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Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 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 BY NORTH TEXAS
MUNICIPAL WATER DISTRICT FOR PERMIT NO. WQ0005323000
TCEQ DOCKET NO. 2023-0529-SLG**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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

TCEQ DOCKET NO. 2023-0529-SLG

IN THE MATTER OF THE APPLICATION BY NORTH TEXAS MUNICIPAL WATER DISTRICT FOR PERMIT NO. WQ0005323000	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

I. INTRODUCTION

A. Summary of Position

Preliminarily, OPIC notes that the TCEQ Chief Clerk’s office received timely hearing requests from twelve requestors. TCEQ also received multiple timely requests for reconsideration. As discussed herein, OPIC respectfully recommends granting the hearing requests of Russell Coones, Scott and Jennifer Dafft, Peter Koelsch, Wilson Lee, Michael Lorra, Charles Ruple, Michael Stubbe, Jim Wall, and Robert Williams, and referring this application for a 180-day hearing at the State Office of Administrative Hearings (“SOAH”) on Issue nos. 1–8 contained in §III.B. OPIC further recommends the Commission deny the remaining hearing requests and all pending requests for reconsideration.

B. Background of Facility

North Texas Municipal Water District (“Applicant”) applied to TCEQ for new Water Quality Permit No. WQ0005323000 (the “proposed Permit”) to authorize the processing, storage, and disposal at a monofill of water treatment plant residuals, which is material generated during the treatment of water for potable use, and not sewage sludge, biosolids, or an industrial solid waste.

The Applicant’s Water Treatment Plant residuals disposal site (the “proposed Facility”) is a 310-acre monofill authorized for the disposal of only dewatered water treatment plant residuals at a max rate of 100,000 dry tons per year. If the permit is ultimately issued, the proposed Facility will be located in Collin County approximately 0.25 miles north of the intersection of County Road 644 and Farm-to-Market Road 547, which is in the drainage basin of Lake Tawakoni in Segment No. 0507 of the Sabine River Basin. However, there will not be a discharge from the proposed Facility, and the proposed Permit does not authorize a discharge of pollutants into water in the state. The proposed Permit authorizes the Applicant to process, store, and dispose of water treatment plant residuals in accordance with the limitations, requirements, and other conditions of the proposed Permit.

C. Procedural Background

TCEQ received the application on May 19, 2021. On September 15, 2021, the Executive Director (“ED”) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) was published on September 29, 2021, in English in *The Dallas Morning News* and in Spanish in *Al Dia*. The ED completed the technical review of the application on February 14, 2022, and prepared the proposed Permit, which if approved, would establish the conditions under which the proposed Facility must operate. The Applicant then published a Combined Notice of Application and Preliminary Decision (“NAPD”) and NORI on June 15, 2022, in English in *The Dallas Morning News* and in Spanish in *Al Dia*. The Combined Notice was published to correct inaccuracies in the original NORI. The public comment period ended July 15, 2022. The Chief Clerk mailed the ED’s Decision and Response to Comments (“RTC”) on February 15, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the Executive Director’s decision was March 17, 2023.

The Commission received requests for a contested case hearing from Russell Coones, Scott and Jennifer Dafft, Neha King, Peter Koelsch, Dianna Lawrence, Wilson Lee, Jane Ridgway, Charles Ruple, Michael Stubbe, Jim (James) Wall, and Robert (Bob) Williams. The Commission also received requests for reconsideration of the ED's decision from Futrell Linsey, Preston Nutt, and Bethanie Wallgren.

II. APPLICABLE LAW

A. Requests for Hearing

This application was filed on or 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.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code ("TAC") § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. HEARING REQUESTS

A. Determination of Affected Person Status

Russell Coones

On October 8, 2021, Russell Coones submitted a timely hearing request during the public comment period. In his request, he states that he is concerned about water runoff from the proposed Facility and its effects on the health and welfare of humans and animals. He also states a concern about increased traffic. According to the map prepared by ED staff, Mr. Coones' property is located 0.02 miles from the proposed Facility's disposal area.

To be granted a contested case hearing, a requestor must show that they are an "affected person" who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application, and they must distinguish that interest from an interest common to the general public. *See* 30 TAC § 55.203(a).

His concerns about the impacts to humans and animals are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Further, as his property is near the monofill's disposal area, a reasonable relationship exists between his claimed interests and the Facility's regulated activity. *See* 30 TAC § 55.203(c)(3). Moreover, his location increases any likelihood that the Facility's operations will impact his property. *See* 30 TAC § 55.203(c)(4). His proximity, in combination with his stated interests, demonstrates that he is likely to be affected in a way not common to members of the general public, and thus possesses a personal justiciable interest in this matter. Consequently, OPIC finds that Russell Coones qualifies as an affected person.

