

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina Gonzalez, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 27, 2024

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

**Re: Application by Circle S Midlothian, LLC for New TPDES Permit No.
WQ0016243001; TCEQ Docket No. 2024-1456-MWD**

Dear Ms. Gharis,

I have enclosed for filing the "Executive Director's Response to Hearing Requests."
Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Fernando Salazar Martinez".

Fernando Salazar Martinez,
Staff Attorney
Environmental Law Division

Enclosure

CC: Mailing List

TCEQ DOCKET NO. 2024-1456-MWD

**APPLICATION BY
CIRCLE S MIDLOTHIAN, LLC
FOR NEW TPDES PERMIT
NO. WQ0016243001**

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**BEFORE
THE TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by Circle S Midlothian, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016243001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day.

The Office of the Chief Clerk received timely contested case hearing requests from the following entities and individuals: Ellis County, Hayden Farrell, Maliya Farrell, Phillip Farrell Jr., Phillip Farrell Sr., Robyn Farrell, Jacob Griffin, Nick Griffin, Rene Griffin, and Carolyn Taylor.

The Executive Director recommends that the Commission find that Ellis County is an affected person and grant its hearing request. The Executive Director further recommends denying the remaining hearing requests.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility and requestors.

II. FACILITY DESCRIPTION

Circle S Midlothian, LLC (Applicant) submitted an application to TCEQ on October 26, 2022 for a new TPDES Permit No. WQ0016243001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.125 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.25 MGD in the Interim II phase, and a daily average flow not to exceed 0.95 MGD in the Final phase. The proposed wastewater treatment facility will serve the new Circle S Subdivision.

The Circle S Subdivision wastewater treatment plant (WWTP) will be an activated sludge process plant operated in the complete mix mode. Treatment units in the Interim I phase will include a bar screen, two aeration basins, one final clarifier, two

sludge digesters, and a chlorine contact chamber. The Interim II phase will add an identical Interim I phase plant. The Final phase will add a circular plant partitioned into a large aeration chamber, two sludge digester chambers, and a chlorine contact chamber. Influent flow will enter a flow splitter before going to each plant. The facility has not been constructed.

The effluent limitations in the Draft Permit, based on a 30-day average, are 10 milligrams per liter (mg/L) five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/L total suspended solids (TSS), 3 mg/L ammonia-nitrogen (NH₃-N), 0.5 mg/L total phosphorus (TP), 126 CFU or MPN of *E. coli* per 100 mL, and 4.0 mg/L minimum dissolved oxygen (DO) in all phases.

The daily average effluent limitations requested in the application are included in the Draft Permit with the addition of 126 CFU or MPN of *E. coli* per 100 ml bacteria effluent limitation. The draft permit includes total phosphorus (TP) effluent limitations to preclude potential eutrophication in the receiving waters, per the Standards Implementation Team Interoffice Memorandum dated December 16, 2022. The Draft Permit includes all updates based on the 30 Tex. Admin. Code Chapter 312 rule change effective April 23, 2020.

The treated effluent will be discharged to Spring Branch, thence to Armstrong Creek, thence to Cottonwood Creek, thence to North Fork Chambers Creek, thence to Chambers Creek Above Richland-Chambers Reservoir in Segment No. 0814 of the Trinity River Basin. The unclassified receiving waters have limited aquatic life use for Spring Branch and Armstrong Creek. The designated uses for Segment No. 0814 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the Draft Permit will maintain and protect the existing instream uses.

Segment No. 0814 is currently listed on the State's inventory of impaired and threatened waters (the 2022 Clean Water Act § 303(d) list). The listing is specifically for bacteria in water (recreation use) from just upstream of the confluence with Cummins Creek up to just upstream of the confluence with Waxahachie Creek (Assessment Unit; AU 0814_02). This facility is designed to provide adequate disinfection and, when operated properly, should not add to the contact recreational use impairment of this portion of the segment. In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 126

colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml has been included in the Draft Permit.

In accordance with 30 Tex. Admin. Code § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

In the Interim I and II phases, the effluent shall contain a total chlorine residual of at least 1.0 mg/L and shall not exceed a total chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow. In the Final phase, the effluent shall contain a total chlorine residual of at least 1.0 mg/L after a detention time of at least 20 minutes (based on peak flow). Then permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/L total chlorine residual.

The Draft Permit includes a requirement for the permittee to provide nuisance odor prevention for the treatment units located closer than 150 feet to the nearest property line according to 30 Tex. Admin. Code § 309.13(e)(2).

The Draft Permit authorizes the disposal of sludge generated from the treatment facility to be disposed of at a TCEQ-permitted landfill or sludge disposal site (to be determined), in Tarrant County.

