

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

August 30, 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 PRAIRIE CROSSING
WASTEWATER, LLC FOR TPDES PERMIT NO. WQ0015850001
TCEQ DOCKET NO. 2024-1260-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1260-MWD

APPLICATION BY	§	BEFORE THE
PRAIRIE CROSSING	§	
WASTEWATER, LLC	§	TEXAS COMMISSION ON
FOR TPDES PERMIT	§	
NO. WQ0015850001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING, REQUEST FOR RECONSIDERATION, AND
MOTION FOR LEAVE**

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, request for reconsideration of the Executive Director’s decision, and motion for leave in the above-captioned matter and would respectfully show as follows:

I. Introduction

A. Summary of Position

Before the Commission is an application by Prairie Crossing Wastewater, LLC (Applicant) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015850001. OPIC notes that the TCEQ Chief Clerk’s office received hearing requests from Taylor Meadows 712, LP; 05 Ranch Investments LLC; and Epitome Development LLC. However, 05 Ranch Investments LLC and Epitome Development LLC withdrew their hearing requests. The Commission also received requests for reconsideration from Taylor Meadows 712, LP and Epitome Development LLC. However, Epitome Development LLC withdrew its request for

reconsideration. As discussed below, OPIC respectfully recommends that the Commission deny Taylor Meadows pending hearing request and issue the permit as recommended by the ED. Additionally, OPIC respectfully recommends denial of the related request for reconsideration.

B. Description of Application and Facility

Prairie Crossing applied to TCEQ for a major amendment to TPDES Permit No. WQ0015850001. If issued, the amended permit would authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.99 million gallons per day (MGD) to an annual average flow not to exceed 4.5 MGD (proposed discharge) from Applicant's Prairie Crossing Wastewater Treatment Facility (the Facility). The Facility is proposed to be located approximately 5,300 feet northeast of the intersection of County Road 485 and Farm-to Market Road 973, in Williamson County, 76574.

The Facility would be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase include a bar screen, an aeration basin, a final clarifier, a sludge holding tank, disk filter, and a chlorine contact chamber. Treatment units in the Interim II phase include a bar screen, two aeration basins, two final clarifiers, two sludge holding tanks, and two chlorine contact chambers. Treatment units in the Final phase include a bar screen, four aeration basins, three final clarifiers, four sludge holding tanks, and an Ultraviolet Light (UV) disinfection system. The Facility has not been constructed.

The proposed discharge route for the treated effluent is via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The unclassified receiving water use is limited aquatic life use for Boggy Creek. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

The effluent limitations in the Interim I, Interim II, and Final phases of the draft permit, based on a 30-day average, are 5.0 milligrams per liter (mg/l) five-day carbonaceous biochemical oxygen demand (CBOD₅), 5.0 mg/l total suspended solids (TSS), 2.0 mg/l ammonia-nitrogen (NH₃-N), and 4.0 mg/l minimum dissolved oxygen (DO). During Interim I and Interim II phases, a 1.0 mg/l total phosphorus (TP) limit, and for the Final phase, a 0.5 mg/L TP limit, are also included in the draft permit. In all phases, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units. Additionally, in Interim I and Interim II phases, the effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes. For the Interim II phase, the permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual. For the Final phase, the permittee shall utilize an Ultraviolet Light (UV) system for disinfection purposes.

C. Procedural Background

The TCEQ received the application on January 9, 2023, and declared it administratively complete on February 9, 2023. On February 26, 2023, the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in

English in the *Taylor Press*, and on February 23, 2023 the NORI was published in Spanish in *El Mundo Newspaper*. The ED completed the technical review of the application on June 2, 2023. On August 20, 2023, the Combined NORI and Notice of Application and Preliminary Decision (NAPD) was published in English in the *Taylor Press*, and on August 24, 2023 it was published in Spanish in *El Mundo Newspaper*. The Combined NORI and NAPD was issued to correct the Applicant's mailing address that was included in the original NORI. The public comment period ended on September 25, 2023. TCEQ received multiple public comments on this application, which were all subsequently withdrawn by the commenters. The Chief Clerk received the ED's Response to Public Comment on February 13, 2024. However, because all public comments received on this application were withdrawn, the RTC was not mailed out, but was instead posted on the publicly accessible Commissioner's Integrated Database that same day. Therefore, pursuant to 30 Texas Administrative Code (TAC) § 55.201(a), the deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was March 14, 2024.

II. Applicable Law

A. Request for Hearing

This application was filed on or 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) (SB 709). 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. 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

be considered affected persons. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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, safety, and 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 ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

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 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. Request for Reconsideration

Any person may file a request for reconsideration (RFR) of the ED's decision under Title 30, Texas Administrative Code (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. Discussion

A. Requests for Hearing

Taylor Meadows 712, LP

On March 1, 2024, TCEQ received a timely hearing request from Taylor Meadows 712, LP that mistakenly identifies 05 Ranch Investments LLC as the requestor. Presumably after discovering this mistake, and in an effort to correct

it, on July 25, 2024, counsel for Taylor Meadows submitted a “First Amended Request for Hearing” explaining that its previously submitted hearing request contains a typographical error. Specifically, the request erroneously identifies the requestor as 05 Ranch Investments LLC instead of Taylor Meadows 712, LP. The amended request purports to correct this error and contains a corrected copy of the request. On August 15, 2024, counsel for Taylor Meadows also filed a Motion for Leave to file the First Amended Request for Hearing. After consideration of the filings, OPIC recommends that Taylor Meadows be considered as the requestor of March 1, 2024 hearing request.