Scott and Jennifer Dafft

Scott and Jennifer Dafft submitted a timely hearing request on March 13, 2023. They also submitted a timely hearing request during the public comment period. In their most recent request, they state that their following concerns were not adequately addressed by the Executive Director in her Response to Comments: plans involving the inactive portion of the Applicant's property; whether berms and fences are required to be built around the Applicant's property; and whether the application contains accurate information. They also maintain their concerns about the quality and amount of storm water runoff and silt carried onto their property, which affects their plants and livestock. Finally, the Daffts take issue with the application referring to a small creek as a watercourse. According to the ED's map, their property is adjacent to the proposed Facility's disposal area.

The Daffts concerns include those which are protected by the law under which this application will be considered, and the ED's map shows that their property is in close proximity to the monofill's disposal area. Further, a reasonable relationship exists between their concerns and the regulated activity. Their concerns, combined with their location, demonstrate that they could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Scott and Jennifer Dafft qualify as affected persons.

Peter Koelsch

On October 21, 2021, Peter Koelsch submitted a timely hearing request during the public comment period. His request states concern about the environmental and health impacts of the monofill, including the impacts to his farm. He also states he is concerned about increased traffic and reduction in property values. According to the ED's map, Mr. Koelsch's property is adjacent to the proposed Facility's disposal area.

Mr. Koelsch's concerns include those which are protected by the law under which this application will be considered, and the ED's map shows that his property is in close proximity to the monofill. Further, a reasonable relationship exists between his concerns and the regulated activity. Mr. Koelsch's concerns, combined with his location, demonstrate that he could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Peter Koelsch qualifies as an affected person.

Dianna Lawrence

On October 31, 2021, Dianna Lawrence submitted a timely hearing request during the public comment period. In her request, she states a general concern for the city and its residents and argues that the proposed Facility will negatively affect area development. The location of Ms. Lawrence's property is not depicted on the ED's map, but based on measurements obtained using TCEQ's Boundary Mapper, she appears to be located approximately three miles from the proposed Facility.¹

This request does not articulate with reasonable specificity how Ms. Lawrence will be impacted in a way that is distinct from the general public. Amongst other requirements, a hearing request must explain how and why a requestor believes that they will be adversely affected by a proposed facility in a manner not common to members of the general public. 30 TAC § 55.201(d)(2). Ms. Lawrence's request expressed only a general concern about the proposed Facility and does not explain how she will be personally impacted. Additionally, the intervening distance between her property and the proposed Facility diminishes any likelihood of her being

¹ Links to TCEQ's Boundary Mapper software showing the location of the proposed Facility are accessible via the TCEQ NORI and Combined NORI/NAPD Notices issued in this matter or by the following link: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.3231%2C33.0928&level=12>

impacted by the Applicant's regulated activity. Therefore, OPIC finds that Dianna Lawrence does not qualify as an affected person.

Wilson Lee

On November 7, 2021, Wilson Lee submitted a timely hearing request during the public comment period.² His request details concerns about the proposed Facility's effects on human and animal health and safety; property values; economic impact on the City; use and storage of chemicals at the Facility; and the creation of odors, air pollution, and noise pollution. According to the ED's map, Mr. Lee's property is less than 0.5 miles from the proposed Facility's disposal area.

Mr. Lee's concerns include those which are protected by the law under which this application will be considered, and the ED's map shows that his property is close to the monofill. Further, a reasonable relationship exists between his concerns and the regulated activity, and combined with his location, his concerns demonstrate that he could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Wilson Lee qualifies as an affected person.

Michael Lorra

On November 5, 2021, Michael Lorra submitted a timely hearing request during the public comment period. In his request, he states that he is concerned the proposed Facility will negatively impact human health and welfare, groundwater, traffic, and property values. He is also concerned it will create odor issues. According to the ED's map, Mr. Lorra's property is approximately 0.2 miles from the proposed Facility's disposal area.

² Mr. Lee additionally submitted an identical hearing request on March 10, 2022.

Mr. Lorra's concerns include those which are protected by the law under which this application will be considered, and his property is close to the monofill. Further, a reasonable relationship exists between his concerns and the regulated activity. His concerns, taken in combination with his location, demonstrate that he could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Michael Lorra qualifies as an affected person.