If this Draft Permit is issued, the plant site will be located approximately one-mile northeast of the intersection of Murr Road and Farm-to-Market Road 157, in Ellis County, Texas 76084.

III. PROCEDURAL BACKGROUND

The permit application was received on October 26, 2022, and declared administratively complete on December 7, 2022. The Notice of Receipt and Intent to

Obtain a Water Quality Permit (NORI) was published in English on December 11, 2022, in the *Waxahachie Daily Light* and the *Midlothian Mirror*. The Executive Director's staff in the Water Quality Division (WQD) completed its technical review of the application on February 1, 2023, and prepared the Draft Permit which if approved, would establish the conditions under which the proposed facility must operate. The Notice of Application and Preliminary Decision (NAPD) was published in English on November 2, 2023, in the *Midlothian Mirror*. A public meeting was held on March 4, 2024, at the Venus Civic Center, 210 S. Walnut Street, Venus, Texas 76084. The public comment period ended on March 4, 2024, at the close of the public meeting. The ED's Response to Comments (RTC) was filed on June 27, 2024, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on August 2, 2024.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. This application is subject to those changes in the law.

IV. EVALUATION OF HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;

¹ 30 TEX. ADMIN. CODE § 55.209(d).

- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.²

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (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;
- (4) list all relevant and material disputed issues of fact that were raised 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 comments that the requestor disputes and 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.⁴

² 30 TEX. ADMIN. CODE § 55.209(e).

³ 30 TEX. ADMIN. CODE § 55.201(c).

⁴ 30 TEX. ADMIN. CODE § 55.201(d).

C. Requirement that Requestor be an Affected Person

To grant a contested case hearing, the Commission must determine that a requestor is an “affected person” by conducting the following analysis:

- (a) For any application, 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 public does not qualify as a personal justiciable interest.
- (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.
- (c) In determining whether a person is an affected person, all factors shall be considered, 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; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
 - (1) the merits of the underlying application and supporting documentation in the commission’s 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.⁵

Under 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

⁵ 30 TEX. ADMIN. CODE § 55.203(a)-(d).

- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁶

Additionally, for applications filed on or after September 1, 2015, a hearing request by a group or association for a contested case may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁷

D. Referral to the State Office of Administrative Hearings

When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.⁸ The Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.⁹

V. ANALYSIS OF THE HEARING REQUESTS

For this permit application, the public comment period ended on March 4, 2024, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on August 2, 2024. The Executive Director's analyses determined whether the Requests followed TCEQ rules, if the requestors qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

⁶ 30 TEX. ADMIN. CODE § 55.205(a)(1)-(3)

⁷ 30 TEX. ADMIN. CODE § 55.205(b)(1)-(4).

⁸ 30 TEX. ADMIN. CODE § 50.115(b).

⁹ 30 TEX. ADMIN. CODE § 55.203(d).

A. Whether the Request Complied with 30 TAC §§ 55.201(c) and (d)

Ellis County, Hayden Farrell, Maliya Farrell, Phillip Farrell Jr., Phillip Farrell Sr., Robyn Farrell, Jacob Griffin, Nick Griffin, and Rene Griffin submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their name, address, email address, and requested a public hearing. They identified themselves as persons with what they believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided a list of disputed issues of fact raised during the public comment period.

The Executive Director concludes that the hearing requests of Ellis County, Hayden Farrell, Maliya Farrell, Phillip Farrell Jr., Phillip Farrell Sr., Robyn Farrell, Jacob Griffin, Nick Griffin, and Rene Griffin substantially comply with the requirements of 30 TAC § 55.201(c) and (d) requirements.

On March 16, 2023, Ms. Taylor submitted a three-sentence comment stating that she requests a “public hearing” for the Application. Carolyn Taylor’s request did contain the information required by 30 TAC § 55.201(c), but it did not contain a statement explaining her location and distance relative to the proposed facility as required by 30 TAC § 55.201(d)(2). Her request also did not identify a personal justiciable interest affected by the application or explain why she believes she will be adversely affected in a manner not common to members of the general public as required by 30 TAC § 55.201(d)(2). Although Ms. Taylor’s request stated that the proposed facility “causes grave concerns” for the citizens of Ellis County, her request did not describe any personal interests or explain how she may be personally affected. Lastly, her request did not list any relevant or material disputed issues of fact based on her timely comments to form the basis of her request as required by 30 TAC § 55.201(d)(4)(B).

The Executive Director concludes that the hearing request of Carolyn Taylor does not substantially comply with the requirements of 30 TAC § 55.201(d).

