

TCEQ DOCKET NO. 2023-0529-SLG

APPLICATION BY NORTH TEXAS	§	BEFORE THE TEXAS COMMISSION
MUNICIPAL WATER DISTRICT FOR	§	ON
TCEQ PERMIT NO. WQ0005323000	§	ENVIRONMENTAL QUALITY

**NORTH TEXAS MUNICIPAL WATER DISTRICT’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND REQUESTS FOR RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS:

The North Texas Municipal Water District (referenced interchangeably as the “District” or “Applicant”) respectfully files its Response to Requests for Contested Case Hearing and Requests for Reconsideration (the “Response”) in the above-referenced matter, and shows the Commissioners of the Texas Commission on Environmental Quality (referenced interchangeably as the “Commission” or “TCEQ”) the following:

I. INTRODUCTION/BACKGROUND

The District requests that TCEQ deny all hearing requests and requests for reconsideration filed in this matter and approve the District’s application for a new TCEQ Water Treatment Residuals Disposal Permit (the “Application”). The District applied to TCEQ for a water treatment residuals disposal permit to authorize the processing, storage and disposal of water treatment plant residuals at a monofill. The Application requests the authorization of the disposal of water treatment plant residuals at a maximum rate of 100,000 dry tons per year at a 310-acre monofill, located approximately 0.25 mile north of the intersection of County Road 644 and Farm-to-Market Road 547, in Collin County, Texas. The disposal site will be located in the drainage basin of Lake Tawakoni in Segment No. 0507 of the Sabine River Basin.

None of the requests for hearing have demonstrated that the activities proposed by the District as contemplated in the Application will adversely affect any of the requestors’ respective personal justiciable interests. Consequently, they are not affected persons. The Texas Water Code expressly prohibits TCEQ from granting a request for a contested case hearing unless TCEQ determines the request was filed by an affected person. Section 5.556 of the Texas Water Code expressly precludes the Commission from granting a hearing request unless the Commission determines that the request was filed by an affected person as defined by Section 5.115 of the Texas Water Code.¹ Because the hearing requests do not adequately show that the requestors are

¹ Tex. Water Code Ann. § 5.556(b) (West 2008) (“The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115.”)

affected persons, they must be denied. Accordingly, TCEQ should grant the Application and issue TCEQ Permit No. WQ0005323000.

II. PROCEDURAL HISTORY

On May 18, 2021, the District filed the Application with TCEQ. The Executive Director of TCEQ (the “ED”) declared the Application administratively complete on September 15, 2021. The Notice of Receipt of Application and Intent to Obtain a Permit, (the “NORI”) was mailed by the TCEQ Office of the Chief Clerk (the “Chief Clerk”) and published by the District in the *Dallas Morning News* and *Al Dia* on September 29, 2021. On May 18, 2022, a combined NORI and Notice of Application and Preliminary Decision (“NAPD”) was issued, in part, to correct the previous NORI, which inaccurately stated the Application was for a Sewage Sludge or Biosolids Surface Disposal Permit,² to a Water Treatment Residuals Disposal Permit. The combined NORI/NAPD was published on June 15, 2022 in the *Dallas Morning News and Al Dia*. The Application was available for inspection by the public at the Charles J. Rike Memorial Library, 203 Orange Street, Farmersville, Texas.

On November 10, 2021, so as to be transparent about the Application, NTMWD voluntarily held an open house in the City of Josephine to inform adjoining landowners to the monofill site and the public about the Application and to answer any questions such landowners and the public had about the Application. The TCEQ public comment period for the Application ended on July 15, 2022, and the hearing request period ended on March 17, 2023. A number of hearing requests were filed, as noted below. The ED filed his Response to Public Comment (“RTC”) on February 13, 2023, and a decision letter indicating TCEQ Permit No. WQ0005323000 meets the requirements of applicable law was issued on February 15, 2023. The District received notice on April 26, 2023 that the Application would be considered by the Commission at the TCEQ agenda meeting scheduled on May 31, 2023. The District submits this response to requests for hearing and requests for reconsideration made to TCEQ on the Application pursuant to Title 30, Section 55.209 of the Texas Administrative Code.

