

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*

September 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 MOTIVA  
ENTERPRISES LLC FOR TPDES PERMIT NO. WQ0003057000  
TCEQ DOCKET NO. 2024-1229-IWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjali".

Pranjali M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1229-IWD

APPLICATION BY MOTIVA  
ENTERPRISES LLC FOR TPDES  
PERMIT NO. WQ0003057000

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUESTS FOR HEARING

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to requests for hearing in the above-referenced matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application by Motiva Enterprises LLC (Applicant or Motiva) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003057000. The Commission received timely hearing requests from John Beard, Ricky Espree, and Gregory Richard (collectively, the Requestors). For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter and therefore, deny the hearing requests. In the alternative, should the Commission determine that a right to a hearing exists, OPIC finds that the Requestors do not qualify as affected persons.

**B. Description of Application and Facility**

Motiva applied to TCEQ for a renewal of TPDES Permit No. WQ0003057000 to authorize the discharge of non-process area stormwater runoff, hydrostatic

test water, steam condensate, potable waterline flushing, other utility wastewaters, construction stormwater, and post-first flush stormwater on an intermittent and flow-variable basis via Outfall 001; and non- process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, and construction stormwater on an intermittent and flow-variable basis via Outfall 002. The Applicant operates Motiva Enterprises Port Arthur Chemicals, a chemical manufacturing facility (the facility). The facility is located at 4241 Savannah Avenue, in the City of Port Arthur, Jefferson County 77640.

The process wastewater and process area stormwater runoff are pre-treated on-site, then routed to the Motiva Port Arthur Refinery (TPDES Permit No. WQ0000414000) for further treatment and discharge. During periods of heavy rainfall, post-first flush stormwater runoff (excess stormwater runoff) is discharged via Outfall 001. Non- process area stormwater, hydrostatic test water, steam condensate, potable water line flushing, fire water system flushing, construction stormwater runoff and other utility wastewaters are discharged via Outfalls 001 and 002 without treatment. If issued, the permit will not authorize the discharge of domestic wastewater. All domestic wastewaters must be disposed of in an approved manner, such as routing to an approved on-site septic tank and drain field system or to an authorized third party for treatment and disposal. If the draft permit is issued, the effluent would be discharged to Jefferson County Drainage Ditch (JCDD) No. 7 Main Outfall Canal, then to

Alligator Bayou, then to Intracoastal Waterway Tidal in Segment No. 0702 of the Neches-Trinity Coastal Basin.

### **C. Procedural Background**

The TCEQ received the application on June 19, 2023, and declared it administratively complete on August 16, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 23, 2023, in the *Port Arthur News*, and the alternate language NORI was published on August 24, 2023, in *El Perico Hispanic Newspaper*. The Notice of Application and Preliminary Decision (NAPD) was published on March 30, 2024, in the *Port Arthur News*, and the alternate language notice was published on March 28, 2024, in *El Perico Hispanic Newspaper*. The public comment period ended on April 29, 2024. The Chief Clerk mailed the ED's Decision and Response to Comments (RTC) on May 30, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was July 1, 2024. The Commission received timely hearing requests from the Requestors.

### **II. Applicable Law**

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 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.

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.

30 TAC § 55.201(d).

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;
- (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.

30 TAC § 55.203(c).

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.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall 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 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.

### **III. Analysis of Hearing Requests**

#### **A. Right to a Contested Case Hearing**

As a threshold matter, Texas Water Code (TWC) § 26.028(d) states that the Commission may approve an application to renew a permit without a public hearing under certain conditions. *See also* 30 TAC §§ 50.113(d)(4), 55.211(d)(4). Commission Rule 55.201(i)(5) provides that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if:

- (A) the applicant is not applying to increase significantly the quantity of waste to be discharged or change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TAC § 55.201(i)(5); *see* TWC § 26.028(d).

Applying these requirements to the application under consideration, first, because this application is for renewal of an existing permit, the draft permit would not increase the quantity of waste that could be discharged, or change the pattern or place of discharge, from the existing permit.

Second, effluent limitations and monitoring requirements would remain the same as existing permit requirements. Thus, the activity to be authorized by the renewal permit will maintain the quality of waste authorized to be discharged.

Third, the public was provided notice of the right to request a public meeting on this application, and TCEQ received seven requests for public meeting or public hearings. The ED must hold a public meeting if the ED determines that there is a substantial or significant degree of public interest in an application, or a member of the legislature who represents the general area in which the facility is located requests that a public meeting be held. 30 TAC § 55.154(c). The ED denied the public meeting requests on May 23, 2024. Though the ED declined to hold a public meeting, the required opportunity has been given.

Fourth, within the RTC, the ED has considered and responded to all timely and significant public comments.

Finally, Applicant's compliance history for the previous five years raises no issues regarding Applicant's ability to comply with a material term of the permit. As of February 6, 2024, the most recent compliance history rating date available, Motiva Enterprises LLC has a rating of 9.55 and a classification of "satisfactory." The Motiva Enterprises Port Arthur Chemicals facility has a rating



of 10.74 and a classification of “satisfactory.” Given the Applicant’s satisfactory classifications, OPIC concludes the relevant compliance histories raise no issues regarding Applicant’s ability to comply with a material term of the permit.<sup>1</sup>

In sum, OPIC finds that because each requirement contained in 30 TAC § 55.201(i)(5) has been satisfied, no right to a contested case hearing exists in this case. However, should the Commission determine that a right to a hearing exists, OPIC provides the following analysis regarding affectedness.

**B. Whether the requestors are affected persons**

The Requestors submitted identical hearing requests during the public comment period, requesting a public hearing on this permit and listing several issues related to it. However, the hearing requests do not explain how the activity or the facility would impact the Requestors or demonstrate a personal justiciable interest distinct from that of the general public, as required by 30 TAC § 55.201(d)(2).

The ED’s map shows that Mr. Richard’s location is approximately 0.5 miles and Mr. Espree’s location is approximately one mile from the outfalls and the discharge route. Mr. Beard’s hearing request does not include a physical address, and he is not included in the ED’s map.

While OPIC acknowledges that the Requestors raised a list of potentially relevant and material issues, they failed to demonstrate a personal justiciable interest. Without a personal justiciable interest, a hearing requestor cannot

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<sup>1</sup> OPIC notes that Applicant’s compliance history for the past five years includes seven 1660 Agreed Orders with Denial, effective between 2019 and 2022.


qualify as an affected person. 30 TAC § 55.203(a). Since the Requestors did not establish a personal justiciable interest protected by the law applicable to this permit, OPIC finds that the Requestors do not qualify as affected persons.

#### **IV. Conclusion**

For the reasons discussed above, OPIC recommends the Commission find there is no right to a contested case hearing on this matter and therefore deny the hearing requests. In the alternative, should the Commission determine that a right to a hearing exists, OPIC recommends the Commission find that John Beard, Ricky Espree, and Gregory Richard do not qualify as affected persons.

Respectfully submitted,

Garrett T. Arthur  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2024, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



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Pranjal M. Mehta

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**TCEQ DOCKET NO. 2024-1229-IWD**

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