B. Whether the Requestor meets the Affected Person Requirements

1. Requestors the Executive Director recommends the Commission find to be Affected Persons

Ellis County

Ellis County, through its representative, Emily Rogers, submitted two timely requests for a contested case hearing. In its requests, Ellis County states that it is an affected person because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public under 30 Tex. Admin. Code § 55.203. Ellis County stated it has specific statutory authority relating to water quality within its jurisdiction under Tex. Water Code §§ 26.171 and 26.173, and therefore an affected person under 30 Tex. Admin. Code § 55.203.

Regarding the proposed facility, Ellis County raises the following issues that it claims will affect their interests: (1) regionalization concerns that will likely have a detrimental effect on the public health, safety, and welfare of the County's citizens; (2) the Draft Permit does not comply with the Texas Surface Water Quality Standards and antidegradation requirements in 30 Tex. Admin. Code Chapter 307; (3) the Applicant is not an experienced facility and system operator; and (4) the Application may not meet all of the TCEQ's requirements and may not have been properly noticed.

Because Ellis County's request specifies its statutory authority relating to water quality within its jurisdiction as required by 30 Tex. Admin. Code § 55.203, and its concerns are related to issues that are relevant and material to the application, the County's request demonstrates a reasonable relationship exists between these interests and the proposed facility. Therefore, the Executive Director recommends that the Commission find that Ellis County is an affected person and grant its hearing request.

2. Parties the Executive Director recommends the Commission find to not be Affected Persons

Hayden Farrell, Maliya Farrell, Phillip Farrell Jr., Phillip Farrell Sr., and Robyn Farrell (Farrells); Jacob Griffin, Nick Griffin, and Rene Griffin (Griffins)

On March 4, 2024, various members of the Farrell and Griffin families (Farrells and Griffins) submitted timely comments and request for a contested case hearing. The requests submitted by these individuals are essentially identical except for the name of the person that filed the request.

In their requests, the Farrells' and Griffins' state that their property is located at 1308 Ozro Road, consisting of approximately 38 acres, and that the confluence of Boggy Branch and Armstrong Creek is on their property. The requests also state that 80% of the property lies within the FEMA Zone A floodplain. Their requests also state several concerns related to impacts to water quality, wildlife, flooding, and the Application containing various inaccuracies and deficiencies.

According to the GIS Map, the Farrells' and Griffins' property is located 2.9 miles away from the proposed facility.

Here, the Farrells' and Griffins' requests raised concerns relevant to the Application, such as compliance with TCEQ's rules and policy, impacts to wildlife, rules related to odors, water quality, and the Texas Surface Water Quality Standards, which are referable issues. Moreover, the Farrells' and Griffins' Requests articulate how these concerns would affect their property in a way not common to the general public. However, the location of their property decreases the likelihood that it would be affected by the proposed discharge and facility.

Because of the location of their property relative to the proposed facility and discharge route, the Farrells' and Griffins' request does not demonstrate that it has a personal justiciable interest that would likely be affected by the proposed facility. Therefore, the Executive Director recommends the Commission find that Farrells and Griffins are not affected persons under 30 Tex. Admin. Code § 55.203 and further recommends the Commission deny their requests.

C. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the Response to Comments. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.¹⁰ The issues raised for this application and the Executive Director's analysis and recommendations are as follows:

¹⁰ TEX. GOVT. CODE § 2003.047(e-1); 30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii).

Issue 1. Whether the applicant complied with TCEQ's regionalization policy and Tex. Water Code §§ 26.081 and 26.0282.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 2. Whether the Draft Permit is adequately protective of human health.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends referring this issue to SOAH.

Issue 3. Whether the Draft Permit complies with the applicable antidegradation rules under 30 Tex. Admin. Code Chapter 307.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 4. Whether the Draft Permit is adequately protective of water quality and the receiving waters in accordance with the applicable regulations, including the Texas Surface Water Quality Standards.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends referring this issue to SOAH.

Issue 5. Whether the Application is accurate and contains all required information.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 6. Whether the Applicant's compliance history should change or alter the terms of the Draft Permit.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance

of the draft permit. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 7. Whether the Application was properly noticed under the applicable public notice rules in 30 Tex. Admin. Code Chapter 39.

This issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

VI. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends the following actions by the Commission:

1. Find that Ellis County is an affected person and grant its hearing request.
2. Deny the hearing requests of Hayden Farrell, Maliya Farrell, Phillip Farrell Jr., Phillip Farrell Sr., Robyn Farrell, Jacob Griffin, Nick Griffin, Rene Griffin, and Carolyn Taylor.
3. Should the Commission decide to refer this case to SOAH:
 - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - b. refer the identified issues above in Section V.C.1-6 to SOAH for a contested case hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Acting Director
Office of Legal Services



Fernando Salazar Martinez, Staff Attorney
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on September 27, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016243001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



Fernando Salzar Martinez, Staff Attorney
State Bar No. 24136087