² The mischaracterization of the Application in the initial NORI drove most of the comments and hearing requests filed because requestors and commentors believed sewage sludge would be applied and disposed of at the monofill site instead of water treatment residuals.

III. DETERMINATION OF AFFECTED PERSONS

Under TCEQ rules, TCEQ Commissioners, the TCEQ Executive Director, the Applicant, and affected persons may submit a request for a contested case hearing.³ 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.”⁴ “An interest common to members of the general public does not qualify as a personal justiciable interest.”⁵ Accordingly, a request for a contested case hearing must include a brief, but specific, description of the requestor’s location and distance relative to the activity that is the subject of the Application.⁶ In addition, the requestor must do more than provide a conclusory statement in the request that he or she will be harmed by the proposed change. The requestor must describe briefly, but specifically, how and why he or she will be affected by the change proposed in the Application.⁷

When determining whether an individual or entity is an affected person, all relevant factors are considered by the Commission, including: “(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) . . . 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.”⁸

Persons claiming to be affected persons must also submit their hearing requests in writing to the Chief Clerk within the time period specified in the notice.⁹ For the purposes of the Application, the notice directed all potential requestors to submit their requests for a contested case hearing on the matter to the Chief Clerk within the 30-day period following the date of the ED’s final decision letter. Thus, all timely hearing requests must have been received by the Chief Clerk

³ 30 Tex. Admin. Code § 55.201(b).

⁴ *Id.* § 55.203(a).

⁵ *Id.*

⁶ *Id.* § 55.201(d)(2).

⁷ *Id.*

⁸ *Id.* § 55.203(c)

⁹ *Id.* § 55.201(c).

by March 17, 2023. All such requests not filed within this period are not timely and thus cannot be processed by the Chief Clerk.

Under TCEQ rules, a person who filed a hearing request may submit a reply to the following responses no later than nine days before the TCEQ Commission Agenda to consider the hearing requests.¹⁰ Under Section 55.209(g), such a reply may contain additional information responsive to the information contained in the correspondence issued by the Chief Clerk pursuant to Section 55.209(d).

Given the inadequacies of the hearing requests submitted on the Application, as discussed in more detail below, it is anticipated that some hearing requestors may attempt to use Section 55.209(g) as a means of curing the substantive defects of their original hearing request by discussing additional issues in an effort to influence the determination of their affected person status. Such a result, if allowed, would effectively neuter the requirement for submitting hearing requests by the time specified in Section 55.201(a).

The only reasonable interpretation of Section 55.209(g) in the context of Section 55.201(a) is that the former provides requestors with the opportunity to round-out, or clarify, the information originally contained in their timely filed requests. The latter, however, precludes the requestors from incorporating newly articulated impacts attributable to the Application, or including other additional substantive components, to their hearing requests.

IV. EVALUATION OF COMMENTS AND HEARING REQUESTS

Notably, all but two of the following requests were submitted after the corrected NORI/NAPD was issued on May 18, 2022. Consequently, some of the below requests focus on issues that are specific to sewage sludge disposal facilities, but are not applicable to water treatment plant (“WTP”) residual disposal sites/facilities like the site and facilities sought by the Application.

A. Individual Hearing Requestors Not Withdrawn

1. Charles L. Ruple

Charles Ruple submitted one request for a contested case hearing. It was received by the Chief Clerk on October 7, 2021.

¹⁰ *Id.* § 55.209(g).

As a threshold issue, Mr. Ruple's request does not include a statement explaining his location and distance relative to the proposed site. In his request, Mr. Ruple describes his general concerns about the impacts to nearby residences, public health and welfare, groundwater quality, runoff, animal operations, and potential PFAS contamination. However, the request fails to include any explanation regarding why he believes that his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his request fails to identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Ruple's request for a contested case hearing should not be granted.

2. Russell Coones

Russell Coones submitted one request for a contested case hearing. It was received by the Chief Clerk on October 8, 2021.

