

**TCEQ DOCKET NO. 2024-0665-MWD**

<b>REQUESTS TO</b>	<b>§</b>	<b>BEFORE THE</b>
<b>RECONSIDER THE</b>	<b>§</b>	
<b>EXECUTIVE DIRECTOR'S</b>	<b>§</b>	
<b>DECISION TO ISSUE A</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>RENEWAL AND MAJOR</b>	<b>§</b>	
<b>AMENDMENT TO TPDES</b>	<b>§</b>	
<b>PERMIT NO.</b>	<b>§</b>	<b>ON</b>
<b>WQ0015618001 TO</b>	<b>§</b>	
<b>LOVES TRAVEL STOPS &amp;</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>COUNTRY STORES, INC.</b>	<b>§</b>	

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**EXECUTIVE DIRECTOR'S RESPONSE TO  
MURPHY DESHONG'S REQUESTS FOR RECONSIDERATION**

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TO THE HONORABLE COMMISSIONERS:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) and files this Response to Murphy DeShong's (Requestor) Request for Reconsideration (RFR) on the ED's preliminary decision to issue a Renewal of and a Major Amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015618001 to Love's Travel Stops & Country Stores Inc. (Applicant), and would respectfully show as follows:

**I. BACKGROUND INFORMATION**

The Applicant filed an application for a Renewal and a Major Amendment on April 26, 2023. The public notices for the application, the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Amendment (NORI) was published in English in the *Amarillo Globe-News* June 21, 2023, and published in Spanish in the *El Mensajero* on June 21, 2023. ED staff completed the technical review of the application on July 26, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English in the *Amarillo Globe-News* on August 30, 2023, and published in Spanish in

the *El Mensajero* September 6, 2023. The public comment period ended on October 6, 2023. After corrections were made to the landowners list, a Combined NORI/NAPD was published in English in the *Amarillo Globe-News* on December 13, 2023, and published in Spanish in the *El Mensajero* on December 13, 2023. The subsequent public comment period ended on January 12, 2024. The ED filed its response to comments on February 12, 2024. The period for submitting hearing requests and requests for reconsideration ended on March 18, 2024. On February 27, 2024, and March 4, 2024, pursuant to Title 30 of the Texas Administrative Code (30 TAC), section (§) 55.201(e), Requestor filed an RFR expressly requesting reconsideration of the ED's decision and giving reasons why the decision should be reconsidered.

### ***Requestor's claims and arguments***

First, Requestor asserts that Applicant has failed to comply with a permit condition because Applicant did not obtain permission from affected property owners to use the planned discharge route.<sup>1</sup> Requestor's assertion stems from language in the draft permit which reads:

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.<sup>2</sup>

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<sup>1</sup> RFR from Murphy DeShong, rec'd on CID on Feb. 27, 2024.

<sup>2</sup> Draft TPDES Permit No. WQ0015618001, p. 1.

Requestor maintains that the Applicant has failed to acquire the necessary property rights to use the discharge route, and so asks for reconsideration of the ED's decision.

Second, Requestor asserts that Applicant failed to comply with a permit condition because Applicant has not installed and maintained adequate safeguards to prevent the discharge of inadequately treated wastewater during electrical power failures.<sup>3</sup> Requestor's assertion comes from Operational Requirement #4 in the draft permit, which states:

The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.<sup>4</sup>

Requestor maintains that the Applicant has failed to install and maintain adequate safeguards, and so asks for reconsideration of the ED's decision.

Third and finally, Requestor asserts that Applicant failed to obtain the proper buffer zone required to abate and control nuisance odors.<sup>5</sup> Applicant indicated in its application that it would comply with the nuisance odor requirement by owning a 150-foot buffer zone between the facility and the nearest property line. However, the Requestor asserts that at a meeting with Randall County Commissioners, Applicant presented a map of the facility in which part the buffer zone was represented as being 136.02 feet wide. Because the buffer zone is smaller than required by regulation,<sup>6</sup>

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<sup>3</sup> RFR from Murphy DeShong, rec'd on CID on Feb. 27, 2024.

<sup>4</sup> Draft TPDES Permit No. WQ0015618001, p. 16.

<sup>5</sup> RFR from Murphy DeShong, rec'd on CID on Mar. 4, 2024.

<sup>6</sup> 30 TAC § 309.13(e).

Requestor asks for reconsideration of the ED's decision.<sup>7</sup>

## **II. DISCUSSION OF FACTS AND APPLICABLE LAW**

The TCEQ's rules concerning RFRs are found at 30 TAC § 55.201(e) and state that any person may file a request for reconsideration of the ED's decision.<sup>8</sup> The request must be filed during the hearing request period.<sup>9</sup> The request must also contain the name, address, and phone number of the person filing the request, and it must expressly state that the person filing the request is requesting reconsideration of the ED's decision.<sup>10</sup> Here, Requestor submitted two requests for reconsideration during the hearing request period; one request is dated February 26, 2024, and was received on the Commissioners Integrated Database (CID) on February 27, 2024, and the other request is dated March 1, 2024, and was received on CID on March 4, 2024. Both requests listed Requestor's required identifying information and expressly stated that Requestor is requesting a reconsideration of the ED's decision. Thus, Requestor properly filed his RFRs.

