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Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 16, 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 COLLEGE MOUND  
SPECIAL UTILITY DISTRICT & POST OAK MHC, LLC  
TCEQ DOCKET NO. 2024-1225-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2024-1225-MWD**

<b>APPLICATION BY COLLEGE MOUND SPECIAL UTILITY DISTRICT &amp; POST OAK MHC, LLC FOR NEW TPDES PERMIT NO. WQ0016312001</b>	<b>§ § § § §</b>	<b>BEFORE THE  TEXAS COMMISSION ON  ENVIRONMENTAL QUALITY</b>
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**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUEST FOR HEARING AND REQUEST FOR RECONSIDERATION**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Request for Hearing and Request for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by College Mound Special Utility District and Post Oak MHC, LLC (Applicants) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016312001. The Commission received timely comments, a hearing request, and a request for reconsideration from Maris M. Chambers on behalf of the City of Terrell. For the reasons stated herein, OPIC respectfully recommends that the Commission find that the City of Terrell is an affected person, and further recommends that the Commission grant Maris M. Chambers’ hearing request on its behalf. OPIC recommends the denial of the request for reconsideration.

## **B. Description of Application and Facility**

College Mound Special Utility District and Post Oak MHC, LLC applied to the TCEQ for a new TPDES permit to authorize discharge of treated domestic wastewater at a daily average flow not to exceed 0.0625 million gallons per day (MGD) in the Interim I phase, 0.125 MGD in the Interim II phase, and 0.25 MGD in the Final phase.

The proposed facility would be an activated sludge process plant operated in the complete mix mode with treatment units that include four aeration basins, final clarifiers, a chlorine contact chamber, and four sludge digesters. Sludge generated from the treatment facility would be hauled by a registered transporter and disposed of at the Greenville Wastewater Reclamation Center, a TCEQ-authorized land application site in Hunt 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 treated effluent would be discharged to an unnamed tributary, then to Anthony Branch, then to Kings Creek, and finally into Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin.

The proposed facility would serve a residential community and would be located approximately 1.73 miles southeast of the intersection of Abner Road and Wilson Road in Kaufman County.

### **C. Procedural Background**

The application was received on March 10, 2023, and declared administratively complete on May 17, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English in the *Kaufman Herald* on May 25, 2023, and in Spanish in *Al Dia* on May 31, 2023. The Executive Director (ED) completed the technical review of the application on August 30, 2023. The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Kaufman Herald* on October 5, 2023, and in Spanish in *Al Dia* on October 11, 2023. The public comment period ended on November 10, 2023. The ED's Response to Comments (RTC) was mailed on April 10, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was May 10, 2024.

## **II. APPLICABLE LAW**

### **A. Hearing Requests**

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 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.

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 requestor'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.<sup>1</sup>

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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may

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<sup>1</sup> 30 TAC § 55.201(d).

be considered affected persons. 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;
- (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.<sup>2</sup>

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.<sup>3</sup>

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

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<sup>2</sup> 30 TAC § 55.203(c).

<sup>3</sup> 30 TAC § 55.203(d).

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, 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.

#### **B. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under 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 ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

### **III. ANALYSIS OF HEARING REQUEST**

#### **A. Whether the requestor is an affected person**

Maris M. Chambers submitted timely comments and a hearing request on behalf of the City of Terrell. The request indicates that the City of Terrell is a local government<sup>4</sup> with the authority to inspect the proposed facility for compliance with various state environmental statutes and TCEQ rules and orders issued thereunder.<sup>5</sup> In addition to these investigatory powers, the City has the

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<sup>4</sup> Tex. Health & Safety Code §§ 361.003(17) and 382.003(8); and Tex. Water Code § 26.001(18).

<sup>5</sup> Tex. Health & Safety Code §§ 361.032; and Tex. Water Code § 26.173.

authority to file civil suit in the same manner as the TCEQ for injunctive relief, civil penalties, or both.<sup>6</sup> Furthermore, the proposed facility, proposed outfall, proposed discharge route, and proposed service area all fall within one mile of the City of Terrell's corporate limits and extraterritorial jurisdiction (ETJ). This proximity is reiterated by the map created by ED staff, which indicates that the outfall to the City of Terrell corporate limits is 0.42 miles, and the outfall to the City of Terrell ETJ is 0.33 miles.

The issues raised in the request include concerns about regionalization; antidegradation; Environmental Protection Agency (EPA) approval and notice; TCEQ regional office participation; accuracy in the NAPD, the Supplemental Permit Information Form (SPIF), the Domestic Administrative Report 1.1, and the Domestic Technical Report 1.0; and nuisance odors.

