

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

December 2, 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 DOUGLAS T.
HARRISON FOR TPDES PERMIT NO. WQ0016211001
TCEQ DOCKET NO. 2024-1723-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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

A handwritten signature in black ink, appearing to read "Josiah T. Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1723-MWD

APPLICATION BY	§	BEFORE THE
DOUGLAS T. HARRISON FOR	§	TEXAS COMMISSION
TPDES PERMIT	§	ON
NO. WQ0016211001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO
REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

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

I. Introduction

A. Summary of Position

Before the Commission is the application of Douglas T. Harrison for new Texas Pollutant Discharge Elimination System (TPDES) Permit no. WQ0016211001. The TCEQ Chief Clerk’s office received 90 timely hearing requests, comprised of 87 requests from individuals and three requests from groups or associations. The Commission also received three timely requests for reconsideration. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of Dry Comal Creek Neighbors, Preserve our Hill Country Environment Foundation, Geri Rue Becker, Erin Bell-Altman, Chris & Kelly Brown, Anna Cannon, Rachel Cannon, Austin Faught, Kyra Faught, Milann Guckian, Prentis Hibler, Jane Johnson, Melissa Laster, Beth Moore, Kira Olson, Karis Olson, James and Robbi Shipley, and Deborah Williams-Bell. OPIC

further recommends that the Commission deny the remaining hearing requests and requests for reconsideration, and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-10 contained in §III.B.

B. Description of Application and Facility

On September 1, 2022, Douglas T. Harrison (Applicant) applied to TCEQ for new TPDES Permit No. WQ0016211001 to authorize the discharge of treated domestic wastewater from the proposed Harrison Tract wastewater treatment facility (Facility) that would be located approximately 0.4 miles south of the intersection of Harrison Road and State Highway 46, in Comal County. The Facility would be an activated sludge process plant operated in the complete mix mode. Treatment units in all phases would include a primary screen, an equalization basin, multiple process trains consisting of anoxic, pre-aeration, and membrane zones, a sludge holding basin, and an ultraviolet (UV) disinfection system.

The permit, if granted, would authorize discharge at a daily average flow limit of 0.6 million gallons per day (MGD). The treated effluent would be discharged to West Fork Dry Comal Creek, then to Dry Comal Creek, then to the Comal River in Segment No. 1811 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for the West Fork Dry Comal Creek. The designated uses for Segment No. 1811 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. Executive Director

(ED) staff has preliminarily determined that the draft permit will maintain and protect the existing instream uses.

C. Procedural Background

The application was received by TCEQ on September 1, 2022. On September 20, 2022, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Herald-Zeitung* on October 5, 2022. The Notice of Application and Preliminary Decision was published on January 31, 2023, in the *Herald-Zeitung*. Publication of the Notice of Public Meeting was published on May 3, 2023, in the *Herald-Zeitung*. A public meeting was held on June 8, 2023, with the public comment period ending that same day. The Chief Clerk mailed the ED's Decision and Response to Comments on September 6, 2024. The deadline for filing requests for a contested case hearing or reconsideration was October 7, 2024.

II. Applicable Law

A. Requests for a Contested Case Hearing

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.¹ 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

¹ Tex. S.B. 709, 84th Leg., R.S. (2015).

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.²

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:

² 30 TAC § 55.201(d).

- (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.³

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.⁴

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

³ 30 TAC § 55.203(c).

⁴ 30 TAC § 55.203(d).

- (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.

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

Any person may file a request for reconsideration of the ED's decision under Title 30, 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. Analysis of Requests for a Contested Case Hearing

A. Whether the Requestors are Affected Persons

Dry Comal Creek Neighbors

The Dry Comal Creek Neighbors (DCCN) submitted a timely hearing request and comments through their chairman—Austin Faught. DCCN states that it is a neighborhood group that seeks to protect Dry Comal Creek and the homes along it. As such, the interests the group or association seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). DCCN's request identifies Austin Faught and Deborah & Erin Bell as group members who would otherwise have standing to request a hearing in their own right.

