

DOCKET NO. 2024-1724-MWD

APPLICATION BY
CEDAR CREEK MH LLC
FOR TPDES PERMIT
NO. WQ0016303001

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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 Cedar Creek MH LLC (Applicant) seeking new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016303001 and the Executive Director's preliminary decision. The Office of the Chief clerk received contested case hearing requests from the Carr Family Partnership, Ltd. (Carr Family) and the Texas Department of Transportation (TxDOT).

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

II. Description of Facility

Cedar Creek MH LLC applied for new TPDES permit No. WQ0016303001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The Applicant proposes to operate the Cedar Creek Wastewater Treatment Facility to serve the Cedar Creek Subdivision.

The Cedar Creek Wastewater Treatment Facility will be an activated sludge process plant operated in the conventional mode with nitrification. Treatment units will include a bar screen, an anoxic/selector zone basin, two aeration basins, one final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The facility has not been constructed. The facility will be located at 2883 State Highway 71, Bastrop, in Bastrop County, Texas 78612.

The treated effluent will be discharged to an unnamed tributary of Dry Creek, thence to Dry Creek, thence to the Colorado River Below Lady Bird Lake / Town Lake in Segment No. 1428 of the Colorado River Basin. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional 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 February 22, 2023, and declared administratively complete on April 4, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on April 19, 2023, in the *Bastrop Advertiser*. The Notice of Application and Preliminary Decision (NAPD) was published on October 11, 2023, in the *Bastrop Advertiser*. A public meeting was scheduled for February 27, 2024. Publication of the Notice of Public Meeting was published on January 24, 2024, in the *Bastrop Advertiser*. A public meeting was held on February 27, 2024, at the Bastrop

Convention and Exhibit Center in Bastrop, Texas. The public comment period ended at the close of the meeting on February 27, 2024.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

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 request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, 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).

1. Carr Family Partnership, Ltd.

Carr Family Partnership, Ltd. (Carr Family) submitted a timely hearing request. They provided their name, address, and email address, and requested a contested case hearing. The Carr Family identified themselves as having what they believed to be personal justiciable interests affected by the application and provided issues raised during the public comment

period. Therefore, the Executive Director concludes that the hearing request of the Carr Family substantially complied with Section 55.201(c) and (d) requirements.

According to the information provided by the Carr Family, their property could be impacted by the proposed facility. The Carr Family states that they own the property directly adjacent to the application area and raises concerns as to whether the effluent will flow through their property. The Carr Family also raises concerns about notice, water quality, nuisance odor, sludge, storage of chlorine gas, regionalization, administrative completeness, and livestock and human health. The Carr Family's concerns are not common to the general public and, given the nature of their claims and their distance from the facility, they proved that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and are an affected person. Thus, the ED recommends granting their hearing request.

The Executive Director recommends the Commission grant the Carr Family's hearing request.

2. Texas Department of Transportation

The Texas Department of Transportation (TxDOT) submitted a timely hearing request. It provided its name, address, and email address, and requested a contested case hearing. TxDOT identified itself as having what it believed to be personal justiciable interests affected by the application and provided issues raised during the public comment period. However, under Texas Water Code 5.115(b) and 30 TAC 55.103, another state agency cannot be considered an affected person and cannot protest an application. Therefore, TxDOT is not and cannot be an affected person; and the Executive Director recommends denying its hearing request.

The Executive Director recommends the Commission deny the Texas Department of Transportation's hearing request.

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

1. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 1)

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. If it can be shown that the draft permit is not drafted to reduce nuisance odor, 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 contains adequate provisions to protect water quality. (RTC Response No. 3)

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. If it can be shown the draft

permit is not drafted to protect water quality, 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 application complied with the state's regionalization policy under Texas Water Code § 26.081. (RTC Response No. 5)

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. If it can be shown that the application did not comply with applicable regionalization requirements, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

VI. 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.

VII. Conclusion

The Executive Director recommends the Commission grant The Carr Family Partnership, Ltd.'s request.

The Executive Director recommends the Commission deny the Texas Department of Transportation's request.