As an initial matter, Mr. Coones's request does not include a statement explaining his location and distance relative to the proposed site. In his request, Mr. Coones describes his general concerns about the impacts to nearby residences, increased traffic from construction, public health and welfare, groundwater quality, runoff, animal operations, and potential PFAS contamination. However, Mr. Coones fails to include any explanation regarding why he believes that his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his request fails to identify any personal justiciable interest affected by the Application, no determination can be made that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Coones's request for a contested case hearing should be denied.

3. Peter Koelsch

Peter Koelsch submitted one request for a contested case hearing. It was received by the Chief Clerk on October 21, 2021.

Mr. Koelsch operates a commercial flower farm and partakes in other farming activities on his property located south of the proposed site. Mr. Koelsch's request addresses his general concerns such as the potential increase in truck traffic, the reduction in property values, and the

general nuisance to the surrounding area. Such interests do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Mr. Koelsch's request also addresses concerns regarding potential harm to his farm production and retail operation but does not give any detail beyond the general concerns listed above. The request fails to provide any specific harm that will be suffered if the Application is granted that is within TCEQ's jurisdiction. As a requestor must do more than provide a conclusory statement in the request that he or she will be harmed by the proposed change, Mr. Koelsch failed to identify any personal justiciable interest affected by the Application, and a determination cannot be made that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Koelsch's request for a contested case hearing should not be granted.

4. Neha King

Neha King submitted one request for a contested case hearing. It was received by the Chief Clerk on October 31, 2021. Notably, Ms. King's request describes the monofill site as a sewage sludge disposal site due to the initial NORI's mischaracterization of the monofill site as being a site for the disposal of sewage sludge instead of water treatment residuals.

As a threshold issue, Ms. King's request does not include a statement explaining her location and distance relative to the proposed site. She mentions she is a "future resident" of Josephine, Texas, and addresses issues such as decreased property value and potential limitations to the expansion of the city. Such interests do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Ms. King also describes her general concerns about the potential odor and nuisance issues associated with the disposal site but fails to include any explanation regarding why she believes that her interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because her request fails to identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Ms. King's request for a contested case hearing should be denied.

5. Dianna Lawrence

Dianna Lawrence submitted one request for a contested case hearing. It was received by the Chief Clerk on October 31, 2021.

Upon review of Ms. Lawrence's request, it does not establish an interest protected by the law under which the Application is considered, nor does it include a statement explaining her location and distance relative to the proposed site. Her main concern is the potential limitations to the expansion of the city. Such interests do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Because her request fails to identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Ms. Lawrence's request for a contested case hearing should not be granted.

6. Robert Williams

Robert Williams submitted one request for a contested case hearing. It was received by the Chief Clerk on November 3, 2021.

Mr. Williams's primary complaints center around a potential negative effect on property value and increased traffic. Such interests do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Mr. Williams also raises concerns about the quality of surface and ground water, with a specific concern of the use of ferric sulfate, and possible odor issues. As mentioned in the ED's RTC, ferric sulfate is a chemical certified for use in drinking water treatment. While Mr. Williams's request describes his property as being located 0.1 mile from the south boundary of the proposed site, Mr. Williams fails to include any explanation regarding why he believes that his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his request fails to identify any personal justiciable interest affected by the Application, no determination can be made that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Williams's request for a contested case hearing should be denied.

7. Jim F. Wall

Jim Wall submitted one request for a contested case hearing. It was received by the Chief Clerk on November 3, 2021. Of particular note, Mr. Wall's request confuses water treatment residuals with biosolids due to the initial NORI's mischaracterization of the monofill site as being a site for the disposal of sewage sludge/biosolids instead of water treatment residuals.

Mr. Wall states that his property borders the proposed site, and his pond would be within seventy-five feet of the proposed site. His request addresses his concerns regarding decreased property value, nuisance from the pumps and trucks, injury to livestock and wildlife, and contamination of his pond. Any effect to property value and any nuisance caused from the proposed site do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Potential injury to livestock and wildlife are concerns that would be shared by the general public. As for the potential pond contamination, the Application, if granted, does not authorize any discharge outside of the monofill containment area. Mr. Wall's request fails to identify any personal justiciable interest affected by the Application, so a determination cannot be made that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Wall's request for a contested case hearing should be denied.