According to the map provided by ED staff—Austin Faught and Deborah & Erin Bell all reside along the discharge route within 1.4 miles downstream of the outfall. These DCCN members all have private water wells on their property and are concerned about the effect the Facility and associated runoff would have on water quality. Additionally, the Bells own and operate an equestrian business on their property. They raise concerns about water quality, odor, and the possible negative effect on their livestock and their business. A reasonable relationship exists between these interests and the Applicant's regulated activity as contemplated by 30 TAC § 55.203(c)(3). These members would therefore have standing to request a hearing in their own right as required by 30 TAC

§ 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

In both timely comment and request, DCCN states concerns related to water quality, possible degradation of local aquifers, effect on livestock and wildlife, and effect on their use of property. Because DCCN has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

Preserve our Hill Country Environment Foundation

The Preserve our Hill Country Environment Foundation (PHCE) also submitted a timely hearing request and comments through their president—Milann Guckian. According to their website, PHCE is a nonprofit organization with a mission to preserve, protect, and restore the land, water, air, wildlife, unique features, and quality of life in the Texas Hill Country. As such, the interests the group or association seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3).

Milann Guckian identifies himself as the president of PHCE and—according to the map provided by ED staff—he resides less than two miles from the Facility. PHCE does not specify any other members but does claim that they have “numerous members who are affected parties.”⁵ PHCE provides extensive comments on the application, raising concerns about monitoring, the adequacy

⁵ Under 30 TAC § 55.205(c), OPIC requests that PHCE provide an explanation as to which other members would have standing in their own right and further explanation as to how the interests they seek to protect are germane to the organization's purpose.

of buffer zones, and water quality. Based on Mr. Guckian's proximity and the relevant and material concerns raised in PHCE's comments, OPIC finds that Mr. Guckian would have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

In both timely filed comments and hearing request, PHCE raises concerns related to water quality, the effect on local wells, and the effectiveness of buffer zones. Because PHCE has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

Greater Edwards Aquifer Alliance

The Greater Edwards Aquifer Alliance (GEAA) also submitted a timely hearing request and comments through their technical director—Nathan Glavy. GEAA states that it is a nonprofit organization that advocates for the protection and preservation of the Edwards Aquifer and the Texas Hill Country that sustains it. As such, the interests the group or association seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). In their comments, they raise concerns about water quality, impacts on surrounding wells, and implementation of beneficial reuse. However, GEAA's request and comments fail to identify any group members who would otherwise have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2). Therefore, although they raise relevant concerns in their comments, OPIC cannot find that GEAA qualifies as an affected person.

Requestors Located Within Two Miles of the Facility

The Commission received timely comments and hearing requests from the following requestors who are located in close proximity to the Facility or proposed discharge route: Geri Rue Becker (1.4 miles), Erin Bell-Altman (0.9 miles—adjacent to discharge route), Chris & Kelly Brown (1.2 miles), Anna Cannon (1.2 miles), Rachel Cannon (1.2 miles), Austin Faught (1.3 miles—adjacent to discharge route), Kyra Faught (1.3 miles—adjacent to discharge route), Milann Guckian (2 miles), Prentis Hibler (1.5 miles—adjacent to discharge route), Jane Johnson (1.7 miles), Melissa Laster (1.9 miles), Beth Moore (0.9 miles), Kira Olson (1.8 miles), Karis Olson (1.8 miles), James and Robbi Shipley (1.2 miles), and Deborah Williams-Bell (1 mile).

To be granted a contested case hearing, a requestor must demonstrate that they are an “affected person” who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.⁶ These interests must be distinguishable from interests that are common to the general public.⁷

Each of the requestors identified in this subsection has raised concerns related to either odor, water quality, human health, livestock, wildlife, or impacts to domestic water wells. These interests are protected by the law under which this application will be considered.⁸ All of these requestors’ properties are located within two miles of the Facility and a number of them are located along

⁶ See 30 TAC § 55.203(a).

⁷ *Id.*

⁸ See 30 TAC § 55.203(c)(1).

the discharge route. Given the sizeable discharge of up to 600,000 gallons per day sought by Applicant, OPIC finds that their proximity to the Facility and its discharge increases any likelihood that they may be affected by its operation in a way not common to members of the general public.⁹ Further, as their properties are near the Facility, a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3).

Therefore, OPIC concludes that each of these requestors has demonstrated that they possess a personal justiciable interest in this matter and qualify as affected persons.