The requests state that Taylor Meadows owns property less than one mile west of the Facility and its discharge point, and that Boggy Creek traverses it. Taylor Meadows is concerned that the application does not include a noise and odor abatement plan, and argues that the application may fail to comply with antidegradation requirements. Taylor Meadows further asserts that it is affected differently from members of the general public because the Facility will affect the use and enjoyment of its property.

According to the map created by the ED’s staff, the Taylor Meadows’ property is located approximately 1.6 miles from the Facility and on Boggy Creek, but appears to be upstream of the discharge route. Given the property’s location somewhat near the Facility, and considering the draft permit’s substantial Final phase discharge limit of 4.5 MGD, Taylor Meadows might be affected in a way that differs from the general public as required by 30 TAC § 55.203(a).

However, Taylor Meadows did not submit public comments during the public comment period. Both the March 1, 2024 request and the July 25, 2024 amended request were submitted to TCEQ after the public comment period had already closed on September 25, 2023. By both statute and rule, for the Commission to find that a hearing requestor qualifies as an affected person, the requestor must have submitted timely comments on the application, and their request must be based only on their own timely comments. TWC § 5.115(a)-1)(2)(B); 30 TAC § 55.201(c). Here, because Taylor Meadows did not submit any timely comments on the application, OPIC must respectfully recommend denial of the hearing request of Taylor Meadows 712, LP.

05 Ranch Investments LLC

On March 1, 2024, TCEQ received a request for hearing from 05 Ranch Investments LLC. As discussed above, this request was intended to be submitted on behalf of Taylor Meadows, but was mistakenly submitted with 05 Ranch Investments LLC erroneously identified as the requestor instead of the correct requestor—Taylor Meadows 712, LP.

To the extent that the Commission may consider this to be a request for hearing on behalf of 05 Ranch Investments LLC, OPIC offers the following additional analysis. On July 25, 2024, TCEQ received a letter from counsel for 05 Ranch Investments stating that the March 1, 2024 hearing request was submitted without its authorization and that it was withdrawing its request for hearing. Therefore, OPIC considers any hearing request from 05 Ranch Investments to be withdrawn and no longer pending before the Commission.

Epitome Development LLC

On August 30, 2023, counsel for Epitome Development LLC filed a request for a contested case hearing. The request details a number of concerns about the Facility, including consideration of need and compliance with TCEQ's regionalization policy. The request was submitted prior to the expiration of the public comment period on September 25, 2023. Following this, on December 18, 2023, Epitome Development filed a letter stating that it was unconditionally withdrawing its protest of the application and no longer requests a contested case hearing. Based on this December 18th communication, OPIC considers Epitome's hearing request to be withdrawn and no longer pending before the Commission.

B. Request for Reconsideration

On March 1, 2024, the Commission received a request for reconsideration from Taylor Meadows 712, LP, however, as discussed earlier, the request mistakenly identifies 05 Ranch Investments LLC as the requestor. On July 25, 2024, counsel for Taylor Meadows 712, LP submitted a "First Amended Request for Reconsideration" explaining that its March 1, 2024 request erroneously identifies the requestor as 05 Ranch Investments LLC instead of Taylor Meadows 712, LP. On August 15, 2024, counsel for Taylor Meadows also filed a Motion for Leave to File First Amended Request for Reconsideration. After consideration of

the filings, OPIC recommends that Taylor Meadows be considered as the requestor of March 1, 2024 request for reconsideration.¹

Substantively, the March 1, 2024 filing asks for reconsideration of the ED's decision to issue the draft permit on the basis that the application materials do not contain a noise and odor abatement plan, nor do they contain the entire antidegradation analysis performed by TCEQ,

Whether the application contains all the necessary materials, and consequently, whether it is complete and accurate, is a fact question. As such, an evidentiary record would be necessary for OPIC to adequately evaluate these concerns and make a recommendation to the Commission as to whether the ED's decision should be reconsidered on these grounds. At this time, an evidentiary record does not exist, and therefore, OPIC cannot recommend that the request for reconsideration be granted on these bases. Thus, OPIC respectfully recommends that the Commission deny this pending request for reconsideration.

OPIC also notes that on August 30, 2023, TCEQ received a request for reconsideration on behalf of Epitome Development LLC. However, on December 18, 2023, Epitome filed a letter stating that it was unconditionally withdrawing its protest of the application. Based on this withdrawal, OPIC concludes that

¹ OPIC notes that to the extent the Commission may be inclined to consider 05 Ranch Investments LLC to be the requestor of the March 1, 2024 request for reconsideration, counsel for 05 Ranch Investments withdrew the request for reconsideration by letter dated July 25, 2024. As such, OPIC concludes that 05 Ranch Investments LLC's request for reconsideration is no longer pending before the Commission.

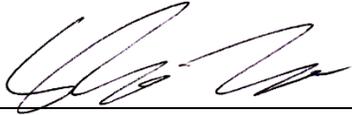
Epitome's request for reconsideration is no longer pending before the Commission.

IV. Conclusion

For the reasons stated above, OPIC respectfully recommends that the Commission deny Taylor Meadows pending hearing request and issue the permit as recommended by the ED. Additionally, OPIC respectfully recommends denial of the related request for reconsideration.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, the Office of Public Interest Counsel's Response to Request for Hearing, Request for Reconsideration, and Motion for Leave 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.



Sheldon P. Wayne

Mailing List

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