

TCEQ DOCKET NO. 2024-0596-MWD

APPLICATION BY § **BEFORE THE**
THE PSALM 25:10 FOUNDATION FOR § **TEXAS COMMISSION ON**
TPDES PERMIT NO. WQ0016202001 § **ENVIRONMENTAL QUALITY**

APPLICANT’S RESPONSE TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION

Psalm 25:10 Foundation (“Applicant”) files this Response to Requests for Hearing and Reconsideration pursuant to 30 Tex. Admin. Code § 55.209 and the Agenda Setting letter dated April 17, 2024, in the above-captioned matter.

I. INTRODUCTION

The Office of the Chief Clerk received requests for a contested case hearing from Trennon Massengale (“Mr. Massengale”), Richard Moore (“Mr. Moore”), Paul Hess (“Mr. Hess”), Glenn Guthrie (“Mr. Guthrie”) and the Judy Raylene West Family Living Trust (the “West Trust”) and its trustees, Ronald and Judy Raylene West (the “West”). The Office of the Chief Clerk also received requests for reconsideration filed by Mr. Massengale, Mr. Moore, Mr. Hess and Mr. Guthrie.

For the reasons stated herein, Applicant asserts that the Commission should deny the hearing requests of Mr. Massengale, Mr. Hess, Mr. Guthrie, and the Wests and West Trust, and defers to the Commissioners on the hearing request of Mr. Moore. Furthermore, Applicant asserts that the Commission should deny the pending requests for reconsideration filed by Mr. Massengale, Mr. Moore, Mr. Hess, and Mr. Guthrie.

II. PROCEDURAL BACKGROUND

On August 12, 2022, Applicant filed its application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016202001 (“Application”), for authorization to discharge treated domestic wastewater from Applicant’s wastewater treatment facility, Prairieview WWTP 1 (the “Facility”), at a daily average flow not to exceed 500,000 gallons per day. The

Facility will be located approximately 0.5 miles northwest of the intersection of West Farm-to-Market Road 4 and Farm-to-Market Road 2331, in Johnson County, Texas 76044.

On September 27, 2022, the Commission declared the Application administratively complete. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the Cleburne Times Review on October 27, 2022. After completing a technical review of the Application, on January 6, 2023, the Executive Director issued a preliminary decision in support of the permit application and prepared a draft permit. On December 5, 2023, the Executive Director issued its Final Decision Letter in favor of the Application, finding that the Application met all statutory and regulatory requirements. Applicant published the Notice of Application and Preliminary Decision (NAPD) in Cleburne Times Review in English on March 28, 2023.

A public meeting for this Application was held on September 19, 2023, and the public comment period ended on September 19, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the Executive Director's decision was January 4, 2024. The Office of the Chief Clerk received timely hearing requests from Massengale, Moore, Hess, the West Trust, and the Wests, and requests for reconsideration from Massengale, Moore, and Hess. As such, Applicant now files this response to requests for hearing and reconsideration on the Application.

III. REVIEW STANDARD

A. Requests for Hearing

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. 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. 30 TAC § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, 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;
- (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.

30 TAC § 55.203(c).

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided. 30 Tex. Admin. Code 55.201(d). The request must also 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 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; and
- (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.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the Executive Director's decision under Title 30, TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the Executive Director's decision and Response to Comments ("RTC"). The request must expressly state that the person is requesting reconsideration of the Executive Director's decision and give reasons why the decision should be reconsidered.

IV. EVALUATION OF REQUESTS

The Commission received five hearing requests on the Application, and four requests for reconsideration. Applicant has evaluated each request below.

Trennon Massengale

Mr. Massengale resides at 9052 FM 4, Godley, Texas 76044. Mr. Massengale's property is located more than one mile downstream from the proposed discharge point. As such, distance restrictions or other limitations imposed by law on the affected interest argue against granting Mr. Massengale standing. 30 TAC § 55.203(c)(2).

Historically, the Commission has considered people who own property adjacent to the facility or discharge route within one mile downstream from the discharge point to be affected

persons. Because Mr. Massengale's property is located more than one mile downstream from the discharge point, he not only fails to meet the TCEQ's commonly applied one-mile standard for determining affected person status, but further, it is unreasonable to expect that at such a distance, he would be affected by the facility or the discharge in a manner that is not common to members of the general public. The distance between Mr. Massengale's property and the discharge point represents a significant disconnect between his interests as an individual and the regulated activity and, as such, he has not demonstrated that he has a personal justiciable interest in this matter. Therefore, the requests for hearing and reconsideration submitted by Mr. Massengale must be denied.

Richard Moore

Mr. Moore timely submitted both a request for hearing and a request for reconsideration of the Executive Director's decision in this matter. Mr. Moore resides at 6165 FM 2331, Godley, Texas 76044. Mr. Moore's property is located immediately adjacent to and approximately the 500 feet from the proposed Facility, and within 3/4 mile downstream from the discharge point. Given Mr. Moore's proximity to the Facility and discharge point, Applicant does not take a position on standing. Accordingly, Applicant defers to the Commissioners on Mr. Moore's request for a contested case hearing.

Applicant's recommendation, however, does not apply to Mr. Moore's request for reconsideration. In his hearing request, Mr. Moore provided a list of 16 "Issues to be Considered in a Contested Case Hearing" but did not enumerate a single issue that should be reconsidered by the Executive Director, let alone, provide any reason why reconsideration was necessary. As such, Mr. Moore's request for reconsideration failed to meet the requirements of 30 TAC § 55.201(e), and therefore, should be denied.

