

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*

June 2, 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: **City of Ennis (Applicant)**  
**TCEQ Docket No. 2023-0557-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 "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-0557-MWD

APPLICATION BY CITY OF	§	BEFORE THE
ENNIS FOR A MAJOR	§	TEXAS COMMISSION ON
AMENDMENT TO TPDES	§	ENVIRONMENTAL
PERMIT NO. WQ0010443002	§	QUALITY

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

**To the Members of the Texas Commission on Environmental Quality:**

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

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by City of Ennis (Applicant) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010443002. The Commission received a timely hearing request from Ron J. Leighton. For the reasons stated herein, OPIC respectfully recommends the Commission find that Mr. Leighton is not an affected person in this matter, and further recommends denial of his hearing request.

**B. Description of Application and Facility**

On July 29, 2021, City of Ennis applied to the TCEQ for a major amendment to TPDES Permit No. WQ0010443002 to authorize the addition of new Outfall 002 to the draft permit. The draft permit would authorize an annual average flow

not to exceed 3,100,000 gallons per day in the interim phase and 4,000,000 gallons per day in the final phase.

The facility is located at 401 West Plant Road, Ennis, in Ellis County. The existing wastewater treatment facility serves the City of Ennis, surrounding areas, the City of Garret, and the City of Alma.

The Oak Grove Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include two mechanical bar screens with washer compactor, one influent wet well, four primary clarifiers, four aeration basins, three secondary clarifiers, a sludge thickener, an aerobic sludge digester, sludge dewatering, sludge drying beds, two chlorine contact chambers, and one dechlorination chamber. The facility is currently operating in the interim phase.

The effluent limitations in the interim phase of the draft permit via Outfall 001 and Outfall 002, based on a 30-day average, are 7 milligrams per liter (mg/l) five-day carbonaceous biochemical oxygen demand (CBOD5), 15 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH3-N), 126 colony-forming units (CFU) or most probable number (MPN) of E. coli per 100 milliliters (ml), and 6.0 mg/l minimum dissolved oxygen (DO).

The effluent limitations in the final phase, based on a 30-day average, are 5 mg/l five-day CBOD5, 12 mg/l TSS, 2 mg/l NH3-N, 126 CFU or MPN of E. coli per 100 ml, and 6.0 mg/l minimum DO. The draft permit also includes Whole Effluent Toxicity (WET) requirements.

The treated effluent would be discharged via Outfall 001 to Cummins Creek, then to Chambers Creek above Richland-Chamber Reservoir in Segment 0814 of the Trinity River Basin, and via proposed Outfall 002 and pipe to an unnamed tributary, then to Bardwell Reservoir in Segment No. 0815 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for Cummins Creek and minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 0815 are primary contact recreation, public water supply, and high aquatic life use.

### **C. Procedural Background**

TCEQ received the application for a major amendment with renewal on July 29, 2021, and declared it administratively complete on November 24, 2021. The City of Ennis published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on December 5, 2021, in *The Ennis News* and in Spanish on December 14, 2021, in *La Prensa Comunidad*. The application was determined to be technically complete on May 16, 2022. The City of Ennis published the Notice of Application and Preliminary Decision (NAPD) in English on July 17, 2022, in *The Ennis News* and in Spanish on July 26, 2022, in *La Prensa Comunidad*. The public comment period for this application closed on August 25, 2022. The Chief Clerk mailed the Executive Director's (ED) Decision and Response to Comments (RTC) on October 6, 2022. The deadline for filing requests for a contested case hearing or reconsideration of the ED's decision on the application was November 14, 2022.

## 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 Texas Administrative Code (TAC) § 55.21(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 requestor'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.

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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

### **III. ANALYSIS OF HEARING REQUEST**

#### **A. Whether the requestor is an affected person**

##### *Ron J. Leighton*

Ron J. Leighton submitted a timely hearing request on December 16, 2021, but did not provide a timely public comment. Pursuant to 30 TAC § 55.201(d), a hearing request must substantially comply with several factors including the identification of a personal justiciable interest. The entirety of Mr. Leighton's hearing request reads, "I would like to request a public hearing." Accordingly, Mr. Leighton's request fails to identify his property's location relative to the regulated activity or show how he would be personally affected by the application

in a manner not common to the general public. Further, Mr. Leighton's request is not based upon issues raised in a timely comment as required by 30 TAC § 55.203(a). Given the lack of compliance with 30 TAC § 55.201(d), and the fact that Mr. Leighton's request is not based upon a timely public comment, OPIC must find that Ron J. Leighton does not qualify as an affected person.

**B. Which issues raised in the hearing request are disputed**

There are no disputed issues raised by the hearing request.

**C. Whether the dispute involves questions of fact or of law**

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. There were no issues of fact raised by the requestor.

**D. Whether the issues were raised during the public comment period**

There were no issues raised by the requestor during the public comment period.

**E. Whether the hearing request is based on issues raised solely in a withdrawn public comment**

The hearing request was not based solely on withdrawn public comments.

**F. Whether the issues are relevant and material to the decision on the application**

The hearing request does not raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC § 55.201(d)(4)(B) and § 55.211(c)(2)(A)(ii).



#### IV. CONCLUSION

Having found that Ron J. Leighton does not qualify as an affected person in this matter, OPIC respectfully recommends the Commission deny his pending hearing request.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By: Jessica M. Anderson  
Jessica M. Anderson  
Assistant Public Interest Counsel  
State Bar No. 24131226  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-6823 Phone

#### CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2023, the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Jessica M. Anderson  
Jessica M. Anderson

**MAILING LIST  
CITY OF ENNIS  
TCEQ DOCKET NO. 2023-0557-MWD**

**FOR THE APPLICANT**

via electronic mail:

Edward Green, P.E.  
Director of Public Works  
City of Ennis  
115 West Brown Street  
Ennis, Texas 75119  
[egreen@ennistx.gov](mailto:egreen@ennistx.gov)

Jeremy Buechter, P.E.  
Schaumburg & Polk, Inc.  
320 South Broadway Avenue, Suite 200  
Tyler, Texas 75702  
[jbuechter@spi-eng.com](mailto:jbuechter@spi-eng.com)

**FOR THE EXECUTIVE DIRECTOR**

via electronic mail:

Kathy Humphreys, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0600 Fax: 512/239-0606  
[kathy.humphreys@tceq.texas.gov](mailto:kathy.humphreys@tceq.texas.gov)

Jose Alfonso Martinez, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-4668 Fax: 512/239-4430  
[jose.martinez@tceq.texas.gov](mailto:jose.martinez@tceq.texas.gov)

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

**FOR ALTERNATIVE DISPUTE  
RESOLUTION**

via electronic mail:

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

**FOR THE CHIEF CLERK**

via eFiling:

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

**REQUESTER(S):**

Ron J. Leighton  
320 Cummins Creek Road  
Ennis, Texas 75119