Charles Ruple

On October 7, 2021, Charles Ruple submitted a timely hearing request during the public comment period. His request explains that the disposal area is close to his residence and that he is concerned about impacts to groundwater, humans, and animals. While the ED's map does not show any property specifically owned by Charles Ruple, it does depict a parcel of property owned by the "Ruple Living Trust" located approximately 0.15 miles from the monofill's disposal area. From this, OPIC is able to reasonably conclude that property is owned by Charles Ruple.³

Mr. Ruple's interests are protected by the law under which this application will be considered, and his property is near the regulated activity. Therefore, OPIC concludes that he is likely to be affected in a way not common to members of the general public and that a reasonable relationship exists between his concerns and the regulated activity. Thus, OPIC finds that Charles Ruple has shown he qualifies as an affected person.

Michael Stubbe

On November 9, 2021, Michael Stubbe submitted a timely hearing request during the public comment period. In his request, he states concerns about impacts to water quality and traffic. He also takes issue with the application, explaining that the Applicant had previously represented

³ To the extent that he desires to, OPIC encourages Mr. Ruple to file a timely Reply clarifying whether the subject property is in fact his residence.

to him that the property would not be used for waste disposal. According to the ED's map, Mr. Stubbe's property is adjacent to the proposed Facility's disposal area.

Mr. Stubbe's concern about water quality is an interest that is protected by the law under which this application will be considered, and his property is near the monofill. Further, a reasonable relationship exists between his concern and the regulated activity. This concern, taken in combination with his location, demonstrates that he could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Michael Stubbe qualifies as an affected person.

Jim Wall

On November 3, 2021, Jim Wall submitted a timely hearing request during the public comment period. In his request, he explains that his property borders the Applicant's property, and he is concerned about contamination of his pond, injury to livestock and wildlife, decrease in property value, and unwanted noise and odor. According to the ED's map, Mr. Wall's property is adjacent to the proposed Facility's disposal area.

Mr. Wall's interests include those that are protected by the law under which this application will be considered, and his property is near the regulated activity. Mr. Wall is likely to be affected in a way not common to members of the general public and a reasonable relationship exists between his concerns and the regulated activity. Therefore, OPIC finds that Jim Wall has shown he qualifies as an affected person.

Robert Williams

On November 3, 2021, Robert Williams submitted a timely hearing request during the public comment period. In his request, he states concerns regarding the proposed Facility's effects

on water quality, property values, traffic, and possible odor issues. According to the ED's map, Mr. Williams' property is 0.09 miles from the proposed Facility's disposal area.

Mr. Williams' concerns include those which are protected by the law under which this application will be considered, and his property is close to the monofill. Further, a reasonable relationship exists between his concerns and the regulated activity. His concerns, taken in combination with his location, demonstrate that he could reasonably be affected in a manner that differs from the general public. Therefore, OPIC finds that Robert Williams qualifies as an affected person.

Neha King

On October 31, 2021, Neha King submitted a timely hearing request during the public comment period. In her request, she describes herself as a "future resident of Josephine, TX" and expresses concerns about odors and the proposed Facility's effects on the community and health. Mrs. King's location is not depicted on the ED's map, and she provided an address in Little Elm, Texas—which is over 30 miles from the regulated activity.

OPIC notes that there are no specific distance limitations applicable to who may be considered an affected person for purposes of this application. However, given the distance between Mrs. King and the proposed Facility, OPIC cannot find that a reasonable relationship exists between the interests claimed and the activity regulated. Further, Mrs. King lacks the proximity necessary to establish a personal justiciable interest which is distinct from interests common to the general public. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Finally, the intervening distance decreases any likelihood that the regulated activity will impact her health, safety, or use of property. Therefore, OPIC must find that Neha King does not qualify as an affected person.

Jane Ridgway

On December 30, 2021, Jane Ridgway submitted a timely hearing request during the public comment period. In her request, she states a general concern about area flooding. Ms. Ridgway did not provide a property address and thus is not depicted on the ED's map. Among other things, a requestor is required to provide their address and an explanation of their location and distance relative to the activity that is the subject of the application. 30 TAC § 55.201(d). Without this information, OPIC is unable to assess whether Ms. Ridgway is likely to be affected by the proposed Facility. Further, a requestor must articulate an interest that relates to a legal right, duty, privilege, power, or economic interest affected by the application in their request. 30 TAC § 55.203(a). Ms. Ridgway's general concern about flooding is not sufficiently particularized to distinguish it from an interest held by the general public, and additionally, it is not an interest that is protected by the law under which this application will be considered. Therefore, OPIC finds that Jane Ridgway does not qualify as an affected person.

