

TCEQ DOCKET NO. 2024-1582-MWD

APPLICATION BY CLEAR UTILITIES LLC FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016273001	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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ELLIS COUNTY’S REPLY TO APPLICANT’S RESPONSE TO HEARING REQUESTS

Ellis County, Texas (“County”) files this Reply to Applicant’s Response to Hearing Requests and, in support thereof, would show the following:

I. Introduction

Clear Utilities, LLC (“Clear Utilities” or “Applicant”) applied to the Texas Commission on Environmental Quality (“TCEQ”) for new TPDES Permit No. WQ0016273001 (the “Application”), seeking to authorize the discharge of treated domestic wastewater at a final phase daily average flow not to exceed 250,000 gallons per day (the “Draft Permit”). The County opposes the issuance of the permit and timely requested a contested case hearing as an affected person within the definition of that term in the Texas Administrative Code. In its Response to Hearing Requests, the Applicant requested that the TCEQ deny the County’s hearing request. The County is an “affected person” pursuant to TCEQ rules and asks the TCEQ to grant the County’s request for a contested case hearing on the Draft Permit and determine that the County is an affected person with party status.

II. The County is an Affected Person.

The County timely filed its hearing request in writing on July 26, 2023, and reasserted its request on September 9, 2024. In its hearing request, the County provided all information requested by 30 Tex. Admin. Code § 55.201(d). Contrary to the assertions made by the Applicant, the County established in its hearing request that it is an “affected person” under 30 Tex. Admin.

Code § 55.203 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. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 Tex. Admin. Code § 55.203. The County has statutory authority over various functions – including but not limited to water quality, transportation, emergency services, and public health and safety – that are affected by the Application. Such functions and interests are relevant to the Draft Permit because they may be affected by the proposed wastewater treatment plant and associated discharge within the County that the Application fails to properly address. For example, potential contamination of surface water within the region may impact the County’s ability to effectively provide emergency services, may impact health and safety by lowering water quality, and could negatively impact the County’s infrastructure.

Additionally, the County has shown that, as a local government, it has specific statutory authority to inspect the public water in its jurisdiction to assess whether the quality of the water meets water quality standards, and to determine whether wastewater dischargers are discharging in compliance with the requirements of a TCEQ-issued permit. Texas Water Code § 26.171. The County also has authority to enter property to make inspections and investigations of conditions relating to water quality and the right to bring a civil suit against any person that violates or threatens to violate Chapter 26 of the Texas Water Code, or any permit issued thereunder. Texas Water Code §§ 7.351 and 26.173. As an inspector, investigator, and potential enforcer of a TCEQ-issued permit, the County has a personal interest in ensuring that any permit issued by the TCEQ in this matter meets the state law requirements, is protective of water quality, and is enforceable. This interest in the Applicant’s proposed discharge within the County’s jurisdiction is therefore

unique to Ellis County and is not common to the general public. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person under TCEQ's rules. 30 Tex. Admin. Code § 55.203.

The Applicant incorrectly states that the County must provide "material evidence" to show how the proposed discharge would affect the County in a manner not common with the members of the general public. Additionally, the Applicant suggest that the County should have provided arguments to refute opinions in the Executive Director's Response to Comments that the Draft Permit is protective of water quality. However, the Applicant is attempting to add a merits requirement into the threshold analysis of party status where none exists, providing no statutory or regulatory citation to support these assertions. 30 Tex. Admin. Code § 55.201(d) states

(d) 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. 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 shall be responsible for receiving all official communications and documents for the group;

(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) for applications filed...on or after September 1, 2015, 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 executive director'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 Tex. Admin. Code § 55.201(d).

In its hearing request, the County has effectively shown that as a governmental entity its statutory authority and its interest in issues relevant to the Application, which are not common to the general public, could be affected by the Draft Permit and the Application. There is no requirement in TCEQ's rules that the County must prove with evidence how its interests will actually be affected. Rather, to establish that it is an affected party, the County must only show how it "believes" it "will be adversely affected" by the activities to be authorized in the Draft Permit. *See* 30 Tex. Admin. Code § 55.201(d)(2). Thus, the County has met the requirements of the TCEQ's rules to determine that it is an affected party for the purposes of this matter.

D. Conclusion

For these reasons, the County reasserts its request that the Commission find that the County is an affected person and grant its request for a contested case hearing on the Application in order to address the concerns raised in its hearing request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, a copy of the foregoing document was filed with the Texas Commission on Environmental Quality Office of the Chief Clerk and all parties on the attached Service List.

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TPDES Permit No. WQ0016273001/ TPDES Permiso No. WQ0016273001

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