Requestors Located at Distances Greater Than Two Miles from the Facility

The Commission received timely hearing requests from the following persons who have not shown they are close to the Facility or the proposed outfall: Regina Adams (71 miles), Katharine Barden (9.4 miles), Windell Cannon (2.6 miles), Franklin Boosman (5.4 miles), Terry Buck (12.7 miles), Russel Cason (4.5 miles), Warren Dahn (13.8 miles), Rebecca Dominick (3.3 miles), Dawn Fradkin (14.3 miles), Jonathan Gulick (4.9 miles), Tanis Hastman (7.3 miles), Rose Hess (4.1 miles), Amy Hillin (7.7 miles), Chris Hopmann (2.3 miles), Rebecca James (2.1 miles), Deborah January-Bevers (14.2 miles), Jennifer Johnson (7.9 miles), Craig Jones (3.7 miles), Teresa Kearney (4 miles), Donald McCallie (3.7 miles), Lindsay

⁹ See 30 TAC § 55.203(a).

Morgan (17.4 miles)¹⁰, Kathryn Mund (3.4 miles), Michael Noah (4.4 miles), Patrick Pence (10.4 miles), Eric Poesch (2.2 miles), Thomas Quigley (5.2 miles), Jonathan Smith (11 miles), Vicki Trammel (2.5 miles), and Beverly Willmann (11.8 miles).

The map and appendix prepared by the ED's staff shows that these requestors are located at distances greater than two miles from the Facility and outfall. OPIC notes that there are no specific distance limitations applicable to who may be considered an affected person for purposes of this application. However, even when considering the substantial volume of the proposed discharge to be permitted, OPIC cannot find that these requestors are likely to be impacted by the Facility's operations in a way that differs from the general public as required by 30 TAC § 55.203(a). Therefore, OPIC must conclude that these requestors have not shown that they possess personal justiciable interests in this matter and, as such, have not demonstrated that they qualify as affected persons.¹¹

Requestors Who Have Not Demonstrated that they Possess a Personal Justiciable Interest

The Commission received timely hearing requests from the following persons who have not demonstrated that they possess a personal justiciable interest in this matter as required by 30 TAC § 55.203(a): Mike Barry (3.9 miles),

¹⁰ OPIC notes that Lindsay Morgan also provided a second address of 2793 Highway 46 West [New Braunfels, 78132] in the body of her hearing request. However, that address is also a considerable distance—8.5 miles—from the Facility.

¹¹ While OPIC is unable to find that these requestors qualify as affected persons based on the information provided in their requests, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

Walter Bevers (14.2 miles), Dudley Buttler (1.3 miles), Bruce Carpenter (3.6 miles), James Dalton (1.1 miles), Dirk Davidek (12.6 miles), Dion Davis (4.3 miles), James Doyle (4.7 miles), Joyce Doyle (4.7 miles), Nancy Filhiol (5.7 miles), Krista Fisher (1.7 miles), Eric Fletcher (1 mile), Bob Hargarther (1.2 miles), Pamela Hibler (1.3 miles), Garrett Hibler (1.3 miles), Mary Lou McMullen (5.6 miles), Linda Mohr (3.5 miles), M. Phillips (8.1 miles), Eugenia Southwell (1.2 miles), Kristin Stewart (8.7 miles), Lisa Swint (10.4 miles), Susan Taylor (10.1 miles), Aria Woodcoff (0.9 miles), Douglas Woodcoff (0.9 miles), Sandra Zimmerman (1.2 miles), and Steve Zimmerman (1.2 miles).

By way of examples, many of the requests submitted by these individuals simply request either a contested case hearing or a public hearing on this permit application, or else only contain discussion of issues that are not within the Commission's jurisdiction to consider in the context of this permitting action, such as flooding or the residential development that the Facility plans to serve. Among other things, a hearing request must explain how and why a requestor believes that they will be adversely affected by a facility in a manner not common to members of the general public.¹² These requestors do not include any specific statement of how or why they feel that they may be personally affected by the Facility. As such, these requestors have not demonstrated that they possess personal justiciable interests as required by 30 TAC § 55.203(a). Consequently, OPIC is unable to conclude that these requestors qualify as affected persons.

¹² See 30 TAC § 55.201(d)(2).

