

TCEQ DOCKET NO. 2023-0556-MWD

APPLICATION BY § BEFORE THE TEXAS
CITY OF HOUSTON §
FOR TPDES § COMMISSION ON
PERMIT NO. WQ0010495030 § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by the City of Houston (Applicant) for an amendment to existing Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010495030. The Office of the Chief Clerk receiving a hearing request from Mr. Will Hickman.

Attached for Commission consideration are the following:

Attachment A-- Executive Director's Satellite Map

I. Description of Facility

The Applicant applied for an amendment of the existing TPDES permit to authorize the removal of the existing Sublethal Whole Effluent Toxicity (WET) limits and monitoring requirements from the permit pursuant to the Environmental Protection Agency's WET policies, the Clean Water Act, and the Code of Federal Regulations. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 26,400,000 gallons per day. The existing wastewater treatment facility serves an area in West Houston inside Harris County that includes residential and commercial development. The West District Wastewater Treatment Facility is an activated sludge process plant operated in the single stage nitrification mode. Treatment units include a bar screen, nine aeration basins, six final clarifiers, two chlorine contact chambers, and dechlorination chamber. The facility is in operation and is located at 12901 Hermitage Lane, in the City of Houston, Harris County, Texas 77079. The treated effluent is discharged directly to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin. The designated uses for Segment No. 1014 are primary contact recreation and limited aquatic life use. In accordance with 30 Texas Administrative Code (TAC) Section 307.5 and the TCEQ's *Procedures to implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1

antidegradation review has preliminarily determined that the existing water quality uses will not be impaired by this permit ation. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review was not required since no exceptional, high, or intermediate aquatic life use water bodies have been identified in the discharge route. Existing uses will be maintained and protected. The preliminary determination can be reexamined if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Five-Day Biochemical Oxygen Demand or Five-Day Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan (WQMP).

II. Procedural Background

TCEQ received the application for an amendment to the TPDES permit on October 22, and declared it administratively complete on December 10, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on December 22, 2021, in the *Houston Chronicle* and in Spanish on December 22, 2021, in *La Voz de Houston*. The application was determined technically complete on March 4, 2022. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on June 8, 2022, in the *Houston Chronicle* and in Spanish on June 8, 2022, in *La Voz de Houston*. The comment period closed on July 8, 2022.

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

III. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's

consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e)

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments, and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the ED's RTC. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be

responsible for receiving all official communications and documents for the group;

- 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 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 executive director's responses to comments that the requestor disputes and 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).

Requirement that Requestor be an Affected Person/ "Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- 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 which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- d) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
- 1) the merits of the underlying application and supporting documentation in the Commission's administrative record, including whether the application meets the requirements for permit issuance;
 - 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

Referral to the State Office of Administrative Hearings (SOAH)

“When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an

issue to SOAH for a contested case hearing unless the Commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

IV. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §§ 55.201(c)

The Executive Director received one timely hearing request, from Mr. Will Hickman. The hearing request was in writing and based on previously timely submitted comment, in compliance with 30 TAC § 55.201(c).

The Executive Director concludes that Will Hickman's hearing request complied with 30 TAC § 55.201(c).

B. Hearing requests which meet the requirements of 30 TAC 55.201(d)

Will Hickman's timely hearing request provided his name, address, and phone number. His request identifies a personal, justiciable interest affected by the application, including a brief explanation of his location and distance relative to the facility. Mr. Hickman requested a contested case hearing and raised genuine issues of disputed fact in his hearing request.

The Executive Director concludes that Will Hickman submitted a hearing request that complies with 30 TAC § 55.201(d).

C. Whether individual requestors meet affected person requirements

Will Hickman

According to the information provided by Will Hickman, he is a landowner who resides near the facility. Mr. Hickman lives within 0.1 miles of the facility. His hearing request raised issues relating to impacts to uses of the receiving waters and potential nuisance odors. Therefore, Mr. Hickman has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and is an affected person.

The Executive Director recommends the Commission find that Will Hickman is an affected person.

D. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues in accordance with the regulatory criteria. The issues were raised by Mr. Will Hickman. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred. The issues raised for this application and the Executive Director's analysis and recommendations follows.

Issue 1: Whether the draft permit is protective of water quality and uses of the receiving waters, including recreational use, in accordance with the Texas Surface Water Quality Standards. (RTC Response No. 2)

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect water quality, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

Issue 2: Whether the draft permit complies with the TCEQ's rules addressing nuisance odor. (RTC Response No. 5)

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown that the draft permit does not provide sufficient provisions to protect and abate from nuisance odors, that

information would be relevant and material to a decision on the application.
The Executive Director recommends referring this issue to SOAH.

V. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VI. Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that Will Hickman is affected person and grant his hearing request.
2. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
3. The Executive Director recommends referring the following timely raised relevant and material issues to SOAH:

Issue 1: Whether the draft permit is protective of water quality and uses of the receiving waters, including recreational use, in accordance with the Texas Surface Water Quality Standards.

