

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 29, 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 MONTGOMERY  
COUNTY MUNICIPAL UTILITY DISTRICT NO. 125 FOR TPDES  
PERMIT NO. WQ0014989001  
TCEQ DOCKET NO. 2023-1594-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-1594-MWD

APPLICATION BY	§	BEFORE THE
MONTGOMERY COUNTY	§	
MUNICIPAL UTILITY DISTRICT	§	TEXAS COMMISSION ON
NO. 125 FOR TPDES PERMIT	§	
NO. WQ0014989001	§	ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO HEARING REQUEST

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to hearing request in the above-referenced matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application by Montgomery County Municipal Utility District No. 125 (Applicant) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ14989001. The Commission received a timely request for a contested case hearing from James White. For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter and deny the hearing request. However, should the Commission find otherwise, OPIC recommends the relevant and material issues listed in Section III.G. be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

## **B. Description of Application and Facility**

Applicant applied to the TCEQ for renewal of TPDES Permit No. WQ14989001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.24 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.48 MGD in the Interim II phase, and a daily average flow not to exceed 0.96 MGD in the Final phase.

The wastewater treatment facility (the facility) would serve Montgomery County Municipal Utility District (MUD) No. 125 and MUD 200. The facility would be an activated sludge process plant operated in extended aeration mode in the Interim I phase, and complete mix mode in the Interim II and Final phases. The treated effluent would be discharged to a man-made ditch, then to an unnamed tributary, then to a pond, then to an unnamed tributary, then to Lake Creek in Segment No. 1015 of the San Jacinto River Basin.

## **C. Procedural Background**

The Applicant submitted the application to renew the existing permit on June 3, 2022, and it was declared administratively complete on August 12, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on August 24, 2022 in the *Cypress Creek Mirror*, and in Spanish on August 25, 2022 in *El Perico*. The Executive Director (ED) completed the technical review of the application on November 17, 2022. The Notice of Application and Preliminary Decision (NAPD) was published in English on March 15, 2023 in the *Cypress Creek Mirror*, and in Spanish on March 9, 2023 in *El Perico*. The public comment period ended on April 14, 2023. The Chief Clerk

mailed the ED's Decision and Response to Comments (RTC) on September 18, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was October 18, 2023. The Commission received a timely hearing request from James White.

## **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 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 shall 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 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 a right to hearing exists**

As a threshold matter, Texas Water Code (TWC) § 26.028(d) states that the

Commission may approve an application to renew a permit without a public hearing under certain conditions. *See also* 30 TAC §§ 50.113(d)(4), 55.211(d)(4). Commission Rule 55.201(i)(5) provides that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if:

- (A) the applicant is not applying to increase significantly the quantity of waste to be discharged or change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

Applying these requirements to the current application, Applicant would not increase the quantity of waste to be discharged from its existing permit and effluent limitations and monitoring requirements would remain the same as the existing permit requirements. OPIC notes that the public was provided notice of the right to request a public meeting on this application and the TCEQ did not receive any request for a public meeting. Also, within the RTC, the ED has considered and responded to all timely and significant public comments. Finally, OPIC notes that the compliance history for Applicant and proposed facility generated a classification of unclassified.

In sum, OPIC finds that because each requirement contained in 30 TAC § 55.201(i)(5) has been satisfied, no right to a contested case hearing exists on the proposed renewal. For this reason, OPIC respectfully recommends the Commission deny the hearing request. However, if the Commission decides otherwise, OPIC offers the following additional analysis.

**B. Whether the requestor is an affected person**

James White submitted a timely hearing request within the comment period. Mr. White's hearing request states that he owns properties downstream from the proposed facility<sup>1</sup> and there is a large pond on his property. Mr. White raised concerns regarding the proposed wastewater running through his property especially traversing through the pond on his property. He further raised concerns about potential water quality issues and any potential harm to the fish and wildlife inhabiting the pond. Additionally, Mr. White raised concerns regarding impacts on his and his family's ability to enjoy the pond for recreational purposes and overall enjoyment. These concerns are interests that are protected by the law under which this application will be considered and, due to the proximity of these properties to the facility and discharge route, a reasonable relationship exists between those interests and regulation of the facility. The ED's map shows that Mr. White's properties are located approximately around one mile from the Outlet 001.<sup>2</sup>

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<sup>1</sup> Mr. White mentioned that he owns three residential lots.

<sup>2</sup> The GIS map shows that Mr. White's properties are located approximately 1.05 miles, 1.13 miles, and 1.15 miles from the Outfall 001. OPIC notes that one of Mr. White's properties seem adjacent to the proposed discharge route.