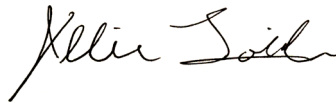
Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine Backens Deputy Director
Environmental Law Division

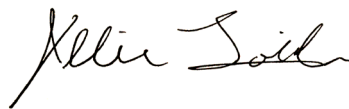


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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on March 10, 2025, the “Executive Director’s Response to Hearing Request” for the application by Cedar Creek MH LLC Permit Number WQ0016303001 was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Allie Soileau, Staff Attorney
Environmental Law Division
State Bar No. 24137200

MAILING LIST
Cedar Creek MH, LLC
TCEQ Docket No./TCEQ Expediente N.º 2024-1724-MWD;
TPDES Permit No./TPDES Permiso N.º WQ0016303001

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Attachment A

Cedar Creek Wastewater Treatment Facility

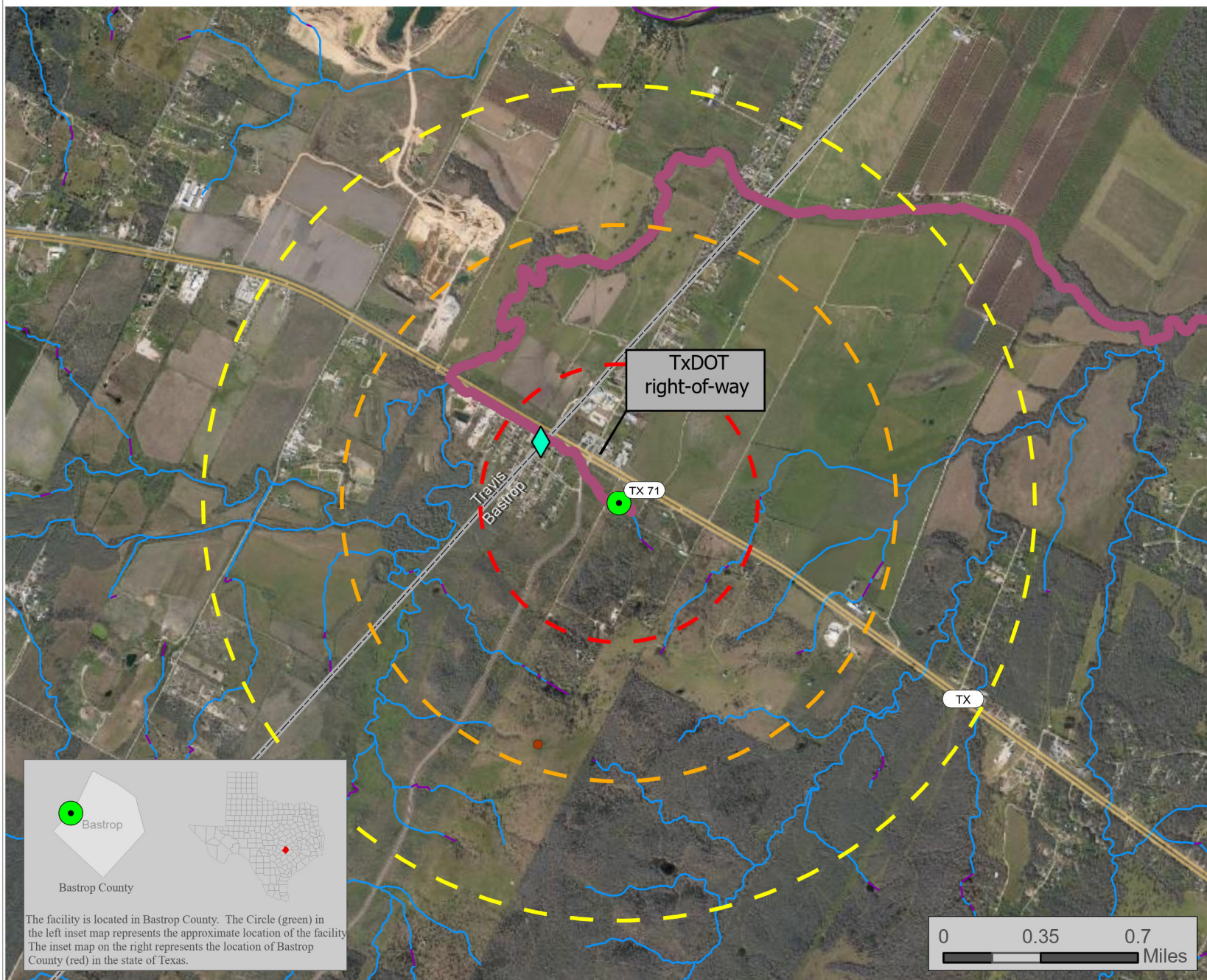
TPDES WQ0016303001

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: 2/21/2025
CRF 0118380
Cartographer: jstalsby



- Facility
- Discharge Route
- Wastewater Outfalls
- 1 Mile Radius
- 1.5 Mile Radius
- 0.5 Mile Radius

Requestor

- Carr Family Partnership, Ltd.

Requestor distance from
facility 0.35 miles

Requestor distance from
discharge route 0.02 miles

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 Bastrop 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 Bastrop County (red) in the state of Texas.

