

DOCKET NO. 2024-1724-MWD

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| APPLICATION OF CEDAR CREEK MH, LLC FOR NEW TPDES PERMIT NO. WQ0016303001 | § § § | BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY |
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APPLICANT’S RESPONSE TO HEARING REQUESTS

Cedar Creek MH, LLC (the “**Applicant**”) files this Response to Hearing Requests pursuant to 30 Tex. Admin. Code § 55.209 on the application by Applicant for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016303001 (the “**Application**”). As discussed below, the Applicant asserts that the hearing request of TxDOT should be denied.

I. Review Standard

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. 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. 30 TAC § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, 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; and
- whether the requester timely submitted comments on the application which were not withdrawn.

30 TAC § 55.203(c).

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided. 30 Tex. Admin. Code 55.201(d). The request must also substantially comply with the following:

- give the name, address, daytime telephone number, and where possible, fax number of the person who files the request;
- 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;
- request a contested case hearing; and
- 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.

II. Evaluation of Hearing Requests

The Commission received hearing requests from the following two individuals or entities: the Texas Department of Transportation ("TxDOT") and the Carr Family Partnership, Ltd ("Carr"). For the reasons set forth below, the Applicant asserts that the request of TxDOT should be denied. The Applicant does not take a position on the Carr hearing request.

The TxDOT request is based on a comments submitted by Kandice Coppola on behalf of TxDOT on February 26, 2024. The comments submitted by Ms. Coppola are as follows:

Regarding draft Permit No. WQ0016303001, TxDOT denies the request to discharge wastewater onto TxDOT's ROW. After a meeting with the TxDOT Austin District Engineer, the request was denied upon the following conclusions: 1) The discharge path runs parallel along SH 71 within TxDOT ROW through the drainage ditch. Currently, this ditch is typically dry with intermittent flow during rain events. With the added wastewater discharge, the roadside ditch would incur constant saturation with varying flow, resulting in possible negative impacts to the roadbed, jeopardizing roadway safety and increasing future maintenance and construction costs. 2) Other discharge options not located on TxDOT ROW exist for this WWTP. Although an exception can be made, Chapter 2, Section 8 of the "Use of Right of Way by Others Manual" states, "...if a person making a request to

discharge shows that there is no feasible and prudent alternative to the proposed discharge to department property." Given that "feasible and prudent" alternatives do exist for this wastewater discharge, TxDOT denies the request. If you have any questions, please feel free to contact me.

The Applicant asserts the TxDOT hearing request should be denied for three reasons. First, pursuant to Texas Water Code § 5.115(b), a state agency cannot contest the issuance of a Commission permit. See, also, 30 Tex Admin Code § 55.103 (defining "affected person"). TxDOT does not have the legal authority to file a contested case hearing request in this matter. Accordingly, TxDOT does not qualify as an affected person under TWC § 5.115(b).

Second, the request fails to substantially comply with 30 Tex. Admin. Code 55.201(d). Particularly, neither the comments submitted by Ms. Coppala nor the subsequent hearing request submitted based on those comments identify the address of the TxDOT property or otherwise identify the location of the property relative to the facility. The sole address provided pursuant to TxDOT's comments and subsequent hearing request is that of the business offices of TxDOT located in Austin ("7901 N Interstate 35") and Bastrop ("174 Highway 21 E Bastrop, Tx, 78602-5693"). That represents a fundamental defect pursuant to 30 Tex. Admin. Code 55.201(d).

Third, as reflected in the comments provided by Ms. Coppala set out above, TxDOT fails to identify that it is an affected person. TxDOT's comments are directed solely at compliance with TxDOT right-of-way authorization under TxDOT authority. TxDOT right-of-way authorization does not invoke issues that are relevant to the jurisdiction of the TCEQ in considering whether to issue a permit based on the application. Further, to the extent that TxDOT's comments can be construed as complaining about infringement on TxDOT's right-of-way property interests, the Commission does not have jurisdiction to consider whether a proposed discharge route might encroach on private property rights. *See, Texas Comm'n on Env'tl. Quality v. Maverick Cnty.*, No. 03-17-00785-CV, 2022 WL 2960797, at *10 (Tex. App.--Austin July 27, 2022). The interests claimed by TxDOT are not "one protected by the law under which the application will be considered" as required by 30 TAC § 55.203(c).

III. Conclusion

The Applicant requests that the Commission deny the hearing request of TxDOT and take such action as the Commission deems appropriate on the Carr hearing request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature above, I certify that on March 10, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were serviced via first class mail and/or email to the parties of record in the docket.