Requestors with No Timely Filed Comments

The Commission received timely hearing requests from the following persons who did not file timely comments: Rita Cinquemani (165 miles), Evelyn Dye (183 miles), Lisa Ephlin (181 miles), Leslie Ann Gant (227 miles), Mark Gentry (49 miles), Clarence Harden (163 miles), Brenda McClain (12 miles), Thomas Minello (12.8 miles), Isaac Montes (12.8 miles), David Olfers (12.8 miles), Mark Peteete (11.9 miles), Tom Pfof (13.3 miles), Dennis Schulin (12.8 miles), Patricia Stendahl (5.9 miles), Allen Wagers (12.8 miles), and Kathye Warfield (12.8 miles).

By law, 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 the request must be based only on that affected person's timely comments.¹³ Because these requestors have not complied with this requirement, OPIC is unable to find that these requestors have demonstrated that they qualify as affected persons.

B. Which Issues Raised in the Hearing Requests Are Disputed

The Requestors raised the following disputed issues in both hearing requests and timely public comment:

1. Whether the Facility and draft permit are adequately protective of water quality, including protection of groundwater and drinking water wells.

Raised by: Geri Rue Becker, Erin Bell-Altman, Anna Cannon, Rachel Cannon, Austin Faught, Kyra Faught, Milann Guckian, PHCE, DCCN, Prentis Hibler, Jane Johnson, Melissa Laster, Beth Moore, Kira Olson, Karis Olson, James and Robbi Shipley, Deborah Williams-Bell

¹³ TWC § 5.115(a)(a-1)(2)(B); 30 TAC § 55.201(c).

2. Whether the Facility and draft permit are adequately protective of human health and animal life, including wildlife, endangered species, and livestock.

Raised by: DCCN, Geri Rue Becker, Erin Bell-Altman, Anna Cannon, Austin Faught, Kyra Faught, Milann Guckian, Prentis Hibler, Melissa Laster, Kira Olson, Karis Olson, James and Robbi Shipley, Deborah Williams-Bell

3. Whether the proposed discharge route is properly characterized in the application, and, as an operational feature of the Facility, will function properly.

Raised by: Erin Bell-Altman, Rachel Cannon, Kyra Faught, Milann Guckian, PHCE, James and Robbi Shipley

4. Whether the Commission should deny or alter the terms and conditions of the draft permit based on Texas' regionalization policy or consideration of need under TWC § 26.0282.

Raised by: Milann Guckian, Kira Olson, Karis Olson

5. Whether the draft permit contains sufficient provisions to prevent the creation of nuisance odor conditions.

Raised by: Prentis Hibler, James and Robbi Shipley

6. Whether the application is complete and accurate, including the location of the Facility.

Raised by: Milann Guckian, PHCE, Prentis Hibler, Kira Olson, Karis Olson, James and Robbi Shipley

7. Whether the application should be denied based on the Applicant or operator's compliance history.

Raised by: Milann Guckian, Kira Olson, Karis Olson

8. Whether the ED's antidegradation review was adequately performed.

Raised by: Milann Guckian, Kira Olson, Karis Olson

9. Whether the Facility is located in a 100-year floodplain, and if so, whether the draft permit contains adequate protections against inundation from flood events.

Raised by: Kira Olson, Karis Olson

10. Whether the Facility will comply with buffer zone requirements contained in 30 TAC, Chapter 309.

Raised by: PHCE, James and Robbi Shipley

11. Whether operation of the Facility will cause flooding or prevent access to property.

Raised by: DCCN, Austin Faught, Prentis Hibler, Beth Moore, Deborah Williams-Bell

12. Whether the discharge will contain pharmaceutical or antibiotic residuals.

Raised by: Prentis Hibler, Deborah Williams-Bell

13. Whether the Applicant should be required to seek an authorization for Beneficial Reuse or Land Application in lieu of discharging effluent.

Raised by: PHCE, Prentis Hibler

C. Whether the Dispute Involves Questions of Fact or of Law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements.¹⁴ The issues listed above are issues of fact.

D. Whether the Issues Were Raised During the Public Comment Period

All issues were specifically raised by requestors who qualify as affected persons during the public comment period.

E. Whether the Hearing Requests are Based on Issues Raised Solely in a Withdrawn Public Comment

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn comments.

¹⁴ 30 TAC § 55.211(c)(2)(A).