8. Michael Lorra

Michael Lorra submitted one request for a contested case hearing. It was received by the Chief Clerk on November 5, 2021.

As a threshold issue, Mr. Lorra's request does not include a statement explaining his distance relative to the proposed site. Mr. Lorra describes his general concerns about the impacts on public health and welfare, groundwater quality, potential odor pollution, increased traffic, and impact on property values. Any effect to property value and any nuisance or increased traffic caused from the proposed site do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Mr. Lorra's concerns regarding public health and welfare, groundwater quality, and potential odor pollution are all characterized as concerns of the general public, and Mr. Lorra fails to include any explanation regarding why he believes that his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his request fails to identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any

relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Lorra's request for a contested case hearing should not be granted.

9. Wilson Lee

Wilson Lee submitted two identical requests for a contested case hearing. They were received by the Chief Clerk on November 7, 2021 and March 10, 2022. Of particular note, Mr. Lee's request describes the monofill site as a sludge processing plant due to the initial NORI's mischaracterization of the monofill site as being a site for the disposal of sewage sludge instead of water treatment residuals.

Mr. Lee's request addresses several concerns to the area surrounding the proposed site, such as the quality of life and safety of nearby residents, potential noise pollution, and impacts on property value and economic growth in the area. Any effect to property value, economic growth, and any nuisance caused from the proposed site do not fall within the scope of TCEQ's review of the Application and are not otherwise within the jurisdiction of TCEQ to adjudicate. Mr. Lee also mentions his concerns regarding the environmental impact on the surrounding communities from using chemicals such as ferric sulfate. As mentioned in the ED's RTC, ferric sulfate is a chemical certified for use in drinking water treatment. Mr. Lee's request fails to include any explanation regarding why he believes that his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his request fails to identify any personal justiciable interest affected by the Application, no determination can be made that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Lee's request for a contested case hearing should be denied.

10. Michael Stubbe

Michael Stubbe submitted one request for a contested case hearing. It was received by the Chief Clerk on November 9, 2021.

Mr. Stubbe notes his concerns about semi-truck traffic, heavy chemicals and solids in the waste, and the permit application process. Increased traffic and any nuisance derived from such does not fall within the scope of TCEQ's review of the Application and is not otherwise within the jurisdiction of TCEQ to adjudicate. Regarding the potential for chemicals in the waste, the

Application is for the disposal of water treatment plant residuals, which are residues or silt material removed from water during the treatment process for public drinking water. Under the proposed permit, such residuals must meet all applicable requirements in Title 30, Section 312 of the Texas Administrative Code. However, Mr. Stubbe's request centers around the effects of potential pollutants into the soil in the general surrounding area, and consequently fails to explain why his interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because his requests fail to identify any personal justiciable interest affected by the Application, a determination cannot be made that the requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Mr. Stubbe's request for a contested case hearing should not be granted.

11. Jane Ridgway

Jane Ridgway submitted one request for a contested case hearing. It was received by the Chief Clerk on December 30, 2021.

Upon review of Ms. Ridgway's request, it does not establish an interest protected by the law under which the Application is considered, nor does it include a statement explaining her location and distance relative to the proposed site. Ms. Ridgway's concerns are potential run-off and flooding, as well as hindrances to development in the area. The Application, if granted, does not authorize any discharge outside of the monofill containment area. Further, Ms. Ridgway's flooding concern is tied to the nearby residential areas but fails to include any explanation regarding why she believes that her interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because her request fails to identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, Ms. Ridgway's request for a contested case hearing should be denied.

12. Jennifer and Scott Dafft

Jennifer and Scott Dafft (the "Daffts") submitted two requests for contested case hearings. They were received by the Chief Clerk on June 30, 2022 and March 13, 2023.