B. Issues Raised in the Hearing Requests of Affected Persons

The affected persons discussed above raised the following issues in both comment and request:

1. Whether the proposed Facility and draft permit are adequately protective of human health, animal life, and the environment? (Raised by: Russell Coones, Scott and Jennifer Dafft, Peter Koelsch, Wilson Lee, Michael Lorra, Charles Ruple, and Jim Wall)
2. Whether the proposed Facility and draft permit are adequately protective of water quality, including stormwater runoff and groundwater? (Raised by: Russell Coones, Scott and Jennifer Dafft, Michael Lorra, Charles Ruple, Michael Stubbe, Jim Wall, and Robert Williams)
3. Whether the application is substantially complete and accurate? (Raised by: Scott and Jennifer Dafft)
4. Whether the chemicals that will be used at the proposed Facility are adequately protective of health and water quality? (Raised by: Wilson Lee)

5. Whether the proposed Facility will create unreasonable odors? (Raised by: Wilson Lee, Michael Lorra, Jim Wall, and Robert Williams)
6. Whether the application adequately addresses the inactive portion of Applicant's property, including whether it is required to be converted into permanent grassland? (Raised by: Scott and Jennifer Dafft)
7. Whether the Applicant will be required to construct berms and fences around its property prior to the start of operations? (Raised by: Scott and Jennifer Dafft)
8. Whether the proposed Facility will cause an unreasonable amount of stormwater and silt to run onto requestors' property? (Raised by: Scott and Jennifer Dafft)
9. Whether the proposed Facility will negatively impact property values? (Raised by: Peter Koelsch, Wilson Lee, Michael Lorra, Jim Wall, and Robert Williams)
10. Whether the proposed Facility will increase traffic? (Raised by: Peter Koelsch, Michael Lorra, Michael Stubbe, and Robert Williams)
11. Whether the proposed Facility will cause air pollution? (Raised by: Wilson Lee)
12. Whether the proposed Facility will cause noise pollution? (Raised by: Wilson Lee and Jim Wall)
13. Whether the proposed Facility will negatively impact economic growth of the City of Josephine? (Raised by: Wilson Lee)
14. Whether the Applicant previously represented that the site of the proposed Facility would not be used for waste disposal, and if so, whether the draft permit should be denied on that basis? (Raised by: Michael Stubbe)

C. Issues Raised in the Hearing Requests Remain Disputed

There is no agreement between the hearing requestors and the ED on the issues raised in the hearing requests. Thus, 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.

OPIC notes that in their hearing request, Scott and Jennifer Dafft raised a concern about the application's use of the term watercourse to describe a small creek. While this concern is arguably related to the completeness and accuracy of the application (Issue no. 3 in §III.B), the validity of Commission substitution of the term "watercourse" for "small creek" is not a disputed issue of fact, but instead a question of law. TWC 26.001(5) defines water in the state to include both creeks and watercourses. Watercourses have been further defined by case law to have a defined bank and beds, a current of water, and a permanent source of supply. *Hoefs v. Short*, 114 Tex. 501, 273 S.W. 785 (1925). Therefore, it appears that the Commission properly used the more general term "watercourse" to refer to a "creek," which is a type of watercourse. Further, as a question of law, this concern is not appropriate for referral to hearing.

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

Issue nos. 1–14 in Section III.B were raised by the affected persons during the public comment period.

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

The hearing requests are all based on timely comments that have not been withdrawn.

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

The affected persons raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A), as well as issues that are not relevant and material. 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 this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues are those governed by the substantive law of the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Human Health, Animal Life, and the Environment

Requestors are concerned about adverse effects to water quality, human health, animal life, including livestock, and the environment. The Commission is responsible for the protection of water quality under Texas Water Code (“TWC”) Chapter 26 and 30 TAC Chapters 307 and 309. Chapter 26 states that its purpose is to:

maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

TWC § 26.003. According to § 307.6(b)(4) of the Texas Surface Water Quality Standards, “[w]ater in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Finally, the proposed Permit requires the Applicant to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health.”⁴ As Chapter 26 and these Standards require that water quality be maintained at a level protective of the environment and human and animal life, Issue nos. 1 and 2 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

⁴ See ED’s Response to Public Comment, p. 5, Response 2.