F. Whether the Issues are Relevant and Material to the Decision on the Application

The Requestors raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.¹⁵

Water Quality, Human Health, and Animal Life

The affected persons in this matter have concerns about the discharge's effects on water quality, including groundwater, and resultant effects on human health, and animal life—including wildlife, livestock, and related economic interests. The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.”¹⁶ According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic

¹⁵ *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

¹⁶ 30 TAC § 307.1.

organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.”¹⁷

Also, Section 309.10(b) states, in part, that “[t]he purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities...on selection of a site that minimizes possible contamination of ground and surface waters...”¹⁸ Therefore, Issue nos. 1 and 2 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Suitability of the Discharge Route

The affected persons in this matter are concerned that the proposed discharge route has been improperly characterized in the application and will not function properly. This concern appears to be based on the suitability and functioning of the discharge route and the potential for increased flow to disrupt access to and economic function of area property. Proper functioning of a discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state. Therefore, Issue no. 3 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

¹⁷ 30 TAC § 307.4(d).

¹⁸ *See also* 30 TAC § 309.12.

Regionalization and Need

The affected persons in this matter are concerned that the proposed Facility would not comply with Texas' Regionalization Policy. Under TWC § 26.081(a), it is "state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to prevent pollution and maintain and enhance state water quality." Further, "in considering the issuance...of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit...based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter."¹⁹ Therefore, Issue no. 4 is relevant and material to the Commission's decision on the application.

Nuisance Odor

The affected persons in this matter are concerned that the proposed Facility will cause nuisance odor conditions. Odor is specifically addressed by 30 TAC § 309.13(e), which requires that nuisance odor be abated and controlled. Further, § 307.4 delineates general criteria that surface waters must meet, including aesthetic parameters which work, in part, to prevent nuisance conditions attributable to the proposed Facility. Finally, one of the purposes of Chapter 309 is "to minimize the possibility of exposing the public to nuisance

¹⁹ TWC § 26.0282.

conditions.”²⁰ Therefore, Issue no. 5 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Completeness and Accuracy of the Application

The affected persons in this matter are concerned that the application is inaccurate and/or incomplete. They specifically question whether the application accurately identifies the location of the Facility and its operator. TCEQ rules require that if an applicant becomes aware that it did not submit required facts or submitted incorrect information in a permit application, the applicant is required to promptly submit the needed facts and information.²¹ Whether the application contains all required information is a disputed question of fact. Therefore, Issue no. 6 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Compliance History

The affected persons in this matter are concerned that the relevant compliance histories have not been properly evaluated by the ED. Specifically, they maintain concerns that because the operator has not been properly identified, its compliance history was erroneously not considered.

Pursuant to 30 TAC § 60.1(a)(1)(A), TCEQ is required to utilize an applicant's compliance history when making decisions regarding a permit.²² Further, the Commission is required to utilize compliance history for five years prior to the date the permit application is received by the ED and specific

²⁰ 30 TAC § 309.10.

²¹ See 30 TAC § 305.125(19).

²² See also TWC § 5.754(e).

components must be included in this history.²³ Additional rules regarding use of compliance history in making permitting decisions are found at 30 TAC § 60.3. Therefore, Issue no. 7 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Antidegradation Review

The affected persons in this matter are concerned that a complete and sufficient antidegradation review was not performed. Antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission's antidegradation policy and contains provisions for implementation of the policy. TCEQ's antidegradation policy requires that "existing uses and water quality sufficient to protect those existing uses must be maintained."²⁴ Because TCEQ regulations designate criteria for antidegradation of water quality and protection of existing uses, Issue no. 8 is relevant and material to the Commission's decision to issue or deny this permit and is appropriate for referral to SOAH.

Floodplain and Protection of the Facility

The affected persons in this matter are concerned that the Facility is located in a floodplain and question whether it will be safe from flood damage. TCEQ rules allow wastewater treatment plants to be sited in a 100-year floodplain as long as the plant is protected from inundation and damage by potential flood events.²⁵ The current draft permit also contains Other Requirement 4, requiring that the Facility be protected from a 100-year flood. Therefore, Issue no. 9 is

²³ 30 TAC §§ 60.1(b), (c).

²⁴ 30 TAC § 307.5(b).

