

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

March 18, 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 LANDRA PARTNERS,
LLC FOR NEW TPDES PERMIT NO. WQ0016258001
TCEQ DOCKET NO. 2024-0134-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 "Josiah Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-0134-MWD

APPLICATION BY LANDRA	§	
PARTNERS, LLC FOR NEW TPDES	§	TEXAS COMMISSION ON
PERMIT NO. WQ0016258001	§	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) at the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to request for hearing in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is an application by Landra Partners, LLC (Applicant or Landra Partners) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016258001 (the Application). The TCEQ Chief Clerk's office received one timely hearing request from an individual—Jeremy Moore. For the reasons stated herein, OPIC respectfully recommends the Commission grant Mr. Moore's request and refer this Application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-3 contained in §III.B.

B. Description of Application and Facility

Landra Partners has applied to the TCEQ for new TPDES Permit No. WQ0016258001. If issued, the permit would authorize discharge of treated

domestic wastewater from a proposed wastewater treatment facility (the Facility) at a daily average flow not to exceed 55,000 gallons per day. The proposed Facility would be located approximately 3,600 feet northwest of the intersection of U.S. Highway 82 and U.S. Highway 69 in Grayson County. The proposed Facility would be an activated sludge process plant, operated in the extended aeration mode with treatment units that would include a bar screen, aeration basin, final clarifier, chlorine contact chamber, and sludge digester. Sludge generated from the treatment Facility would be hauled by a registered transporter and disposed of at the City of Colony's Stewart Creek wastewater treatment facility, a TCEQ-authorized land application site (TPDES Permit No. WQ0011570001) in Denton County. The proposed permit would also authorize the disposal of sludge at a co-disposal landfill, a TCEQ-authorized land application site or wastewater treatment facility, or a facility that further processes sludge.

The proposed Facility would discharge to an unnamed tributary, then to Mill Creek, then to Choctaw Creek, and then to the Red River below Lake Texoma in Segment No. 0202 of the Red River Basin. The designated water quality uses for Segment No. 0202 are primary contact recreation, public water supply, and a "high" aquatic life use. Mill Creek is assigned a "limited" aquatic life use, and the unnamed tributary has a "minimal" aquatic life use designation. The Executive Director (ED) did not evaluate Choctaw Creek due to its distance. The ED's office performed a Tier I Antidegradation Review and preliminarily determined that the Facility would not impair existing water quality uses. No Tier II Antidegradation Review was performed.

C. Procedural Background

The TCEQ received the Application on November 28, 2022, and declared it administratively complete on January 5, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Herald Democrat* on January 12, 2023. The NORI was available to be viewed at the Sherman Public Library starting on January 12, 2023 until the end of the comment period. The ED completed the technical review of the Application on February 8, 2023. The Applicant published the Notice of Application and Preliminary Decision in the *Herald Democrat* on April 4, 2023. The public comment period for this Application ended on May 4, 2023. The Chief Clerk mailed the ED's Decision and Response to Public Comment on October 26, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was November 27, 2023. The TCEQ Chief Clerk's office received a timely hearing request from one individual—Jeremy Moore.

II. Applicable Law

This Application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.¹ 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.

¹ Tex. S.B. 709, 84th Leg., R.S. (2015).

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.²

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;

² 30 TAC § 55.201(d).

- (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.³

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.⁴

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must 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 ED's RTC,

³ 30 TAC § 55.203(c).

⁴ 30 TAC § 55.203(d).