Completeness and Accuracy of the Application

Requestors are concerned that the Application contains inaccuracies. TCEQ rules require that if an applicant becomes aware that it did not submit required facts or submitted incorrect information in a permit application, the applicant is required to promptly submit the needed facts and information. 30 TAC § 305.125(19). Further § 305.44(b) requires applicants to certify that all information they have submitted to the Commission is true, accurate, and complete. Therefore, Issue no. 3 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Process Chemicals

Requestors are concerned about the chemicals used in the proposed Facility's treatment process, and have specifically expressed concern about the use of ferric sulfate and its effects on water quality and health. As stated above, water quality and related health effects are relevant and material to the Commission's decision regarding this application. Therefore, Issue no. 4 is appropriate for referral to SOAH.

Odors

Requestors are concerned that the regulated activity at the proposed Facility will create unreasonable odor. The disposal of water treatment residuals is governed by Commission rules found in Chapter 312. According to 30 TAC § 312.125(g)(3)(B) nuisance conditions must be prevented from occurring and offensive odors must be minimized through some type of preventative action. Therefore, Issue no. 5 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Stormwater Runoff, Berms, Fences, and Grass

Requestors are concerned that stormwater runoff from the monofill will adversely affect their properties. They inquire as to whether berms and fences will be built and whether grass will be planted to help contain diffuse surface water on the Applicant's property. Commission rules require that disposal of water treatment residuals be conducted in such a way that it prevents runoff of the residuals and protects the quality of surface water. 30 TAC § 312.125(e). Further, the regulated activity is not allowed to contaminate an underground drinking water source. 30 TAC § 312.125(f). Finally, the ED's Response to Comments notes that vegetative cover must be maintained on areas within the monofill that have reached maximum elevation and that the proposed Permit requires that the Applicant install berms and fencing.⁵ Therefore, Issue nos. 6, 7, and 8 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Property Values, Traffic, Air and Noise Pollution, Economic Impact, and Previous Representations

Requestors have stated a number of concerns about diminution in property values, increase in vehicular traffic, air pollution, noise pollution, negative impact to the City of Josephine's economy, and previous representations by the Applicant that it would not use the property for disposal activities. This application is for a water quality permit sought to authorize the processing, storage, and disposal of water treatment residuals. It does not authorize the release of air contaminants, therefore, concerns about air pollution that go beyond concerns about odor (which are addressed in Issue no. 5), are outside the scope of this permitting process. Additionally, the Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider issues related to noise, any effects on property values, economic impact on

⁵ See ED's RTC p. 9, Response 14; p. 10, Response 15.

municipalities, or previous representations between the Applicant's representatives and private parties about use of the subject property when deciding whether to issue a water quality permit. Therefore, Issue nos. 9–14 are not relevant and material to the Commission's decision regarding this Application and are not appropriate for referral to SOAH.

H. Issues Recommended for Referral

For the reasons discussed above, OPIC recommends referring Issue nos. 1–8 in Section III.B to SOAH for a contested case hearing.

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 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. REQUESTS FOR RECONSIDERATION

The Commission received timely requests for reconsideration from Futrell Linsey, Preston Nutt, and Bethanie Wallgren. They request reconsideration on the basis that sewage sludge and waste will negatively affect their community and ask the Commission to require that the regulated activity take place at a different location away from water sources and residents.

While OPIC appreciates their concerns, OPIC must first observe that this proposed Permit does not authorize the disposal of sewage sludge or biosolids. Unfortunately, the first notice published for this application incorrectly stated that the application was for a Sewage Sludge or Biosolids Surface Disposal Permit. The second notice corrected this error, and correctly stated that the application is for disposal of water treatment plant residuals, which are not sewage sludge or industrial solid waste. Instead, these residuals are the material generated during the treatment of water for potable use. Finally, the concerns about general impacts to the community lack the specificity OPIC would need to evaluate whether the ED's decision should be reconsidered. Therefore, OPIC cannot recommend that these requests be granted. However, to the extent that it is relevant and material to the Commission's decision on this application, the overarching concern about negative impact to the community and water sources is addressed by the issues that OPIC recommends be referred for contested case hearing.


V. CONCLUSION

OPIC respectfully recommends that the Commission grant the hearing requests of Russell Coones, Scott and Jennifer Dafft, Peter Koelsch, Wilson Lee, Michael Lorra, Charles Ruple, Michael Stubbe, Jim Wall, and Robert Williams and refer Issue nos. 1–8 specified in §III.B for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny the remaining hearing requests and all pending requests for reconsideration.

Respectfully submitted,

[Signature on Next Page]

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CERTIFICATE OF SERVICE

I hereby certify that May 8, 2023, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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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