²⁵ See 30 TAC § 309.13(a).

relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Buffer Zones

The affected persons in this matter are concerned that the Facility does not meet applicable buffer zone requirements. TCEQ rules contain various buffer zone provisions related to water wells and prevention of nuisance odor.²⁶ For example, according to 30 TAC § 309.13(c), a wastewater treatment plant unit may not be located closer than 500 feet from a public water well or 250 feet from a private water well. Therefore, Issue no. 10 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Flooding, Access to Property, Pharmaceuticals and Antibiotics, and Land Application or Beneficial Reuse

Finally, the affected persons in this matter raise concerns about potential flooding, inability to access their properties, and the presence of pharmaceuticals and antibiotics in the treated effluent. They also argue that the Applicant should adopt land application or beneficial reuse strategies instead of discharging at all.

The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider these types of concerns when deciding whether to issue a TPDES permit. TCEQ has no jurisdiction to consider flooding or impacts on the access to property in the context of a wastewater permit. Additionally, neither TCEQ nor the EPA has promulgated rules or criteria

²⁶ See generally 30 TAC § 309.13.

addressing pharmaceuticals in wastewater. Finally, TCEQ may not compel an Applicant to apply for either land application or beneficial reuse of wastewater. However, the ED's RTC does note that TCEQ received a reuse application on December 5, 2022. If such an authorization is ultimately issued, it must meet the appropriate limits required by 30 TAC Chapter 210.

In sum, Issue nos. 11, 12, and 13 are not relevant and material to the Commission's decision regarding this application and are not appropriate for referral to SOAH.

H. Maximum Expected Duration for the Contested Case Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier.²⁷ To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

²⁷ 30 TAC § 50.115(d)(2).

IV. Analysis of Requests for Reconsideration

Elizabeth Bowerman, Hayley Fassnidge, and Dawn Fradkin submitted timely requests for reconsideration expressing concerns about water quality, general impact to the environment, and need for the Facility. While these concerns are relevant and material to the decision on this application, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the ED's decision should be reconsidered. OPIC cannot recommend reconsideration without the benefit of such a record and must therefore recommend denial of the requests for reconsideration.

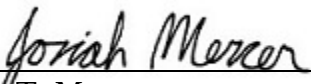
V. Conclusion

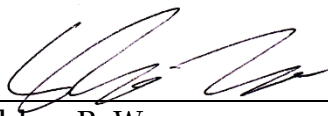
For the reasons discussed above, OPIC finds that Dry Comal Creek Neighbors, Preserve our Hill Country Environment Foundation, Geri Rue Becker, Erin Bell-Altman, Chris & Kelly Brown, Anna Cannon, Rachel Cannon, Austin Faught, Kyra Faught, Milann Guckian, Prentis Hibler, Jane Johnson, Melissa Laster, Beth Moore, Kira Olson, Karis Olson, James and Robbi Shipley, and Deborah Williams-Bell have demonstrated that they qualify as affected persons. Therefore, OPIC respectfully recommends that the Commission grant their hearing requests and refer Issue nos. 1-10 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC recommends denying all remaining hearing requests and all requests for reconsideration.

Respectfully submitted,

[Signature on Next Page]


Garrett T. Arthur
Public Interest Counsel

By: 
Josiah T. Mercer
Assistant Public Interest Counsel
State Bar No. 24131506
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-0579

By: 
Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144

CERTIFICATE OF SERVICE

I hereby certify that December 2, 2024, the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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
DOUGLAS T. HARRISON
TCEQ DOCKET NO. 2024-1723-MWD

FOR THE APPLICANT

via electronic mail:

Douglas T. Harrison, Landowner
Douglas T. Harrison
1000 Harrison Road
New Braunfels, Texas 78132

Mike McMinimee
Jamie Miller, P.E.
JA Wastewater, LLC
5765 Fig Way
Arvada, Colorado 80002
mmcminimee@jawastewater.com
jmiller@jawastewater.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison "Cole" Malley, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
harrison.malley@tceq.texas.gov

Sujata Sinha, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1963 Fax: 512/239-4430
sujata.sinha@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

See attached list.

