

DOCKET NO. 2024-1720-MWD

APPLICATION BY
CLEAR UTILITIES, LLC
FOR TPDES PERMIT
NO. WQ0016360001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Clear Utilities, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016360001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Robert Martinez, Sara and Chris Hightower, Emily D. Harman, Shane Harman, Roger McCrary, Cynthia Weir, and Senator Mayes Middleton. The Chief Clerk also received timely Requests for Reconsideration (RFR) from Shane McNamara and Melissa Jared.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

Clear Utilities, LLC (Applicant) submitted an application to TCEQ for a new permit, TPDES Permit No. WQ0016360001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The Applicant proposes to operate the Field Creek Crossing wastewater treatment plant (WWTP) to serve the proposed Field Creek Crossing mobile home development.

The Field Creek Crossing Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix mode. Treatment units will include a bar screen, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged via pipe to two man-made ponds, thence via pipe to a detention pond, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are limited aquatic life use for the two man-made ponds and detention pond. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses.

III. Procedural Background

The permit application was received on June 26, 2023, and declared administratively complete on August 9, 2023. The first Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 22, 2023, in the *Galveston County Daily News*. The combined NORI and Notice of Application and Preliminary Decision (NAPD) was published on April 19, 2024, in the *Galveston County*

Daily News and was published in *La Prensa De Houston* on April 28, 2024. The public comment period ended on May 28, 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. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 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. Senate Bill 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 hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- whether the hearing request is based on issues 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 Executive Director's Response to Comment;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

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

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the

requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- I. 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;
- II. 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;
- III. request a contested case hearing; and
- IV. 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 Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. 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 general public does not qualify as a personal justiciable interest. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;
- distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

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;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

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 SOAH for a hearing." 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Requests Complied with Section 55.201(c) and (d).

Robert Martinez, Sara and Chris Hightower, Emily D. Harman, and Roger McCrary submitted timely hearing requests. They included their name, address, and telephone number in their hearing requests. Additionally, these Requestors identified personal justiciable interests affected by the application, demonstrating how they believed they were affected in a manner not common to the general public.

The Executive Director concludes that Robert Martinez, Sara and Chris Hightower, Emily D. Harman, and Roger McCrary submitted hearing requests that comply with 30 TAC § 55.201(c) and (d).

Shane Harman submitted a timely filed hearing request. However, Mr. Harman did not submit a timely comment in accordance with 30 TAC § 55.201(c).

Cynthia Weir submitted a timely filed hearing request. However, no issues were raised in the hearing request. Therefore, she did not identify a personal justiciable interest affected by the application or explain how she will be adversely affected by the proposed facility in a manner not common to members of the general public in accordance with 30 TAC § 55.201(d).

Senator Mayes Middleton submitted a timely filed hearing request. However, he did not identify a personal justiciable interest affected by the application or explain how he will be adversely affected by the proposed facility in a manner not common to members of the general public in accordance with 30 TAC § 55.201(d).

The Executive Director concludes that Shane Harman, Cynthia Weir, and Senator Mayes Middleton submitted hearing requests that failed to comply with 30 TAC § 55.201(c) and (d).

B. Whether the Requestors Meets the Affected Person Requirements.

1. Robert Martinez

According to the information provided by Robert Martinez, his residence is 0.37 miles from the proposed facility. Mr. Martinez is not listed as the owner of a property on the affected landowners list provided by the Applicant with the application. Mr. Martinez raised concerns during the comment period regarding odor and hazardous gases, spillage of sewage that will drain into private properties nearby, contamination of drinking water and wells, whether there is a maintenance plan to ensure that the plant stays functioning, whether the Applicant will be able to handle the amount of waste inside the community, and human health. Mr. Martinez's concerns regarding odor, water quality, and human health are protected by the law under which the application is considered. Due to his proximity to the proposed facility and discharge route, and the issues raised, Robert Martinez has demonstrated that he is affected in a manner not common to the general public and is an affected person.

The Executive Director recommends the Commission find that Robert Martinez is an affected person.

