

**TCEQ DOCKET NO. 2023-1566-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>PRESERVE HUTTO, LLC, FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TPDES PERMIT NO. WQ0016145001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**APPLICANT’S RESPONSE TO REQUESTS FOR HEARING AND REQUEST FOR  
RECONSIDERATION**

Preserve Hutto, LLC, (“Applicant”) files this Response to Hearing Request pursuant to 30 Tex. Admin. Code § 55.209 on the application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00161415001 (“Application”).

**I. Review Standard**

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. 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. 30 TAC § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;
- distance restrictions or other limitations imposed by law on the affected interest;
- whether a reasonable relationship exists between the interest claimed and the activity regulated;

- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- likely impact of the regulated activity on use of the impacted natural resource by the person; and
- whether the requester timely submitted comments on the application which were not withdrawn.

30 TAC § 55.203(c).

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided. 30 Tex. Admin. Code 55.201(d). The request must also substantially comply with the following:

- give the name, address, daytime telephone number, and where possible, fax number of the person who files the request;
- identify the person's 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 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 facility or activity in a manner not common to members of the general public;
- request a contested case hearing; and
- 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.

## II. Evaluation of Hearing Requests

The Commission received eight hearing requests on the Application. Six of those hearing requests are from individual landowners and two are from organizations—the Williamson County WSIDD 3 board and the City of Hutto.

### Charlie Alder and Travis Scogin

The hearing requests by Charlie Alder and Travis Scogin both fail to identify any justiciable interest affected by the application. In the absence of that information, the Commission cannot determine that any of the identified entities is an affected person. Because the protestant group failed to present the necessary information as part of a timely hearing request, the hearing request must be denied. Further, the Commission's rules do not make available the opportunity to correct such a deficiency after the fact. The hearing requests for those individuals should be denied on that basis.

### Mohammed Hallak

Mohammed Hallak resides at 2012 Oak Vista Dr, Pflugerville, TX 78660-9475, approximately (0.74) miles southwest of Applicant's proposed site. Mr. Hallak's listed concerns are broad and specify no ties beyond a general concern on the impact of school children, in which he fails to identify if his child(ren) attended the nearby school. Hallak also levels various attacks such as "Bad planning and inconsiderate to our life's and property. We have lived here for 20 years and you are destroying our land and community." These are insufficient to identify a personal justiciable interest, and are no more than vague assertions that seem to fail to identify a concern specific to the Applicant. Based on his distance from the site and lack of demonstration of any

likelihood of that he would be affected by the Applicant's Facility in a way not common to members of the general public, Mr. Hallak's request should be denied.

Karen Blakey

Karen Blakey identified an interest in a property that was roughly a half mile from the Applicant's proposed facility. She raised issues concerning the site's location such as "It's right next to many houses & across the street from an elementary school!" and "How was this site selected for this facility?" Blakey's complaints express general concerns with the Commission's procedural rules that do not create a judicable interest, and a contested case hearing is not the appropriate venue to raise such issues.

Further, the distance between Blakey's property represents a significant disconnect between the interests of her as an individual and the regulated activity, and the concerns she raises do not indicate they will be adversely affected at that distance in a manner not common to members of the general public (as required by 30 TAC § 55.201(d)(2)). There are numerous properties in between her property and the proposed Facility. It is not reasonable to expect that she would be affected by the facility or the discharge at that distance in a manner that is not common to members of the general public.

Next, Blakey raises concerns about the impact on traffic, unidentified improvements, as well as homes, grocery stores, and dining establishments. It is long established that these concerns are not subject to TCEQ's jurisdiction and otherwise fall short of "a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application." Tex. Water Code § 5.115(a); 30 TAC § 55.203(a).

Finally, Blakey raises concerns about odors. As the Executive Director noted in Response to Comment No. 16, “According to its application, Preserve Hutto intends to comply with the requirement to abate and control nuisance of odor by locating the treatment units at least 150 feet from the nearest property line. This requirement is incorporated in the draft permit. Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility provided Preserve Hutto operates the facility in compliance with TCEQ’s rules and the terms and conditions of the draft permit.” At her substantial distance from the proposed facility, it is not reasonable to expect Blakey to be affected by any nuisance odor, and particularly not in any way that is not common to the general public.

