

TCEQ DOCKET NO. 2024-0134-MWD

APPLICATION BY
LANDRA PARTNERS, LLC
FOR NEW TPDES PERMIT NO.
WQ0016258001

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BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Hearing Requests on the application by Landra Partners LLC, (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit number (No.) WQ0016258001.

A. Attachments for Commission Consideration

1. Attachment A - ED's GIS Map

II. BACKGROUND

A. Application Request

The Applicant applied for new TPDES Permit No. WQ0016258001, authorizing a discharge of treated domestic wastewater at a daily average flow limit of 0.055 gallons per day from the Grayson County Wastewater Treatment Facility (WWTF) and (proposed facility).

B. Description of Facility and Discharge Route

If the proposed permit is ultimately issued, the proposed facility will serve a residential community and will be located approximately 3,600 feet northwest of the intersection of U.S. Highway 82 and U.S. Highway 69 in Grayson County, Texas 75414. When constructed the proposed facility will be an activated sludge process plant, operated in the extended aeration mode with treatment units that include one bar screen, aeration basin, final clarifier, chlorine contact chamber, and sludge digester. Sludge generated from the treatment facility will be hauled by a registered transporter and disposed of at the Colony's Stewart Creek WWTF, a TCEQ-authorized land application site (TPDES Permit No. WQ0011570001) in Denton County. The proposed permit also authorizes the disposal of sludge at a co-disposal landfill, a TCEQ-authorized land application site or WWTF, or a facility that further processes sludge.

The route of the proposed discharge is to an unnamed tributary, then Mill Creek, then Choctaw Creek, and then to the Red River below Lake Texoma in Segment No. 0202 of the Red River Basin.

III. PROCEDURAL BACKGROUND

The TCEQ received the application on November 28, 2022, and declared it administratively complete on January 5, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Permit (NORI) in Grayson County, Texas in the *Herald Democrat* on January 12, 2023. The ED completed the technical review of the application on February 8, 2023, and prepared the proposed permit, which if approved,

would establish the conditions under which the proposed facility must operate. The Applicant next published the Notice of Application and Preliminary Decision (NAPD) in Grayson County, Texas in the *Herald Democrat* on April 4, 2023. The public comment period ended on May 4, 2023, the ED's Response to Comment (RTC) was filed on October 18, 2023, the ED's Final Decision Letter was mailed on October 26, 2023, and the deadline for filing a Request or a Request for Reconsideration (RFR) was November 27, 2023. Because the application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55.

IV. ACCESS TO RULES, LAWS, AND RECORDS

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Current TCEQ Rules," then "Download TCEQ Rules").
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:**
<https://www.tceq.texas.gov/compliance/complaints/index.html> (select "use our online form") or by sending an email to the following address:
complaint@TCEQ.Texas.gov.
- Alternative language notice in Spanish is available at:
<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>.

El aviso de idioma alternativo en español está disponible en

<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>.

Commission records for the Proposed facility are available for viewing and copying at TCEQ's main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor in the Office of the Chief Clerk, for the current application until final action is taken). Some documents located at the OCC may also be found in the TCEQ Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid.

The permit application has been available for viewing and copying at the Sherman Public Library, located at 421 North Travis Street, Sherman, Texas 75090, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision were available for viewing and copying at the same location since publication of the NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, animal life, vegetation, and human health. However, if individuals wish to file a complaint about the proposed facility concerning its compliance with the provisions of its permit

or with TCEQ rules, the TCEQ's Office of Compliance and Enforcement should be contacted. Specifically, the DFW Regional Office (Region 4) in Fort Worth Texas, Texas may be contacted at (817) 588-5800 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above at the seventh bullet under "Access to Rules, Laws, and Records." If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

V. EVALUATION OF 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 (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the commission's consideration of Requests. This application was declared administratively complete on September 14, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709.

A. *LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS*

"The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests... [which must specifically address:]"

1. whether the requestor is an affected person;
2. whether issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
6. whether the issues are relevant and material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.¹

The issues described above in subparagraph A.6. are often referred to as "relevant and material fact issues."

B. *HEARING REQUEST REQUIREMENTS*

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . ., based only on the requester's timely comments, and not based on an issue that was 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 ED's Response to Comment.²

¹ 30 TAC §§ 55.209(d) and (e) [combined].

² 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- (1) give the name, address, 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 is responsible for receiving all official communications and documents for the group;
- (2) 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;
- (3) request a contested case hearing;
- (4) for applications filed;
 - (B) on or after September 1, 2015, 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, list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.³

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (a) 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 public does not qualify as a personal justiciable interest.
- (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.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (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;

³ *Id.* at § 55.201(d).

- (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; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁴
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
- (1) 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;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁵

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 State Office of Administrative Hearing (SOAH) for a hearing.”⁶ “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.”⁷

E. REQUESTS FOR RECONSIDERATION

According to 30 TAC § 55.201(e), any person may file a RFR of the ED's decision no later than 30 days after the Chief Clerk mails the ED's decision and RTC, if it expressly states that the person is requesting reconsideration of the ED's decision, is in writing, and gives reasons why the decision should be reconsidered.