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 the Requestor is an Affected Person

The Commission received one timely hearing request from Jeremy Moore—who also submitted timely comments. According to the map provided by ED staff, Mr. Moore resides 1.16 miles away from the proposed Facility. Mill Creek runs through his property—directly downstream of the proposed Facility. Although Mr. Moore is not included on the landowner map provided by the Applicant, his property includes an already heavily-eroded bend in Mill Creek that is just beyond one mile downstream from the proposed outfall. Moreover, the landowner map shows that Mill Creek runs within and along the Applicant's property boundary for several hundred yards before running onto others' property. Mr. Moore therefore resides approximately one mile from the Applicant property boundary and within a mile downstream of where the proposed discharge route would leave the Applicant's property.⁵

Mr. Moore raises concerns regarding the Facility's effect on the water quality on his property, and the consequences for human health and the health

⁵ These conclusions were reached by comparing the GIS map provided by ED staff, the Landowner Information map provided in the Application, and GoogleMaps satellite images.

of his cattle and local wildlife. He also raises concerns about the appropriateness of the discharge route and the potential for the discharge to cause erosion damage on his property. These concerns are interests that are protected by the law under which this application is considered, and a reasonable relationship exists between those interest and regulation of the Facility.⁶

Mr. Moore’s downstream proximity to the Facility, outfall, and the discharge route, combined with his stated interests, demonstrates that he is likely to be affected in a way not common to members of the general public—and thus possesses a personal justiciable interest in this matter.⁷ Therefore, OPIC finds that Jeremy Moore qualifies as an affected person.

B. Which Issues Raised in the Hearing Request are Disputed

The affected person discussed above raised the following issues:

1. Whether the discharge route is suitable for the amount of proposed discharge.
2. Whether the proposed discharge would negatively affect water quality along the discharge route.
3. Whether the Application would negatively affect human health, livestock, or local wildlife.

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. The issues raised here are issues of fact.

⁶ See 30 TAC § 55.203(c)(1) & (3). See also 30 TAC § 309.12.

⁷ See 30 TAC § 55.203(a).

D. Whether the Issues were Raised During the Public Comment Period

All issues were specifically raised by a requestor who qualifies as an affected person 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 comments.

F. Whether the Issues are Relevant and Material to the Decision on the Application

The affected person's hearing request raises issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii) as well as other issues that are not relevant and material. 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 this permit. Relevant and material issues are those governed by the substantive law under which this permit is to be issued.⁸

Suitability of the Discharge Route

The affected person in this matter is concerned that the proposed discharge route will not function properly and that the proposed discharge will cause erosion damage. Mr. Moore claims that the flow of Mill Creek varies, and he worries that the proposed discharge would substantially change the creek's flow rates. He also raises concerns about erosion—claiming that this change in flow rates could worsen erosion along his portion of Mill Creek. Proper

⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

functioning of a discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12. Therefore, Issue no. 1, relating to suitability of the discharge route, is relevant and material to the Commission’s decision regarding this Application and is appropriate for referral to SOAH.

Water Quality, Human Health, Wildlife, and Livestock

The affected person in this matter is concerned with adverse effects to water quality and its impacts on human health, local wildlife, and livestock. Mr. Moore opines that the facility would change the flow rates and water quality in Mill Creek—which runs through his property. Mr. Moore has children that access the creek regularly, and he does not want them to be exposed to the proposed discharge. Mr. Moore also claims that his cattle and local wildlife rely on the water from Mill Creek and consume the grasses that it feeds.

The Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (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.”⁹ According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic

⁹ 30 TAC § 307.1.

organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.”¹⁰ Therefore, Issue nos. 2 and 3—relating to water quality and its impacts on human health, local wildlife, and livestock—are relevant and material to the Commission’s decision regarding this Application and are appropriate for referral to SOAH.

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.¹¹ 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.

¹⁰ 30 TAC § 307.4(d).

¹¹ 30 TAC § 50.115(d)(2).

V. Conclusion

For the reasons stated above, OPIC finds that Jeremy Moore qualifies as an affected person. Therefore, OPIC respectfully recommends that the Commission grant his hearing request and refer this Application for a contested case hearing at SOAH on Issue nos. 1-3 contained in §III.B with a maximum duration of 180 days.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that March 18, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.

Josiah Mercer
Josiah T. Mercer

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