Judy Scogin and Megan McMillin

Neither Judy Scogin nor Megan McMillin identify specific concerns or identify that they are concerned about any impacts as they specifically apply to them. The assertions raised by each are vague and non-particularized claims about impact to quality of life, but they entirely fail to identify “a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application” because they do not specify whose quality of life will be affected or how the Facility will affect it. Tex. Water Code § 5.115(a); 30 TAC § 55.203(a). does not identify an interest protected by the law under which the Application will be considered, only theoretical opposition as a member of the general public. 30 TAC § 55.203(c)(1). Further, both properties are separated from the Facility by additional properties and are well beyond the 150-foot abatement requirement of 30 TAC § 309.13(e).

### Organizations

The Applicant declines to take a position on whether the City of Hutto and the Williamson County WSIDD 3 board have satisfied the procedural and substantive requirements prerequisite to the granting of a hearing.

For the reasons stated, the Applicant requests that the Commission find that the identified entities are not affected persons and that the Commission therefore deny their hearing requests.

### **III. Other Considerations**

The Applicant provides the following responses addressing 30 Tex. Admin. Code § 55.209 to the extent the Commission decides to refer this case to SOAH.

- *which issues raised in the hearing request are disputed;*

The Applicant disputes all issues raised in the hearing requests, none of which the Applicant asserts supports referral to SOAH for a contested case hearing. To the extent the Commission determines there are one or more valid hearing requests, the Applicant asserts there is a single issue in dispute that should be adjudicated at SOAH: whether the discharge from the facility will adversely affect water quality.

- *whether the dispute involves questions of fact or of law;*

The Applicant believes that whether the discharge from the facility will adversely affect water quality will involve only disputed questions of fact and not questions of law.

- *whether the issues were raised during the public comment period;*

The Applicant states that the issue of whether the discharge from the facility will adversely affect water quality was raised within the timeframe of an applicable public comment period.

- *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 Executive Director's Response to Comment;*  
The Applicant is not aware that any comments at issue were withdrawn.
- *whether the issues are relevant and material to the decision on the application; and*  
The Applicant asserts that the issue of whether the discharge from the facility will adversely affect water quality, if referred, is relevant and material to the decision on the application.
- *a maximum expected duration for the contested case hearing.*  
If the Commission decides to refer this case to SOAH, then the applicant recommends that the maximum duration of the hearing be 150 days.

Respectfully submitted,

**Gregg Law PC**

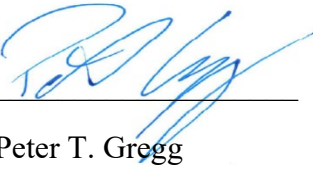


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Attorneys for Applicants

## **CERTIFICATE OF SERVICE**

I certify pursuant to the above signature that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 29, 2024.



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Peter T. Gregg



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See attached list.

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Sharon J Smith Armbrust & Brown  
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- *whether the dispute involves questions of fact or of law;*

The Applicant believes that whether the discharge from the facility will adversely affect surface water quality will involve only disputed questions of fact and not questions of law.

- *whether the issues were raised during the public comment period;*

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The Applicant is not aware that any comments at issue were withdrawn.
- *whether the issues are relevant and material to the decision on the application;* and The Applicant asserts that the issue of whether the discharge from the facility will adversely affect surface water quality, if referred, is relevant and material to the decision on the application.
- *a maximum expected duration for the contested case hearing.*  
If the Commission decides to refer this case to SOAH, then the applicant recommends that the maximum duration of the hearing be 150 days.

Respectfully submitted,

**Gregg Law PC**



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Attorneys for Applicants

## CERTIFICATE OF SERVICE

I certify pursuant to the above signature that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 29, 2024.



---

Peter T. Gregg

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