2. Sara and Chris Hightower

According to the information provided by Sara and Chris Hightower, their residence is 0.50 miles from the proposed facility. Sara and Chris Hightower are not listed as owners of property on the affected landowners list provided by the Applicant with the application. Sara and Chris Hightower raised issues during the comment period including flooding, traffic, and contamination to water quality. Based on their distance from the proposed facility and discharge route, Sara and Chris Hightower have not demonstrated that they have a personal justiciable interest affected by this application. Sara and Chris Hightower's concerns are common to the general public, and they are not affected.

The Executive Director recommends the Commission find that Sara and Chris Hightower are not affected persons.

3. Shane Harman

According to the information provided by Shane Harman, his residence is 0.52 miles from the proposed facility. Mr. Harman is not listed as the owner of a property on the affected landowners list provided by the Applicant with the application. Mr. Harman did not submit a comment during the comment period pursuant to 30 TAC § 55.201(c). Thus, Mr. Harman did not comply with the requirements for requesting a hearing, and his hearing request should be denied.

The Executive Director recommends the Commission find that Shane Harman is not an affected person.

4. Emily Harman

According to the information provided by Emily Harman, her residence is 0.52 miles from the proposed facility. Ms. Harman is not listed as the owner of a property on the affected landowners list provided by the Applicant with the application. During the comment period, Emily Harman raised issues regarding water quality and flooding. Based on her distance from the proposed facility and discharge route, Ms. Harman has not demonstrated that she has a personal justiciable interest affected by this application. Ms. Harman's concerns are common to the general public, and she is not affected.

The Executive Director recommends the Commission find that Emily Harman is not an affected person.

5. Roger D. McCrary

According to the information provided by Roger McCrary, his residence is 0.55 miles from the proposed facility. Mr. McCrary is not listed as the owner of property on the affected landowners list provided by the Applicant with the application. Mr. McCrary raised issues during the comment period including public notice, water quality, if there's a backup electrical generation system, Applicant becoming bankrupt, and the location of the proposed facility. Based on his distance from the proposed facility and discharge route, Mr. McCrary has not demonstrated that he has a personal justiciable interest affected by this application. Mr. McCrary's concerns are common to the general public, and he is not affected.

The Executive Director recommends the Commission find that Roger D. McCrary is not an affected person.

6. Cynthia Weir

According to the information provided by Cynthia Weir, her residence is 0.24 miles from the proposed facility. Ms. Weir is not listed on the affected landowners list provided by the Applicant with the application. Ms. Weir submitted a single hearing request during the comment period. However, no issues were raised in the hearing request pursuant to 30 TAC § 55.201(d). Thus, Ms. Weir has not complied with the requirements for requesting a hearing by demonstrating how she is affected in a manner not common to the general public and is not an affected person.

The Executive Director recommends the Commission find that Cynthia Weir is not an affected person.

7. Senator Mayes Middleton

Senator Mayes Middleton submitted a hearing request asking the Executive Director to “give all due consideration in granting the requests of the affected persons prior to final [permit] approval.” The address provided by Senator Middleton is a P.O. box in Austin, TX. Senator Middleton states that material issues have been submitted regarding the permit, including issues related to the expected flow of the drainage onto private property posing a risk to a number of wells. He raises concerns regarding human health, livestock, groundwater, and property values. Senator Middleton states that his constituents have requested physical on-site surveys of the natural drainage as well as an assessment of the impact to the water quality of Dickinson Bayou and related property values. Senator Middleton recommends TCEQ explore options that have a lesser impact on the environment. However, Senator Middleton did not identify any personal justiciable interests of his own that he believes could be uniquely affected by the proposed facility. Because Senator Middleton’s hearing request did not identify any personal justiciable interest unique to him, the ED recommends that the Commission deny his hearing request.

The Executive Director recommends the Commission find that Senator Mayes Middleton is not an affected person.

C. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The following issues were raised during the public comment period:

1. Whether the draft permit will be protective of surface water quality in accordance with the Texas Surface Water Quality Standards and be protective of groundwater in the area. (RTC Response Nos. 2-3)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not be protective of surface water and groundwater, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

2. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 4)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not adequately address nuisance odor, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

3. Whether the draft permit is protective of human health and residents in the immediate vicinity of the proposed facility and the immediate discharge route. (RTC Response No. 2)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not adequately address human health and safety, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

VI. Request for Reconsideration/Rehearing

The Chief Clerk received timely Requests for Reconsideration (RFR) from Shane McNamara and Melissa Jared. As required by 30 Texas Administrative Code § 55.201(e), Shane McNamara and Melissa Jared gave their request in writing, and provided their name, address, and daytime telephone number. Shane McNamara and Melissa Jared specifically requested reconsideration of the ED's decision on the Clear Utilities application. The issues brought up by Shane McNamara included flooding (RTC Response No. 14), and the impact of flooding on property and human life (RTC Response Nos. 13-14). The issues brought up by Melissa Jared included flooding (RTC Response No. 14), and the impact of flooding on property and human life (RTC Response Nos. 13-14).

These issues, to the extent they are within the Commission's jurisdiction to consider on a TPDES application, were considered during the ED's review of the application. The RFRs did not provide any new information that would lead the ED to change her recommendation on the application, therefore, the ED recommends denial of the RFRs.

VII. Contested Case Hearing Duration

If there is a contested case 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.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Robert Martinez is an affected person and grant his hearing request.

Deny the hearing requests of Sara and Chris Hightower, Emily D. Harman, Shane Harman, Roger McCrary, Cynthia Weir, and Senator Mayes Middleton.

Deny the requests for reconsideration.

Refer the following issues to SOAH:

Issue 1. Whether the draft permit will be protective of surface water quality in accordance with the Texas Surface Water Quality Standards and be protective of groundwater in the area.

Issue 2. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13.

Issue 3. Whether the draft permit is protective of human health and residents in the immediate vicinity of the proposed facility and the immediate discharge route.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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TCEQ Docket No. / TCEQ Expediente N.º 2024-1720-MWD;
TPDES Permit No. / TPDES Permiso N.º WQ0016360001

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REQUESTER(S)/INTERESTED PERSON(S)/ SOLICITANTE(S)/ PERSONA(S) INTERESADA(S)

See attached list/Ver lista adjunta.

REQUESTER(S)/ SOLICITANTE(S)

Harman, Emily Diane
13924 Country Side St
Santa Fe Tx 77517-3794

Harman, Shane
13924 Country Side St
Santa Fe Tx 77517-3794

Hightower, Chris & Sara
13816 Country Side St
Santa Fe Tx 77517-3700

Jared, Melissa
1203 Ginger St
Santa Fe Tx 77517-3815

Martinez, Robert
1100 Veronica St
Santa Fe Tx 77517-3798

McCrary, Roger D
13913 Country Side St
Santa Fe Tx 77517-3701

McNamara, Shane Robert
13820 Country Side St
Santa Fe Tx 77517-3700

Middleton, Mayes
The Honorable State Senator
The Senate Of Texas District 11
PO Box 12068
Austin Tx 78711-2068

Weir, Cynthia Lynne
13928 Doris St
Santa Fe Tx 77517-3832

Attachment A

Clear Utilities LLC

WQ0016360001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 10/1/2024
CRF 0111443
Cartographer: MAttoh



- Outfall 001
- Requestors
- 0.5 Miles From Facility Point
- 1.0 Miles From Facility Point
- 1.5 Miles From Facility Point
- 1.0 Miles Discharge Route From Outfall

Distance in Miles to Requestors

Name	Distance	Number
Roger D. McCrary:	0.55	1
Shane and Emily D. Harman:	0.52	2
Robert Martinez:	0.37	3
Cynthia L. Weir:	0.24	4
Sara and Chris Hightower:	0.49	5

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Galveston County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Galveston County (red) in the state of Texas.

0 0.3 0.6 Miles