Issue 2: Whether the draft permit complies with the TCEQ's rules addressing nuisance odor.

Respectfully submitted,
Texas Commission on Environmental Quality

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Interim Executive Director

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 10, 2023, the original of the “Executive Director’s Response to Hearing Requests” for TPDES Permit WQ0010495030 for City of Houston. was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Bobby Salehi, Staff Attorney
Environmental Law Division
State Bar No. 24103912

MAILING LIST
City of Houston

TCEQ Docket No. 2023-0556-MWD; TPDES Permit No. WQ0010495030

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INTERESTED PERSON(S):

Kristen Schlemmer
Bayou City Waterkeeper
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Houston, Texas 77018

Attachment A

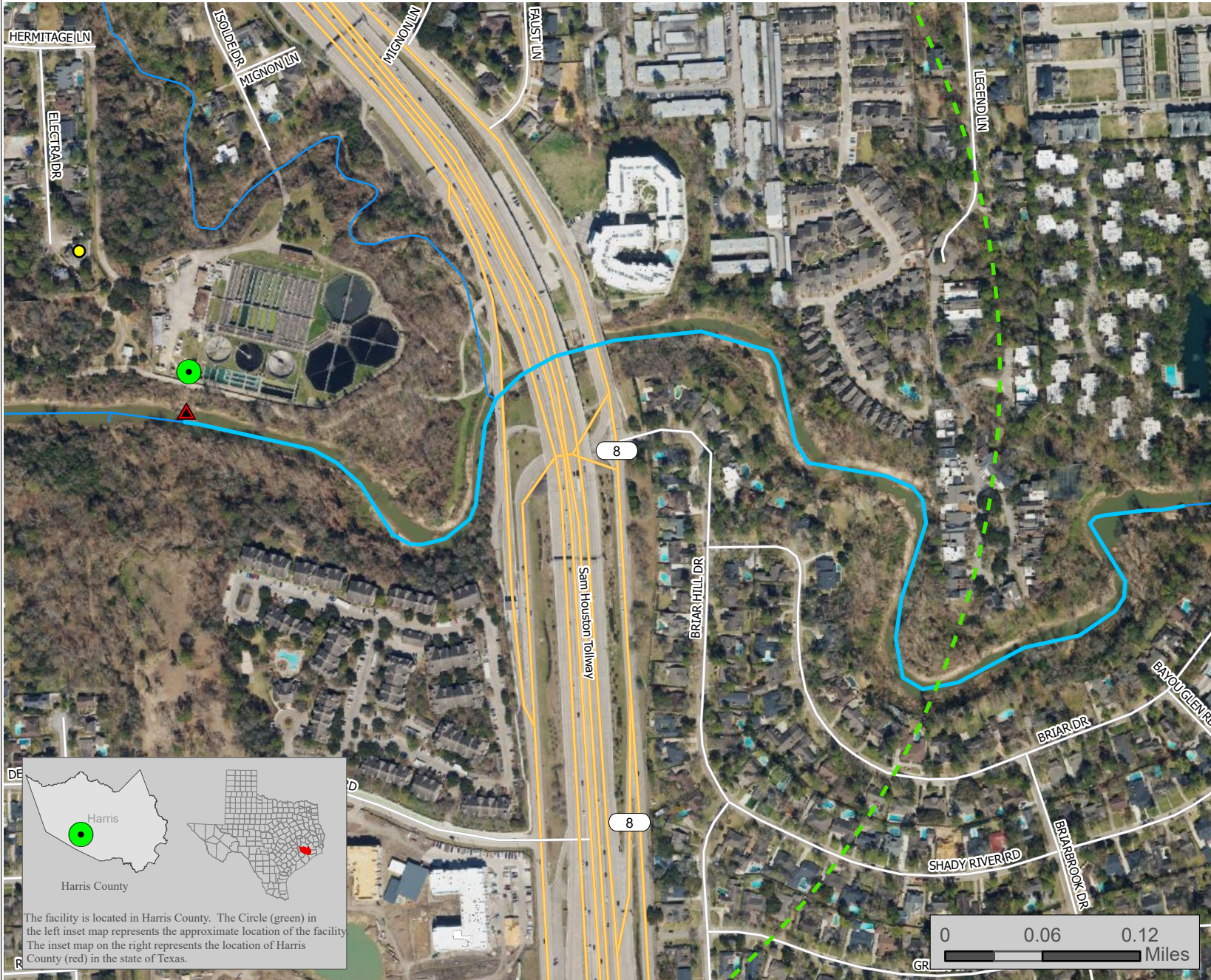
City of Houston WQ0010495030

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 11/14/2022
CRF 0080122
Cartographer: cschrade



- Facility
- ▲ Outfall
- Requestor
- - - 0.5 mi Radius
- - - 1.0 mi Radius
- - - 1.5 mi Radius
- 1 mi Discharge Route

The requestor, Will Hickman,
is 0.1 mi from the facility.



The facility is located in Harris County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Harris County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

