

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

May 22, 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 CLEAN HARBORS SAN
LEON, INC. FOR PERMIT NO. WQ0004086000
TCEQ DOCKET NO. 2023-0579-WQ**

Dear Ms. Gharis:

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

DOCKET NO. 2023-0579-WQ

APPLICATION BY	§	BEFORE THE
CLEAN HARBORS	§	
SAN LEON, INC.	§	TEXAS COMMISSION ON
FOR TPDES PERMIT	§	
NO. WQ0004086000	§	ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS

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 the hearing requests in the above-captioned matter.

I. Introduction

A. Summary of Position

Preliminarily, OPIC notes that the TCEQ Chief Clerk's office received two timely hearing requests from the Razz Halili Trust (the Trust). For the reasons stated herein, OPIC respectfully recommends the Commission deny the Trust's hearing requests.

B. Description of Application and Facility

Clean Harbors San Leon, Inc. (Clean Harbors or Applicant) applied to TCEQ for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004086000 (the Permit) to authorize the relocation of Outfall 001. The draft Permit authorizes the discharge of stormwater previously

associated with industrial activity and previously monitored effluent (treated process wastewater and treated contaminated stormwater from internal Outfalls 101 and 102) on an intermittent and flow-variable basis via Outfall 001 in both interim and final phase; treated process wastewater and treated contaminated stormwater at a daily average flow not to exceed 65,000 gallons per day (GPD) via internal Outfall 101; and treated wastewater and treated contaminated stormwater at a daily average flow not to exceed 40,000 GPD via internal Outfall 102.

The Executive Director (ED) forwarded the draft Permit to the US Environmental Protection Agency (EPA) on October 31, 2022. EPA approved the draft Permit on December 12, 2022.

The Clean Harbors San Leon facility (the Facility) is located at 2700 Avenue S, in the City of San Leon, Galveston County. The Facility is a recycling and storage facility that manages catalyst and oily wastes from the petroleum refining and petrochemical industries.

Currently, the Facility discharges via Outfall 001 to a drainage ditch, then to an unnamed tidal tributary of Dickinson Bayou, then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. After relocation, Outfall 001 discharges directly to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the drainage ditch and high aquatic life use for the unnamed tidal tributary. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use.

The ED performed a Tier 1 antidegradation review and preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review was also performed and preliminarily determined that no significant degradation of water quality is expected in the unnamed tidal tributary and Dickinson Bayou Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

C. Procedural Background

TCEQ received the application on July 8, 2021. On October 8, 2021, the ED declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on October 20, 2021 in English in the *Bay Area Citizen* and in Spanish in *La Voz*. The ED completed the technical review of the application on November 16, 2022 and prepared the proposed Permit, which if approved, would establish the conditions under which the Facility must operate. The Notice of Application and Preliminary Decision was published in English in the *Houston Chronicle* on November 23, 2022 and in Spanish in *La Voz* on November 30, 2022. The public comment period closed on January 2, 2023. The Chief Clerk mailed the ED's Decision and Response to Comments on February 23, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was March 27, 2023.

The Commission received requests for a contested case hearing from the Razz Halili Trust.

II. Applicable Law

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, Texas Administrative Code (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 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 Requests

A. Whether the requestor is an affected person

On behalf of the Razz Halili Trust, trustee Hajrulla Halili submitted two timely hearing requests during the public comment period. The requests explain that the Trust owns two tracts of property that are less than a mile from the Facility and discharge. They further state that the Trust has concerns about the permit amendment. According to the map created by the ED's staff, the locations

of the Trust's properties are as follows: Property 1 is approximately 1.1 miles away from the Facility and 0.5 miles from the outfall; and Property 2 is approximately 0.8 miles from the Facility and 1.5 miles from the outfall. According to the adjacent landowner's map provided by the Applicant, Property 1 is located next to Dickinson Bayou.

To be granted a contested case hearing, the Trust must show that it is 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 it must distinguish that interest from an interest common to the general public. 30 TAC § 55.203(a).

After review, OPIC finds that the Trust has not demonstrated that it qualifies as an affected person. Its requests do not contain any specific concerns about the Facility's operations or explain how and why the Trust believes it will be affected. As a result, the requests lack the specificity needed to articulate a personal justiciable interest. The lack of stated interests prohibits any assessment of whether a reasonable relationship exists between the Trust's interests and the regulated activity or whether its interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1), (3). Similarly, OPIC is unable to gauge the likelihood of any impact on the Trust's use of its property or natural resources. *See* 30 TAC § 55.203(c)(4)-(5). Finally, OPIC is unable to ascertain whether the Trust's unstated interests are distinguishable from those of the general public. Therefore, OPIC finds that the Razz Halili Trust has not demonstrated that it qualifies as an affected person.

B. Which Issues Raised in the Hearing Requests Are Disputed

The Trust failed to raise any disputed issues. Therefore, no disputed issues exist for Commission consideration in this matter.

C. Whether the Dispute Involves Questions of Fact or of Law

As stated, the Trust failed to raise any disputed issues. Therefore, no issues of fact exist for Commission consideration in this matter.

D. Whether the Issues Were Raised During the Public Comment Period

The hearing requests were timely submitted during the public comment period. However, the requests contain no issues, and therefore no issues were raised by requestor during the public comment period.

E. Whether the Hearing Requests are Based on Issues Raised Solely in a Withdrawn Public Comment

The hearing requests were submitted during the public comment period, and no public comments were withdrawn.

F. Whether the Issues are Relevant and Material to the Decision on the Application

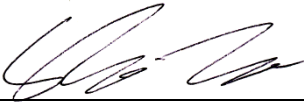
The requestor did not raise any issues that are relevant and material to the Commission's decision on this Application.

IV. Conclusion

For the reasons discussed above, OPIC finds that the Razz Halili Trust has not demonstrated that it qualifies as an affected person. Therefore, OPIC respectfully recommends denial of its hearing request.

Respectfully submitted,

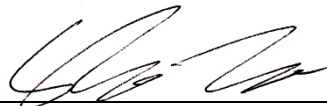
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CERTIFICATE OF SERVICE

I hereby certify that May 22, 2023, the original of the Office of Public Interest Counsel's Response to Requests for Hearing 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.


Sheldon P. Wayne

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TCEQ DOCKET NO. 2023-0579-WQ

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