Based on Mr. White's water quality concerns and his proximity to the Outlet 001 and proposed discharge route, OPIC finds that Mr. white has a personal justiciable interest in this matter which is not common to the members of the general public. *See* 30 TAC § 55.203(a). Therefore, OPIC finds that Mr. White is an affected person in this matter.

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

Mr. White raised the following disputed issues:

1. Whether the draft permit would adversely affect water quality.
2. Whether the draft permit would adversely affect fish and wildlife inhabiting Mr. White's property.
3. Whether the draft permit would adversely affect Mr. White and his family's use and enjoyment of their property.
4. Whether the discharge route has been properly characterized.
5. Whether the proposed facility would negatively impact Mr. White's property values.

**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 of the issues were raised by Mr. White during the public comment period.

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

The hearing requests are based on timely comments that have not been withdrawn.

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

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 a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

*Water Quality, Protection of Wildlife, and Use and Enjoyment*

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. Texas Surface Water Quality Standards (TSWQS) in Chapter 307 require that the proposed permit "maintain 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." 30 TAC § 307.1. The TSWQS also require that "[a] permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality." 30 TAC § 307.2(d)(5)(D). Additionally, surface waters must not be toxic to humans from ingestion, consumption of aquatic organisms, or contact with the skin. 30 TAC §

307.4(d). Therefore, Issue Nos. 1, 2, and 3 are relevant and material to the Commission's decision regarding this application.

Discharge Route

As discussed earlier, Mr. White raised concerns regarding the proposed discharge flowing through his property and the pond on his property. The purposes of 30 TAC Chapter 309, Subchapter B, Domestic Wastewater Effluent Limitation and Plant Siting requirements, include goals "to minimize the possibility of exposing the public to nuisance conditions" and "to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics." 30 TAC §309.10(b). Additionally, 30 TAC §309.12 provides that "the commission may not issue a permit for a new facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater." Therefore, Ms. White's concerns regarding the discharge route are relevant material.

Property Values

TCEQ does not have jurisdiction to consider a draft permit's impact on property values. Therefore, Issue No. 5 is not relevant and material.

**G. Issues Recommended for Referral**

For the reasons stated above, should the Commission find a right to hearing exists, OPIC recommends referral of the following issues:

1. Whether the draft permit would adversely affect water quality.
2. Whether the draft permit would adversely affect fish and wildlife inhabiting Mr. White's property.
3. Whether the draft permit would adversely affect Mr. White and his family's use and enjoyment of their property.
4. Whether the discharge route has been properly characterized.

**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. 30 TAC § 50.115(d)(2). To assist 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.

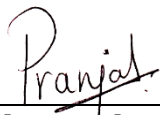
**IV. Conclusion**

For the reasons discussed above, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter and therefore deny the hearing request of James White. However, if the Commission

decides otherwise, we find that Mr. White would qualify as an affected person. If a hearing is granted, OPIC recommends the relevant and material issues listed in Section III.G. be referred to SOAH for a contested case hearing.

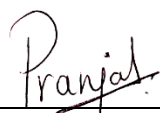
Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By:   
Pranjal M. Mehta  
Assistant Public Interest Counsel  
State Bar No. 24080488  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-0574

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2024, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Pranjal M. Mehta

**MAILING LIST**  
**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 125**  
**TCEQ DOCKET NO. 2023-1594-DIS**

FOR THE APPLICANT

via electronic mail:

Andrew Laycock, President  
Montgomery County MUD No. 125  
1980 Post Oak Boulevard, Suite 1380  
Houston, Texas 77056  
[kugle@sklaw.com](mailto:kugle@sklaw.com)

Jacob Miller, P.E., Project Engineer  
Pape-Dawson Engineers, Inc.  
10350 Richmond Avenue, Suite 200  
Houston, Texas 77042  
[jmiller@pape-dawson.com](mailto:jmiller@pape-dawson.com)

Rutika Nanivadekar, E.I.T., Engineer II  
Pape-Dawson Engineers, Inc.  
10350 Richmond Avenue, Suite 200  
Houston, Texas 77042  
[rnativadekar@pape-dawson.com](mailto:rnativadekar@pape-dawson.com)

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Bradford Eckhart, 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  
[bradford.eckhart@tceq.texas.gov](mailto:bradford.eckhart@tceq.texas.gov)

Ruiqiang Zong, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-4589 Fax: 512/239-4430  
[ruiqiang.zong@tceq.texas.gov](mailto:ruiqiang.zong@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):

Mr. James Jefferson White IV  
10964 Lake Forest Drive  
Conroe, Texas 77384