Paul Hess

The requests for hearing and reconsideration submitted by Mr. Hess fail to comply with any of the requirements of 30 TAC § 55.201(d). Mr. Hess's requests for hearing and reconsideration consisted of a blanket statement directing the Commission to comments previously filed on December 12, 2023. The requests and comment incorporated by reference fail to identify any specific property location by which the Commission could reasonably assess whether Mr. Hess is an affected person. The only address Mr. Hess has provided to date was a mailing address listed on a "TCEQ Registration Form" dated September 19, 2023, which was filed in conjunction with Mr. Hess's written public comment. It is impossible to ascertain from Mr. Hess's hearing request, whether Mr. Hess resides at the mailing address provided on the TCEQ Registration Form, 8850 CR 1127, Godley, Texas 76044. However, even if said address is Mr. Hess's primary residence, the requests filed by Mr. Hess fail to identify any justiciable interest affected by the application.

In the public comment submitted by Mr. Hess on December 12, 2023, which formed the basis of his hearing request, Mr. Hess outlines a list of questions he would like to see answered. Nowhere in those questions—nor in any other oral or written comments/requests submitted by Mr. Hess to date—does he assert personal concerns that should be addressed in a contested hearing or identify any justiciable interest that he believes could be affected by the application. Based on his failure to present information necessary to ascertain whether he is an affected person and lack of demonstration of any likelihood of that he would be affected by the Applicant's Facility in a way not common to members of the general public, Mr. Hess's requests should be denied.

Furthermore, Mr. Hess's request for reconsideration should also be denied on grounds that he did not specify any of the Executive Director's responses from the RTC that he disputes, the factual basis of the dispute, or list any disputed issues of law as specified by 30 Tex. Admin. Code

§ 55.201(d)(4)(B). As such, Mr. Hess's request for reconsideration failed to meet the requirements of 30 TAC § 55.201(e), and therefore, should be denied.

Glen Guthrie

The requests for hearing and reconsideration submitted by Mr. Guthrie also fall short of meeting the requirements of 30 TAC § 55.201(d). Although Mr. Guthrie provided an address of 8801 CR 1127, Godley Texas 76044 at the top of his request, he failed to provide any written statement specifically explaining the location and distance of his property in relation to the Facility or activity that is the subject of the Application. Instead, Mr. Guthrie offered multiple contradicting statements about his location, which make it impossible for the Commission to reasonably assess whether Mr. Guthrie is an affected person. For example, Mr. Guthrie notes in his request that "our property is adjacent to the development, we are on the northside." Mr. Guthrie contradicts that statement by later noting that his property "will be in direct Southwind of the facility." Mr. Guthrie further states that he is located "adjacent to the facility." It is not possible for Mr. Guthrie's property to be located north, south, and adjacent to the Facility, and as such, it is impossible to determine whether Mr. Guthrie is an affected person. Accordingly, without a specific description of his property, Mr. Guthrie has failed to present necessary information as part of a timely hearing request in accordance with 30 TAC § 55.201(d). Further, the Commission's rules do not make available the opportunity to correct such a deficiency after the fact. Therefore, the requests filed by Mr. Guthrie must be denied.

Additionally, Mr. Guthrie's request for reconsideration does not comply with the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.201(e). Mr. Guthrie failed to identify or dispute any issues raised by the Executive Director in the RTC, specify the factual basis of the dispute, or list any disputed issues of law. Furthermore, Mr. Guthrie did not provide any

explanation as to why reconsideration is necessary. For these reasons, Mr. Guthrie’s request for reconsideration should be denied.

Judy Raylene West Family Living Trust & Ronald and Judy Raylene West

The Wests and West Trust filed a request for a contested case hearing on January 4, 2024. Although the hearing request was timely, the Wests and West Trust had not previously submitted comments on the Application. It is well understood that all hearing requests must be based on a requestor’s timely submitted comments. The Agenda Setting letter in this matter notes that “[a] valid request for a contested case hearing must: ... raise disputed issues of fact that are relevant and material to the commission's decision on the application which were *raised by the requestor during the comment period* and not withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.” Here, the Wests and West Trust have not complied with this requirement. As previously noted, the public comment period ended on September 19, 2023. The Wests and West Trust did not timely submit comments by the September 19, 2023 deadline. In fact, they did not make their first appearance in this matter until January 4, 2024, with the filing of their request for a contested case hearing.

Because the Wests and West Trust did not file public comments by the September 19, 2023 deadline—or at all—their hearing request is not only untimely, but it also cannot be based on issues raised in previously submitted comments. Therefore, the hearing request submitted by the Wests and West Trust must be denied.

V. CONCLUSION

For the reasons stated, the Applicant respectfully requests that the Commission take the following actions:

1. Applicant recommends the Commission deny requests for a contested case hearing filed by Trennon Massengale, Paul Hess, Judy Raylene West Family Living Trust, and Ronald and Judy Raylene West.
2. Applicant defers to the Commissioners on the request for a contested case hearing filed by Richard Moore.
3. Applicant recommends the Commission deny requests for reconsideration filed by Trennon Massengale, Richard Moore, and Paul Hess.
4. If the Commission decides to refer this case to SOAH, then the Applicant recommends that the maximum duration of the hearing be 150 days.

Respectfully submitted,

Gregg Law PC

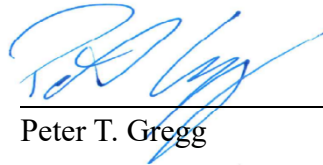


Peter T. Gregg
State Bar No. 00784174
910 West Ave., No. 3
Austin, Texas 78701
Phone: 512-522-0702
Fax: 512-727-6070
pgregg@gregglawpc.com

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2024, a true and correct copy of the foregoing document has been served on all parties and their respective counsel of record in accordance with the Texas Rules of Civil Procedure.



Peter T. Gregg