

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 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 VALE BUILDING
GROUP LLC FOR TPDES PERMIT NO. WQ0016212001
TCEQ DOCKET NO. 2024-0132-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 "Pranjali".

Pranjali M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-0132-MWD

**APPLICATION BY VALE
BUILDING GROUP (LLC) FOR
TPDES PERMIT NO.
WQ0016212001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**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) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to request for hearing in the above-referenced matter.

I. Introduction

A. Summary of Position

For the reasons detailed below, OPIC recommends the Commission grant the hearing request of Jonah Water Special Utility District (Jonah). OPIC further recommends the Commission refer the issues specified in Section III.B for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

B. Description of Application and Facility

Vale Building Group LLC (Vale or Applicant) applied to TCEQ for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016212001 to authorize a discharge of treated domestic wastewater at a daily average flow limit of 0.322 million gallons per day (MGD) from the Weir Subdivision Waste Water Treatment Facility (the proposed facility). If the permit is issued, the proposed

facility would be located approximately 1,615 feet northwest of the intersection of County Road 194 and Farm-to-Market Road 1105 in Williamson County 78626.

The proposed facility would be an activated sludge process plant operated in the extended aeration mode. The treated effluent would be discharged to an unnamed tributary, then to Weir Branch, then to the San Gabriel/North San Gabriel River in Segment No. 1248 of the Brazos River Basin.

C. Procedural Background

The TCEQ received the application on September 2, 2022, and declared it administratively complete on October 11, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Williamson County Sun* on October 30, 2022. The Executive Director (ED) completed the technical review of the application on February 2, 2023. The Notice of Application and Preliminary Decision (NAPD) was published in *The Sunday Sun*¹ on March 26, 2023. The public comment period ended on April 25, 2023. The Chief Clerk mailed the ED's Decision and Response to Comments on October 16, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was November 15, 2023. The Commission received timely hearing requests from Jonah Water Special Utility District.

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

¹ It is the weekend version of the Williamson County Sun newspaper.

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. 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;
- (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 Requests

A. Whether the requestor is an affected person

The Commission received timely comments and hearing requests from Jonah.² Jonah holds a Certificate of Convenience and Necessity (CCN) in Williamson County and operates under Texas Water Code (TWC) Chapter 65. Jonah stated that the proposed facility is located on the boundary between Weir Water Works' CCN territory and Jonah's district boundary and water CCN

² On April 25, 2023, Jonah submitted first hearing request during the public comment period. On November 15, 2023, Jonah submitted second timely hearing request.

territory.³ Jonah is concerned that the effluent from the proposed facility could flow through Jonah's water service area into the San Gabriel River, which feeds into Lake Granger—the source of raw water for Jonah's customers. Jonah also raised concerns about potential increases in algal growth, blooms, and other water quality issues in creek beds, tributaries, Weir Branch, the San Gabriel River, and ultimately Lake Granger, which would impact the safety and sanitation of Jonah's water supply and would ultimately impact the health of the local community. Jonah also expressed concerns regarding regionalization and stated that the application does not support the need for regionalization.

The ED's map confirms the close proximity of the proposed facility to Jonah's district boundaries and indicates that the proposed discharge route passes through Jonah's water service area. Based on Jonah's CCN location relative to the proposed facility, it has an interest in regionalization that is not common to the general public, and it should be considered under TWC Section 26.0282. Further, Jonah's water quality and health concerns are interests protected by the law under which the application will be considered, and a reasonable relationship exists between water quality and the regulation of wastewater discharge. Therefore, OPIC finds that Jonah qualifies as an affected person under 30 TAC § 55.203(a) and (c).

³ Jonah's second hearing request stated that Jonah has entered into a Purchase and Sale agreement for the Weir Water Works system (Weir) and is currently operating the system under contract until the transfer, along with the associated CCN, is finalized. Jonah filed an application for sale, transfer, or merger of facilities and certificate rights with the Public Utility Commission of Texas on October 16, 2023 and is currently in the process of acquiring Weir and incorporating the Weir service area into Jonah's CCN No. 10970. For these reasons, Jonah is also representing Weir Water Works' interest in this application.

B. Which issues raised in the hearing requests are disputed

Jonah raised the following disputed issues:

1. Whether the draft permit is protective of water quality and the uses of the receiving waters under the applicable Texas Surface Water Quality Standards (Standards).
2. Whether the draft permit would impact any nearby water wells.
3. Whether the draft permit includes appropriate provisions to protect against increases in algal growth and blooms.
4. Whether the draft permit is adequately protective of human health and safety.
5. Whether the application complies with TCEQ's regionalization policy.

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 Jonah during the public comment period.

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

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

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 and Health Effects

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. Standards 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 Standards 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, 3, and 4 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Groundwater and Impact on Nearby Water Wells

Title 30 TAC Chapter 309, Subchapter B rules contain the location standards for domestic wastewater treatment facilities. Section 309.10(b) states

that the purpose of Chapter 309 is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities on selection of a site that minimizes possible contamination of ground and surface water. Under 30 TAC § 309.13, a wastewater treatment plant must comply with site location restrictions and buffer zone requirements. Further, 30 TAC § 309.13(c) states that a wastewater treatment plant unit may not be located closer than 500 feet from a public water well, nor 250 feet from a private water well. Therefore, Issue No. 2 is relevant and material to the Commission's decision regarding this application.

Regionalization

It is state policy to encourage regionalization, and TCEQ must consider regionalization when deciding whether to issue a discharge permit. TWC §§ 26.081(a), 26.0282. Therefore, Issue No. 5 regarding regionalization is relevant and material to a decision on this application.

G. 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.

V. Conclusion

For the reasons discussed above, OPIC recommends the Commission grant Jonah's hearing request and refer the issues 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 on April 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

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