REQUESTER(S)

Regina Adams
413 Starview Ln
Georgetown, TX 78628-3831

Katharine Barden
8430 Twisted Oaks
Garden Ridge, TX 78266-2767

Mike Barry
1633 Vintage Way
New Braunfels, TX 78132-2671

Mrs Geri Rue Becker
298 S Fork
Bulverde, TX 78163-2861

Erin Bell
Erin Bell Dressage
2323 Shearer Rd
Bulverde, TX 78163-2837

Erin Bell-Altman
2323 Shearer Rd
Bulverde, TX 78163-2837

Mrs Erin Bell-Altman
Erin Bell Dressage
2535 Shearer Rd
Bulverde, TX 78163-2830

Dr. Walter Bevers
824 Northpark Rdg
New Braunfels, TX 78130-8362

Franklin Boosman
249 Fly Line Trl
New Braunfels, TX 78132-0157

Elizabeth Bowerman
41 Stonecrest Cir
New Braunfels, TX 78132-3200

CHRISTOPHER BRONW & KELLY BROWN
2902 Briarcroft St
San Antonio, TX 78217-3801

Terry A Buck
1191 Edwards Blvd
New Braunfels, TX 78132-4053

Dudley Buttler
653 Third Frk
Bulverde, TX 78163-2882

Anna Cannon
1710 Shearer Rd
Bulverde, TX 78163-2834

Rachel J Cannon
1710 Shearer Rd
Bulverde, TX 78163-2834

Windell W Cannon
30045 Fm 3009
New Braunfels, TX 78132-2600

Mr Bruce D Carpenter
1228 Decanter Dr
New Braunfels, TX 78132-2679

Mr Russell Rembert Cason
Affected Person
9040 Ozark Ter
San Antonio, TX 78266-2656

Paul & Rita D Cinquemani
3515 Moss Trail Dr
Missouri City, TX 77459-3823

Warren Dahn
1123 Gardenia Dr
New Braunfels, TX 78130-5903

James L Dalton
1680 Shearer Rd
Bulverde, TX 78163-2832

Dirk Davidek
144 Landa St
Apt 851
New Braunfels, TX 78130-7998

Dion Christine Davis
14 Sun Valley Dr
Spring Branch, TX 78070-7000

Rebecca Dominick
4802 S Cranes Mill Rd
New Braunfels, TX 78132-1647

James David Doyle
200 Cedar Park
Canyon Lake, TX 78132-1810

Joyce Doyle
200 Cedar Park
Canyon Lake, TX 78132-1810

Evelyn S Dye
Mebr Llc
2905 Amber Hill Trl
Pearland, TX 77581-5288

Lisa J Ephlin
12239 Fm 1394
Wortham, TX 76693-4535

Hayley Fassnidge
Rockinhfbrandtx
1885 Fm 2673
Unit G1
Canyon Lake, TX 78133-4765

Austin N Faught
Cactus Rose Ranch
315 Kirk Ln
Bulverde, TX 78163-3919

Kyra N Faught
315 Kirk Ln
Bulverde, TX 78163-3919

Nancy Filhiol
315 Curvatura
New Braunfels, TX 78132-0023

Dr. Krista Fisher
952 Lonesome Dove
Bulverde, TX 78163-2939

Eric Fletcher
1555 Shearer Rd
Bulverde, TX 78163-2931

Dr. Dawn Moore Fradkin
208 Remington Dr
Bergheim, TX 78004-1912

Leslie Ann Gant
3816 Roseland Ave
Unit D300
Dallas, TX 75204-4210

Mark Gentry
500 N Market 304 A Llc
18108 Austin Blvd
Lago Vista, TX 78645-9702

ANNALISA PEACE & NATHAN M GLAVY
Greater Edwards Aquifer Alliance
1809 Blanco Rd
San Antonio, TX 78212-2616

ANNALISA PEACE & NATHAN M GLAVY
Greater Edwards Aquifer Alliance
Po Box 15618
San Antonio, TX 78212-8818

Mona Milann Guckian
30954 Fm 3009
New Braunfels, TX 78132-2931

Milann Guckian
Preserve Our Hill Country Environment
Po Box 310431
New Braunfels, TX 78131-0431

