

TCEQ DOCKET NO. 2024-0133-IWD

APPLICATION BY
SCHRIEBER FOODS, INC.
FOR
TLAP NO. WQ0003074000

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Schrieber Foods, Inc. (Applicant) seeking a major amendment to Texas Land Application Permit (TLAP) Number WQ0003074000 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Tandi Remy.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

Schrieber Foods, Inc. has applied for a major amendment to Texas Land Application Permit No. WQ0003074000 to authorize the increase of application acres from 50 acres to 61 acres, increase the permitted daily average flow from 132,000 gallons per day (gpd) to 192,000 gpd, and update the organic loading rate measured as biochemical oxygen demand (5-day) and the nitrogen loading rate measured as total nitrogen. Soybean hay, forage sorghum, and small grain crops have been included as alternative crops to the grasses (i.e., coastal Bermuda and ryegrass).

The applicant currently operates Schrieber Foods, a specialty dairy food products manufacturer. Raw milk is brought to the plant in tankers. In the process of converting milk into finished products (such as cream cheese) much of the water is extracted. This water (a.k.a. cow water) is captured and used, together with clean water, for truck and equipment washwater. Process wastewater, consisting of captured washwater along with milk minerals, organics, and cleaning compounds, is collected and routed through a monitoring station which includes a bar screen for solids removal and is then pumped to a dissolved air floatation tank for additional solids removal. Domestic wastewater is treated by a chlorination system prior to being commingled with the process wastewater at the lift station. From the lift station, the commingled effluent is pumped to a storage/treatment system consisting of a 3 million-gallon (MG) aeration lagoon equipped with 200 horsepower (hp) of aeration equipment and two 3 MG aeration lagoons (Aerated Storage Basins No. 1 and 2) equipped with 60 hp of aeration equipment each. Effluent from the lagoons is routed to a center-pivot irrigation system consisting of a 61-acre tract for irrigating crops consisting of Coastal Bermuda Grass, Soybean hay, forage sorghum (primary crops) and Ryegrass and small grain crops (supplemental coolweather crops). TCEQ received this application on February 06, 2023.

The plant and land application site are located at 923 County Road 176, near the City of Stephenville, Erath County, Texas. This link to an electronic map of the site

or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.188333,32.262777&level=18>.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

III. Procedural Background

The TCEQ received the permit application on February 6, 2023, and declared it administratively complete on March 21, 2023. The applicant published the English version of the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Stephenville Empire Tribune* on March 29, 2023, as well as published the Spanish version of the NORI in the *La Prensa Comunidad* on March 28, 2023. The ED completed the technical review of the application on May 30, 2023, and prepared the proposed permit, which if approved, would establish the conditions under which the facility must operate. The Applicant published the English version of the Notice of Application and Preliminary Decision (NAPD) in the *Stephenville Empire Tribune* on August 24, 2023, as well as the Spanish version of the NAPD in the *La Prensa Comunidad* on August 22, 2023. The comment period for this application closed on September 25, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

whether the requestor is an affected person;

which issues raised in the hearing request are disputed;
whether the dispute involves questions of fact or of law;
whether the issues were raised during the 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;
whether the issues are relevant and material to the decision on the application; and
a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

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;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised 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 Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed

issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/“Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected” person. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, 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. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, 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;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

the merits of the underlying application and supporting documentation in the commission’s administrative record, including whether the application meets the requirements for permit issuance;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

“When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;
was raised during the public comment period by an affected person whose hearing request is granted; and
is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Requests Complied with Section 55.201(c) and (d).

Tandi Remy submitted a timely hearing request based on issues she raised during the public comment period that have not been withdrawn. She provided her name, address, email address, and requested a contested case hearing. She identified herself as a person with what she believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided disputed issues of fact raised during the public comment period. Therefore, the Executive Director concludes that the hearing request of Tandis Remy substantially complied with the Section 55.201(c) and (d) requirements.

1. Tandis Remy

According to the information provided by Ms. Remy, she owns an RV park and her property is located about 0.51 miles from the application area. Tandis Remy submitted a hearing request that raises concerns about odor, the effect that such odor will have on her business, and her own health. Ms. Remy’s concerns are not common to the general public and, given the nature of her claims and her distance from the facility, she demonstrated that she has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is an affected person.¹ Thus, the ED recommends granting her hearing request.

The Executive Director recommends the Commission find that Tandis Remy is an affected person.

¹ § 55.203(a); *see also* § 55.211(c)(2).

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

1. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Responses Nos. 1, 2)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not include adequate provisions to address nuisance odor in accordance with the TCEQ's rules in Chapter 309, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Tandi Remy as an affected person and grant her hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Executive Director

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Environmental Law Division

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on April 1, 2024, the “Executive Director’s Response to Hearing Request” for major amendment to Texas Land Application Permit (TLAP) No. WQ0003074000 by Schrieber Foods, Inc. was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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MAILING LIST/LISTA DE CORREO
Schreiber Foods, Inc.
TCEQ Docket No./TCEQ Expediente N.º 2024-0133-IWD
TPDES Permit No./TLAP Permiso N.º WQ0003074000

FOR THE APPLICANT/PARA EL SOLICITANTE:

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Green Bay, Wisconsin 54307

Paul Bythway, Environmental Engineer
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FOR THE EXECUTIVE DIRECTOR/PARA
EL DIRECTOR EJECUTIVO

via electronic mail/vía correo
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ABOGADOS DE INTERÉS PÚBLICO

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FOR THE CHIEF CLERK/PARA EL
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Docket Clerk
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REQUESTER(S)/SOLICITANTE(S)/
INTERESTED PERSON(S)/PERSONA(S)

INTERESADA(S):

See list on next page:

REQUESTER(S)/SOLICITANTE(S)

Tandi Remy
Stephenville Texas RV Park
4710 North US Highway 281
Stephenville, Texas 76401

Tandi Remy
4630 North US Highway 281
Stephenville, Texas 76401

INTERESTED PERSON(S)/PERSONA(S)

INTERESADA(S):

Kaitlin Sowle
4552 North US Highway 281
Stephenville, Texas 76401

Attachment A

Schrieber Foods

WQ0003074000

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 12/5/2023
CRF 0098135
Cartographer: AlOrtiz



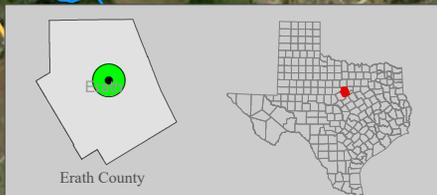
- Remy, Tandi
- Facility
- 1.5 Miles from Facility
- 1.0 Mile from Facility
- 0.5 Mile from Facility
- Lake/Pond
- Reservoir
- Highway
- Intermediate Roads
- Stream/River
- Artificial Path
- County Boundary

Distance from Requestor to Facility
in Miles:

0.51

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Erath County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Erath County (red) in the state of Texas.