As a threshold issue, neither of the Dafft's requests includes a statement explaining their location and distance relative to the proposed site. The first request mentions that they are an "adjoining landowner" but does not specify the location or address of their property. The Daffts' requests address concerns regarding erosion, silt runoff, and effects on nearby properties and wildlife. These concerns are described as concerns of the general public, and the Daffts failed to include any explanation regarding why they believe that their interests will be affected by the requests made in the Application, if granted, in a manner distinct from interests common to members of the general public. Because their requests fail to identify any personal justiciable interest affected by the Application, it is impossible to determine that the requestors are affected persons using any relevant factors, including the factors enumerated in Title 30, Section 55.203 of the Texas Administrative Code.

Therefore, the Daffts' request for a contested case hearing should not be granted.

B. Requests for Reconsideration

While a request for reconsideration must meet the same deadline requirements as a request for a contested case hearing, if a requestor submits only a request for reconsideration, a commission meeting shall only be scheduled if the general counsel directs the Chief Clerk to do so.¹¹ For this Application, there were three requestors who submitted a request for reconsideration without a request for a contested case hearing.

1. Linsey Futrell

Linsey Futrell submitted one request for reconsideration. It was received by the Chief Clerk on October 29, 2021. Notably, Ms. Futrell's request describes the monofill site as a sewage sludge disposal site due to the initial NORI's mischaracterization of the monofill site as being a site for the disposal of sewage sludge instead of water treatment residuals.

In her request, Ms. Futrell claims to be a future resident of the area, and her concerns center around the potential impacts on the community roadways and housing. However, these concerns do not fall within the scope of TCEQ's review of the Application, so Ms. Futrell's request does not provide reasons sufficient to reconsider the Application.

Therefore, Ms. Futrell's request for reconsideration should be denied.

¹¹ 30 Tex. Admin. Code § 55.209(b)(2).

2. Preston Nutt

Preston Nutt submitted one request for reconsideration. It was received by the Chief Clerk on October 29, 2021.

Mr. Nutt's request states his general concern for possible effects to downstream residents. The proposed permit requires the District to "take all reasonable steps to minimize or prevent any . . . permit violation that has a reasonable likelihood of adversely affecting human health." As his concern is already addressed in the proposed permit, Mr. Nutt's request does not provide reasons sufficient to reconsider the Application.

Therefore, Mr. Nutt's request for reconsideration should not be granted.

3. Bethanie Wallgren

Bethanie Wallgren submitted two requests for reconsideration. They were received by the Chief Clerk on November 10, 2021 and May 3, 2023. As the request filed on May 3, 2023 was received after the March 17, 2023 deadline, this request is not timely. Of particular note, Ms. Wallgren's requests describe the monofill site as a sludge disposal site due to the initial NORI's mischaracterization of the monofill site as being a site for the disposal of sewage sludge instead of water treatment residuals.

Regarding the request received on November 10, 2021, Ms. Wallgren lists several questions that were addressed in the ED's RTC. She requests the proposed facility be moved to a different location, however, this does not fall within the scope of TCEQ's review of the Application, so Ms. Wallgren's request does not provide reasons sufficient to reconsider the Application.

Therefore, Ms. Wallgren's request for reconsideration should be denied.

V. CONCLUSION

Based on a careful and thorough review of all hearing requests and requests for reconsideration received by the TCEQ Chief Clerk for the Application, the responses provided above recommend the legally correct course of action for TCEQ to take with respect to each hearing request and request for reconsideration. For the foregoing reasons, the District respectfully recommends that TCEQ proceed in a manner consistent with the analysis provided in this response.

Respectfully submitted,

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**ATTORNEYS FOR THE NORTH
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CERTIFICATE OF SERVICE

I, Sara R. Thornton, hereby certify that on this 8th day of May, 2023, a true and correct copy of the foregoing Response to Requests for Contested Case Hearing has been sent via TCEQ's electronic filing system, United States Postal Service ("USPS"), or electronic mail to the following parties and counsel of record:



SARA R. THORNTON

CERTIFICATE OF SERVICE

I certify that a true and correct copy of North Texas Municipal Water District’s Response to Requests for Contested Case Hearing was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile on this 8th day of May, 2023.

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