Milann Guckian
30954 Fm 3009
New Braunfels, TX 78132-2931

Jonathan Gulick
Sjwtx
1210 Ace Trl
New Braunfels, TX 78132-3434

Clarence J Harden Iii
13106 Plumwood Dr
Cypress, TX 77429-3806

Bob Hargarther
1871 Shearer Rd
Bulverde, TX 78163-2829

Tanis Hastman
7819 Star Cir
Garden Ridge, TX 78266-2922

Rose Hess
614 Battistrada
New Braunfels, TX 78132-2965

Pamela Hibler
653 Third Frk
Bulverde, TX 78163-2882

Prentis Otis Hibler
Hibler Ranch
360 Kirk Ln
Bulverde, TX 78163-3919

Garrett Hibler
653 Third Frk
Bulverde, TX 78163-2882

Mary E Higgins
16905 Blanco Rd
San Antonio, TX 78232-1911

Amy Hillin
1761 Lakeside Dr W
Canyon Lake, TX 78133-5835

Chris M Hopmann
30323 Fm 3009
New Braunfels, TX 78132-2633

Rebecca James
30838 Fm 3009
New Braunfels, TX 78132-2649

Deborah January-Bevers
824 Northpark Rdg
New Braunfels, TX 78130-8362

Jennifer Jagger Johnson
2104 Acacia Pkwy
Spring Branch, TX 78070-5658

Mrs Jane E Johnson
31400 Fm 3009
New Braunfels, TX 78132-2648

Mr Craig Jones
2073 Marsala
New Braunfels, TX 78132-5341

Teresa Kearney
2463 Comal Spgs
Canyon Lake, TX 78133-5997

Melissa Laster
1121 Right Frk
Bulverde, TX 78163-2815

Donald L McCallie
2116 Appellation
New Braunfels, TX 78132-2773

Brenda McClain
422 Pampa St
Pasadena, TX 77504-1414

Mary Lou McMullen
2410 River Way
Spring Branch, TX 78070-5987

Thomas Minello
500 N Market St
Unit B111
New Braunfels, TX 78130-5034

Linda Holley Mohr
6013 Cornwall Dr
Spring Branch, TX 78070-7222

Isaac Montes
17106 Happy Hollow Dr
San Antonio, TX 78232-1608

Ms Beth A Moore
751 Shearer Rd
Bulverde, TX 78163-2853

Lindsay Morgan
1654 Sunspur Rd
New Braunfels, TX 78130-3350

Kathryn Mund
501 Stoney Ridge Rd
Bulverde, TX 78163-2906

Mr Michael Noah
1243 Acquedotto
New Braunfels, TX 78132-2783

Mr David H Olfers
136 Copper Creek Dr
La Vernia, TX 78121-4796

Miss Karis Olson
245 Saur Rd
Bulverde, TX 78163-3909

Kira Olson
Fallspring
245 Saur Rd
Bulverde, TX 78163-3909

Ltc Patrick E Pence
17 Preston Wood
New Braunfels, TX 78132-3858

Mark Peteete
2631 Bretzke Ln
New Braunfels, TX 78132-3266

Tom Pfost
301 S Gilbert Ave
New Braunfels, TX 78130-4518

M Phillips
677 Cindy Dr
Canyon Lake, TX 78133-5363

Mr Eric Poesch
1376 Vicky Ct
New Braunfels, TX 78132-3472

Mr Thomas F Quigley
376 Butternut Way
Canyon Lake, TX 78132-3448

Dennis M Schulin
5919 Saxon Dr
Houston, TX 77092-6240

Jim & Robbi Shipley
10502 Tandom Ct
San Antonio, TX 78217-3946

Jonathan Smith
6551 Fm 482
New Braunfels, TX 78132-4828

Eugenia Southwell
435 Third Frk
Bulverde, TX 78163-2920

Patricia Stendahl
10119 Steinig Link
New Braunfels, TX 78132-4660

Kristin Stewart
26014 Big Cypress
San Antonio, TX 78261-2145

Lisa Swint
19810 Wild Holw
Garden Ridge, TX 78266-2165

Susan Taylor
1457 Cattail
Canyon Lake, TX 78133-2953

Vicki Trammell
1220 Loma Rnch
New Braunfels, TX 78132-3456

Mr Allen Wagers
816 Elmwood Cv
New Braunfels, TX 78130-5238

Kathye Warfield
3526 Linwood St
Pearland, TX 77581-3428

Deborah Anne Williams-Bell
2323 Shearer Rd
Bulverde, TX 78163-2837

Beverly P Willmann
1205 Mountain Laurel Dr
New Braunfels, TX 78132-3303

Douglas Woodcoff
1200 Shearer Rd
Bulverde, TX 78163-2826

Aria Woodcoff
1200 Shearer Rd
Bulverde, TX 78163-2826

Sandra Zimmerman
450 Shearer Rd
Bulverde, TX 78163-2822

Steve Wayne Zimmerman
450 Shearer Rd
Bulverde, TX 78163-2822