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Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 5, 2024

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 BAHAMAS LAGUNA  
AZURE LLC FOR NEW TPDES PERMIT NO. WQ0016186001  
TCEQ DOCKET NO. 2023-1560-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Josiah Mercer".

Josiah T. Mercer, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2023-1560-MWD**

<b>APPLICATION BY BAHAMAS</b>	<b>§</b>	<b>BEFORE THE</b>
<b>LAGUNA AZURE LLC FOR PERMIT</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>NO. WQ0016186001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO REQUESTS 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 the hearing requests received in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application of Bahamas Laguna Azure LLC for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016186001. The TCEQ Chief Clerk's office received two timely hearing requests—both from governmental entities. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of both Royse City and the North Texas Municipal Water District—and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1 and 2 contained in §III.B.

**B. Description of Application and Facility**

On July 1, 2022, Bahamas Laguna Azure LLC (Applicant) applied to TCEQ for new TPDES Permit No. WQ0016186001 to authorize the discharge of treated domestic wastewater from a proposed facility (Facility) that would be located

approximately two miles southeast of the intersection of FM-548 and IH-30 in Rockwall County. The Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units for Interim phase I consist of a bar screen, a final clarifier, a chlorine contact chamber, two aeration basins, and two sludge digesters. Interim phase II units mirror that of Interim phase I, but include two additional aeration basins and sludge digesters. Treatment units in the Final phase consist of a bar screen, two final clarifiers, two chlorine contact chambers, five aeration basins, and five sludge digesters. Additionally, the proposed permit authorizes the disposal of sludge at any TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

The Application, if granted, would authorize discharge at a daily average flow limit of 0.125 million gallons per day (MGD) in the Interim I phase, 0.250 in the Interim II phase, and 0.525 in the Final phase. The treated effluent would be discharged into an unnamed tributary, then to Sabine Creek, then to the South Fork Sabine River, and then to Lake Tawakoni in Segment No. 0507 of the Sabine River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, Sabine Creek, and the South Fork Sabine River. The designated uses for Segment No. 0507 are primary contact recreation, public water supply, and high aquatic life use.

### **C. Procedural Background**

The Application was received by TCEQ on July 1, 2022. On August 10, 2022, the Executive Director (ED) declared the application administratively complete.

The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in Rockwall County in English in the *Herald Banner* on August 25, 2022, and in Spanish in *Al-Dia* on August 24, 2022. The technical review of the application was completed on November 9, 2022. The Applicant next published a combined Notice of Application and Preliminary Decision and Notice of Public Meeting in Rockwall County in Spanish in *Al-Dia* on March 8, 2023, and in English in the *Herald Banner* on March 10, 2023. The TCEQ's Office of the Chief Clerk held a public meeting for this Application on April 13, 2023, with the public comment period ending that same day. The Chief Clerk mailed the ED's Decision and Response to Comments on July 17, 2023. The deadline for filing requests for a contested case hearing was August 16, 2023.

## **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.<sup>1</sup> 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;

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<sup>1</sup> Tex. S.B. 709, 84th Leg., R.S. (2015).

- (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.<sup>2</sup>

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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. 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;

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<sup>2</sup> 30 TAC § 55.201(d).

- (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.<sup>3</sup>

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.<sup>4</sup>

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,

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<sup>3</sup> 30 TAC § 55.203(c).

<sup>4</sup> 30 TAC § 55.203(d).

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 Requestors are Affected Persons**

##### Royse City

The Commission received timely comments and hearing requests from Royse City (The City) through their attorney—James Aldredge. Royse City is a Home Rule municipality. The City holds TPDES Permit No. WQ0010366001 which authorizes the City to maintain a wastewater treatment facility. This permit authorizes discharge of 0.50 MGD into Sabine Creek. Additionally, the City holds Certificate of Convenience and Necessity (CCN) number 20813 and provides sewer service within their district. According to the map provided by ED staff—and the Public Utility Commission of Texas's online Water and Sewer CCN viewer—the proposed Facility is within the borders of the City's CCN; the proposed Facility is less than a mile away from the City's facility; and the proposed Facility is within several hundred feet of the edge of Royse City limits. In fact, the proposed discharge route crosses wastewater lines that connect to the City's facility.

A relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant

to the Application.<sup>5</sup> The City questions whether the proposed Facility would comply with the TCEQ's policy of regionalization and disputes the Application's assertion that there are no collection or treatment facilities within three miles that have capacity and are willing to serve the proposed development. The City claims that their collection system and wastewater treatment facility have capacity, and they are willing to treat the volume of flows proposed in the Application. Additionally, the City expresses concerns about the proposed Facility's effect on surface water quality.

Issues of regionalization and water quality are relevant to this application. When combined with the proximity of the City's facility, corporate limits, CCN, and wastewater lines, these issues give Royse City a personal justiciable interest in this matter—an interest which is distinct from the general public. Therefore, OPIC finds that Royse City qualifies as an affected person under TCEQ rule § 55.203(b) and (c)(7).

#### North Texas Municipal Water District

The Commission received a timely comment and hearing request from North Texas Municipal Water District (NTMWD) through their attorney—Lauren Kalisek. NTMWD is a conservation and reclamation district that provides wastewater service in Rockwall County. They operate the Sabine Creek wastewater treatment facility which is located within two miles of the proposed Facility. They claim that the proposed Facility, if constructed, would interfere

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<sup>5</sup> 30 TAC § 55.203(c)(7).



with their operations in the area. They also claim to be able to provide sewer service to the proposed development.

A relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the Application.<sup>6</sup> In their comments, NTMWD claims that the proposed Facility is not necessary, and the Application would violate the State's regionalization policy. According to NTMWD, as a local provider of wastewater treatment, they have an interest in promoting regionalization. Additionally, as a conservation and reclamation district they have statutory authority over water within their district.<sup>7</sup> Therefore, they have statutory authority over and interest in issues that are relevant to the Application.<sup>8</sup>

Based on their facility's proximity and their stated interests in regionalization and water quality—OPIC finds that the North Texas Municipal Water District has demonstrated that it qualifies as an affected person in this matter under TCEQ rule § 55.203(b) and (c)(7).

## **B. Which Issues Raised in the Hearing Requests Are Disputed**

The Requestors raised the following disputed issues in both hearing requests and timely public comment:

1. Whether the proposed facility and draft permit comply with the State's regionalization policy, including demonstration of need; and

(Raised by the City of Royse City and North Texas Municipal Water District)

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<sup>6</sup> 30 TAC § 55.203(c)(7).

<sup>7</sup> Tex. Const. art. XVI, § 59(a).

<sup>8</sup> *Id.*

2. Whether the proposed facility and draft permit comply with Texas Surface Water Quality Standards and are adequately protective of water quality, including surface water and groundwater.

(Raised by the City of Royse City)

**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. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

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

All issues were specifically raised by requestors who qualify as affected persons during the public comment period.

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

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn comments.

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

The Requestors 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). 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 include those governed by the

substantive law of the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

### Regionalization and Need

Under Texas Water Code § 26.081(a), it is “state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems ... to prevent pollution and maintain and enhance the quality of the water in the state.” The Texas Water Code further states:

In considering the issuance ... of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit ... based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order....<sup>9</sup>

Therefore, Issue 1 regarding regionalization is relevant and material to the Commission’s decision on the Application and is appropriate for referral to SOAH.

### Water Quality

Requestors raised concerns about adverse effects to water quality in the area and its potential to affect their operations and residents. The Commission is responsible for the protection of water quality under Texas Water Code Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the Proposed Permit “maintain

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<sup>9</sup> TWC § 26.0282.

the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and ... economic development of the state....”<sup>10</sup> According to § 307.6(b)(4) of the Standards, “Water 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.”<sup>11</sup> As Chapter 307 designates criteria for the regulation of water quality and the protection of uses of relevant water bodies, Issue No. 2 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

#### **H. Maximum Expected Duration for the Contested Case 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.<sup>12</sup> To assist

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<sup>10</sup> 30 TAC § 307.1.

<sup>11</sup> 30 TAC § 307.4(d).

<sup>12</sup> 30 TAC § 50.115(d)(2).


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. Conclusion**

For the reasons discussed above, OPIC finds that Royse City and the North Texas Municipal Water District have demonstrated that they qualify as affected persons. Therefore, OPIC respectfully recommends that the Commission grant their hearing requests and refer Issue nos. 1 and 2 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that August 5, 2024, 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.

  
\_\_\_\_\_  
Josiah T. Mercer

**MAILING LIST**  
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**TCEQ DOCKET NO. 2023-1560-MWD**

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**FOR ALTERNATIVE DISPUTE**

**RESOLUTION**

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