the ED's Decision and Response to Comments on November 28, 2022. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was December 28, 2022. The Commission received one timely filed hearing request, as discussed below.

II. APPLICABLE LAW

The 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 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 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

Ricky Collins timely submitted a hearing request. Mr. Collins raised concerns about potential water contamination and environmental issues. Mr. Collins further raised concerns about potential impacts on fish, wildlife, and recreational uses of the water body on his property. These concerns are interests that are protected by the law under which this application will be considered. The Adjacent Landowner's Map submitted by the Applicant shows Mr. Collins' property lies adjacent to the facility. Further, the ED's map shows that Mr. Collins' property is within a half mile of the proposed facility. Mr. Collins' proximity to the proposed facility demonstrates that a reasonable relationship exists between the environmental and water quality concerns he expresses, and the activity authorized by the draft permit. OPIC therefore finds that Mr. Collins is an affected person who has a personal justiciable interest in this matter which is not common to the members of the general public.

B. Issues Raised in the Hearing Request

Mr. Collins raised the following issues:

1. Whether the draft permit contains adequate provisions to prevent contamination of surface water?
2. Whether the draft permit is adequately protective of wildlife, including aquatic life, and the environment?
3. Whether the draft permit would impact Mr. Collins' recreational use of the water body on his property?
4. Whether the draft permit complies with Chapter 309 siting and design requirements relating to inundation?
5. Whether operations under the draft permit would cause increased traffic on adjacent roads and bridges?

C. Issues Raised in the Hearing Request Remain Disputed

There is no agreement between the hearing requestor and the ED on the issues raised in the hearing request; therefore, they remain disputed.

D. Whether the Disputed Issues Are Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

E. Issues Raised During the Comment Period

All of the issues were raised by Mr. Collins during the public comment period.

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

The hearing request is based on timely comments that have not been withdrawn.

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

To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

The Commission is responsible for the protection of water quality under Texas Water Code Chapter 26 and 30 TAC Chapters 307 and 309. These responsibilities include ensuring compliance with the Texas Surface Water Quality Standards (TSWQS). The purpose of these standards is to "maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state." 30 TAC § 307.1. Also, "[a] permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality." 30 TAC § 307.2(d)(5)(D). Additionally, surface waters must not be toxic to humans from ingestion, consumption of aquatic organisms, or contact with the skin. 30 TAC § 307.4(d).

The TSWQS further provide that "[t]he commission may not issue a permit for a new facility ... unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of water in the state." 30 TAC § 309.12. Therefore, Issue Nos. 2 through 4 are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

Mr. Collins raised concerns regarding potential water contamination due to floods, hurricanes, or broken lines. The TCEQ does not have jurisdiction to consider general flooding issues in the wastewater permitting process. However, the design of the facility must account for

any unsuitable site characteristics by protecting against inundation or structural damage during rain events that would result in unauthorized discharges or contaminated runoff. The potential for these events at the facility could affect water quality, and the facility is subject to the siting requirements of Texas Water Code Chapter 26 and Chapter 309 of the Commission's rules. Therefore, Issue No. 1 is relevant and material to the Commission's decision on this application.

Traffic is not a consideration addressed by the statutes and rules applicable to this proposed wastewater discharge permit. Therefore, Issue No. 5 is not relevant and material to the Commission's decision to issue or deny this permit.

H. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the draft permit contains adequate provisions to prevent contamination of surface water?
2. Whether the draft permit is adequately protective of wildlife, including aquatic life, and the environment?
3. Whether the draft permit would impact Mr. Collins' recreational use of the water body on his property?
4. Whether the draft permit complies with Chapter 309 siting and design requirements relating to inundation?

I. Maximum Expected Duration of Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and

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provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

For the reasons discussed above, OPIC recommends the Commission grant the hearing request of Ricky Collins. OPIC further recommends the Commission refer the issues specified in Section III.H for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: Pranjal

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2023, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Pranjal M. Mehta

**MAILING LIST
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TCEQ DOCKET NO. 2023-0324-MWD**

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