Requestor's first reason for requesting reconsideration stems from language in the draft permit stating that it is the Applicant's responsibility to obtain property rights as necessary to use the discharge route.<sup>11</sup> Requestor characterizes this language as a condition and claims that, because of Applicant's failure to comply with said condition, TCEQ should deny issuing the draft permit. However, Requestor incorrectly characterizes the permit language as a condition. Rather, this language merely explains that a TPDES permit does not grant the permittee a right to use private or public property to convey wastewater along the discharge route. TCEQ is charged with the

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<sup>7</sup> 30 TAC § 305.125(1).

<sup>8</sup> 30 TAC § 55.201(e).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Draft TPDES Permit No. WQ0015618001, p. 1.

duty to establish the level of quality to be maintained in, and control the quality of, water in the state.<sup>12</sup> TCEQ implemented the TPDES program to fulfill this duty. Water in the state is a term of art that means groundwater, percolating or likewise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.<sup>13</sup> The definition does not use ownership of the underlying land as a factor which identifies water as being water in the state. Similarly, the TPDES program does not consider the ownership of property when establishing water quality criteria in a TPDES permit. That is, effluent discharged under a TPDES permit will have to achieve the same water quality criteria whether that effluent flows over private or public property.

Because the TPDES program fulfills the TCEQ's duty to maintain and control the quality of water in the state, TPDES permits are only concerned with water quality. The language on the first page of the permit lets the public know that the TPDES permit does not grant the permittee any authority to use public or private property because the permit is concerned with water quality. A TPDES permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action. The permit language, then, describes a limit on the permit's authority by placing the responsibility for obtaining the right to use public and private property on the Applicant. It is not a basis which the TCEQ could use to refuse to issue a TPDES

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<sup>12</sup> TWC § 26.011

<sup>13</sup> TWC § 26.001(5).

permit. Therefore, the Requestor's first reason for reconsideration does not provide a valid reason to reconsider the ED's decision.

Requestor's second reason for requesting reconsideration is based in the draft permit's Operational Requirement #4, which requires the Applicant to install and maintain adequate safeguards to prevent the discharge of inadequately treated wastes during an electrical power outage. Requestor supports his point by referencing the Notice of Violation (NOV) that TCEQ issued to the Applicant on November 23, 2022, for failure to install and maintain the safeguards contemplated in Operational Requirement #4. Requestor also references an NOV that TCEQ issued to the Applicant on October 10, 2023. An applicant's compliance history report lists all the NOVs relevant to the consideration of an applicant's application. The period covered by the compliance history report must include the five years prior to the date the permit application was received.<sup>14</sup> Here, TCEQ received the application on April 26, 2023, so the smallest date range for the compliance history report is from April 26, 2018, to April 26, 2023. However, the Applicant's compliance history report considered data from a larger range, from April 26, 2018, to June 27, 2023. Applicant's compliance history report lists the November 23, 2022, NOV and classifies it as a moderate violation. This NOV was used to calculate the compliance history classification for both the Applicant and the facility, and both were classified as satisfactory. The NOV issued on October 10, 2023, however, is not included in the compliance history report because it is outside the required date range. Requestor, then, provides information that was already considered, or not required to be considered, during the ED's review of the permit application pursuant to the TCEQ's Chapter 60 rules. Thus, Requestor's

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<sup>14</sup> 30 TAC § 60.1(b).

second reason for reconsideration does not provide a valid reason to reconsider the ED's decision.

Requestor's third reason for requesting reconsideration regards an insufficient buffer zone to abate and control nuisance odors. TCEQ rules require that wastewater treatment facilities, like the Applicant's facility, may not be located less than 150 feet from the nearest property line.<sup>15</sup> In the application, Applicant stated that it would maintain a 150-foot buffer zone to comply with the rules. However, the RFR states that in a meeting with Randall County Commissioners, the Applicant presented a map which displayed the distance between the facility and the nearest property line as 136.02 feet. ED staff confirmed with the Applicant that 136.02 feet was the correct measurement between the facility and the nearest property line. The Applicant has represented to the ED that it plans to purchase the property necessary to create a 150-foot buffer zone, but the Applicant has offered no proof of property ownership as of the date of this filing. Thus, the ED agrees with the Requestor that the Applicant's facility does not comply with 30 TAC § 309.13(e), which materially affects the ED's decision. Therefore, Requestor's third reason for reconsideration provides a valid reason to reconsider the ED's decision.

### **III. CONCLUSION**

Requestor has provided a valid reason to reconsider the ED's decision. Requestor's third argument, that the Applicant's facility is not in compliance with TCEQ's nuisance odor rules, is correct based on the information available to the ED. Applicant has not submitted an alternative odor plan nor proof of ownership for a 150-foot buffer zone around the facility.

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<sup>15</sup> 30 TAC § 309.13(e)(1).

The ED respectfully recommends that the Commissioners grant Requestor's RFR and remand the application back to the ED for further action on the buffer zone requirement.

Respectfully submitted,

Texas Commission on Environmental  
Quality

Kelly Keel,  
Executive Director

Charmaine Backens, Deputy Director  
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REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

#### **CERTIFICATE OF SERVICE**

I certify that I have served a true and correct copy of the foregoing by certified mail, return receipt requested, regular mail, hand delivery, electronic mail, and/or fax transmission on May 23, 2024, to the parties on the attached mailing list.



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