VI. ANALYSIS OF THE HEARING REQUESTS

The ED analyzed whether the Requests followed TCEQ rules, the requestor's Affected Person qualifications, what issues to refer for a possible hearing, and the appropriate length of any hearing. After reviewing the Requests with the following analysis, the ED respectfully recommends denying the Request of Jeremy Moore.

⁴ 30 TAC § 55.203(a)-(c).

⁵ *Id.* at § 55.203(d).

⁶ 30 TAC § 50.115(b).

⁷ *Id.* at § 55.203(d).

A. WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).

1. **Jeremy Moore** filed a timely, written Request because he filed his Request during the comment period, which provided the requisite contact information and requested a Hearing. However, Mr. Moore's Request did not comply with the TCEQ's Chapter 55 rules referenced below.

Mr. Moore's Request failed to raise issues that formed the basis of his Request in timely comments not withdrawn before the RTC was filed, because he did not make any relevant or material comments on the application to base his Request on, as required by 30 TAC § 55.201(d)(4)(B), nor did Mr. Moore's Request raise any relevant or material issues of disputed fact that were based on any timely comments also required by 30 TAC § 55.201(d)(4)(B).

Mr. Moore's Request, while explaining his location and distance relative to the facility, lacked a statement of how and why he believes he will be adversely affected by the facility or activity in a manner not common to members of the public, as required by 30 TAC § 55.201(d)(2).

The ED recommends finding that Jeremy Moore's Request failed to substantially comply with 30 TAC §§ 55.201(c) and 55.201(d).

B. Whether Requestor is an Affected Person under 30 TAC § 55.203.

1. **Jeremy Moore** filed a Request that failed to effectively identify a personal, justiciable interest affected by the application, describing in plain language in a brief, written statement of how and why Mr. Moore believes he will be adversely affected by the facility in a manner not common to members of the public. Mr. Moore's Request did not raise any relevant issues, nor explain why the issues he raised demonstrate that he will be adversely affected by this application in a manner not common to members of the public.

According to the GIS map prepared by the ED's staff, Mr. Moore's property is 1.16 miles away from the proposed facility, which decreases the likelihood that Mr. Moore will be adversely affected by the proposed facility in a manner not common to members of the public because of the issues he raised.

Because of that fact that Mr. Moore's Request did not raise referable issues, nor articulate a personal justiciable interest affected by the proposed facility, his Request failed to demonstrate a reasonable relationship exists between the interests claimed and the activity regulated, decreasing the likelihood that he will be adversely affected in a unique way. Therefore, Mr. Moore is not an affected person under 30 TAC § 55.203.

The ED recommends that the Commission find Jeremy Moore is not an Affected Person under 30 TAC § 55.203.

VII. REFERABLE Issues raised in the Hearing Request:

There were no relevant or material issues of fact raised in Mr. Moore's Request. Mr. Moore raised the issue of flooding and erosion of his property, which may be an issue of fact but it not relevant and material because the TCEQ does not have the statutory authority or jurisdiction to address flooding or erosion in the context of a TPDES permit. Therefore, there are no issues of disputed fact for the ED to analyze to determine whether there is relevance or materiality in the issue.

VIII. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED 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.

IX. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Jeremy Moore is not an affected person under 30 TAC §§ 55.203.
2. Deny the Request of Jeremy Moore.
3. Should the Commission decide to refer this case to SOAH, refer the case to Alternative Dispute Resolution for a reasonable time.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, *Executive Director*

Erin Chancellor, *Director*
Office of Legal Services

Charmaine Backens, *Deputy Director*
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

X. CERTIFICATE OF SERVICE

I certify that on March 18, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016258001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.

A handwritten signature in black ink, appearing to read "Michael T. Parr II". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Michael T. Parr II, Staff Attorney
State Bar No. 24062936

MAILING LIST
Landra Partners, LLC
TCEQ Docket No. 2024-0134-MWD; TPDES Permit No. WQ0016258001

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Wasteline Engineering, Inc.
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Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S):

Jeremy Moore
4191 US Highway 82
Bells, Texas 75414

INTERESTED PERSON(S):

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Attachment A

Landra Partners LLC, GIS Map

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 01/12/2024
CRF 0098047
Cartographer: jstalsby

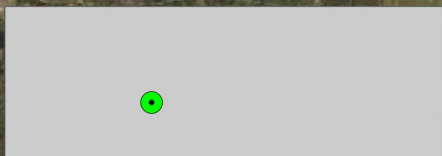


- Facility
- Outfall
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius
- Requestor

Requestor name	Distance in miles
Jeremy Moore	1.16

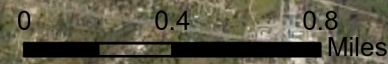
Jeremy Moore
4191 US Highway 82
Bells, Texas 75414-4600

Mull Creek



Grayson County

The facility is located in Grayson 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 Grayson County (red) in the state of Texas.



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.