Governmental entities, including local governments, with authority under state law over issues raised by the application, may be considered affected persons.<sup>7</sup> Furthermore, when determining whether local governments are affected persons, factors related to their statutory authority over or interest in the issues relevant to the application should be considered.<sup>8</sup> Some of the City of Terrell's concerns are protected by the law under which the application will be considered. Further, the City has demonstrated that it has authority under state law over some of the issues it has raised. Finally, there is substantial proximity

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<sup>6</sup> Tex. Water Code § 7.351.

<sup>7</sup> 30 TAC § 55.203(b).

<sup>8</sup> 30 TAC § 55.203(c).



between Terrell's city limits and ETJ, and the proposed facility. In combination, these factors give the City a personal justiciable interest and distinguish that interest from the general public. Therefore, OPIC finds that the City of Terrell qualifies as an affected person.

**B. Which issues raised in the hearing request are disputed<sup>9</sup>**

The affected requestor raised the following disputed issues:

1. Whether the permit violates the TCEQ's policy on regionalization.
2. Whether the permit will violate the TCEQ's antidegradation policy.
3. Whether the TCEQ's regional office adequately responded to the Request for Comments on Draft Permit included in the application.
4. Whether the proposed permit was accurate.
5. Whether the proposed permit is adequately protective against nuisance odors.

**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.

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<sup>9</sup> The City asked whether the draft permit was approved by EPA and whether EPA received adequate notice. Based on the available record, including the RTC, it appears the draft permit was submitted to EPA, and on October 30, 2023, EPA responded that it had no objection to the draft permit. OPIC finds this issue is no longer disputed and should not be referred to SOAH. Therefore, the disputed issues list in this subsection does not include the issue.

**D. Whether the issues were raised during the public comment period**

Issues No. 1-5 in Section III.B. were specifically raised by an affected requestor 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 public comments.

**F. Whether the issues are relevant and material to the decision on the application**

The hearing request raised 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). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued.<sup>10</sup>

*Regionalization*

TCEQ's regionalization policy comes from Section 26.081 of the Texas Water Code, which implements "the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in

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<sup>10</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

the state.” TCEQ’s wastewater permit application requires the applicant for a new permit to provide information concerning other wastewater treatment facilities that exist near the applicant’s proposed treatment facility site. The Applicant is required to state whether any portion of the Applicant’s proposed service area is located in an incorporated city, whether its proposed service area is located within another utility’s certificate of convenience and necessity area, and whether there is a facility, or any sewer collection lines located within the three-mile area surrounding the proposed facility site. Accordingly, Issue No. 1 is relevant and material to the Commission’s decision on this Application.

#### *Antidegradation*

Antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission’s antidegradation policy and contains provisions for implementation of the policy. As part of the ED’s antidegradation review, the existing uses of a waterbody are determined, and the draft permit is designed to protect those uses. Therefore, Issue No. 2 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

#### *TCEQ Regional Office Approval*

The City raised concerns about the lack of response from TCEQ’s regional office as no responsive communications from the regional office were included in TCEQ’s file for this application. Based on the available record, OPIC cannot determine whether TCEQ Region 4 should have responded to the Request for

Comments regarding the draft permit, and if so, why they did not. Therefore, Issue No. 3 is potentially relevant and material.

Permit Accuracy

TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information.<sup>11</sup> Therefore, Issue No. 4 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Nuisance Odors

TCEQ regulates nuisance conditions under 30 TAC § 309.13(e) which requires applicants to implement a nuisance odor abatement plan. Further, permits issued by TCEQ do not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of his or her property. Because 30 TAC § 309.13 addresses nuisance conditions as described by a requestor, Issue No. 5 is relevant and material to the Commission's decision on this Application.

**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. 30 TAC § 50.115(d)(2). 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.

#### **IV. REQUESTS FOR RECONSIDERATION**

Maris M. Chambers submitted a request for reconsideration on behalf of the City of Terrell which articulated the same concerns discussed in section III.B. While OPIC is recommending a hearing and referral of issues encompassing requestor's concerns expressed in the request for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that the request for reconsideration be granted. As no such record currently exists, OPIC cannot recommend the request be granted at this time.

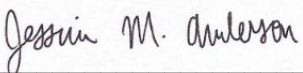
#### **V. CONCLUSION**

Having found that the City of Terrell qualifies as an affected person in this matter, OPIC respectfully recommends the Commission grant Maris M. Chambers' hearing request on its behalf and refer Issue Nos. 1-5 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of

180 days. OPIC further recommends the Commission deny the pending request for reconsideration.

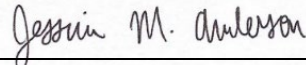
Respectfully submitted,

Garrett T. Arthur  
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By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing and Request for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
Jessica M. Anderson

**MAILING LIST**  
**COLLEGE MOUND SPECIAL UTILITY DISTRICT & POST OAK MHC, LLC**  
**TCEQ DOCKET NO. 2024-1225-MWD**

FOR THE APPLICANT

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FOR ALTERNATIVE DISPUTE  
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