

## Jennifer Cox

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**From:** PUBCOMMENT-OCC  
**Sent:** Thursday, September 26, 2024 4:33 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016303001  
**Attachments:** TXDOT Request for Contested Hearing - WQ00163030014.pdf

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** Diana.Schulze@txdot.gov <Diana.Schulze@txdot.gov>  
**Sent:** Thursday, September 26, 2024 12:33 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016303001

**REGULATED ENTY NAME** CEDAR CREEK WWTP

**RN NUMBER:** RN111681797

**PERMIT NUMBER:** WQ0016303001

**DOCKET NUMBER:**

**COUNTY:** BASTROP

**PRINCIPAL NAME:** CEDAR CREEK MH LLC

**CN NUMBER:** CN606110708

**NAME:** Diana Schulze

**EMAIL:** [Diana.Schulze@txdot.gov](mailto:Diana.Schulze@txdot.gov)

**COMPANY:** Texas Department of Transportation

**ADDRESS:** 174 SH 21 East  
BASTROP TX 78602

**PHONE:** 5123212195

**FAX:**

**COMMENTS:** Please see attached comments which have been uploaded in PDF format.

To whom it may concern,

TxDOT requests a contested case hearing for 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 is in violation of TAC Title 43 Part 1 Chapter 21. Procedures for complying with this chapter of the TAC can be found in TxDOT's *Use of Right of Way by Others Manual*. Chapter 2, Section 8 specifically addresses wastewater discharge stating, "The department concludes that a wastewater discharge onto department property would constitute a trespass and unauthorized use of property rights owned by the state. Unless the property can be determined surplus and other statutory requirements met under Transportation Code Sections 202.021 or 202.052, the property cannot be sold or leased for this purpose."
- 2) The manual also states an exception can be made "...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.
- 3) The discharge path runs parallel along SH 71 within TxDOT ROW through the roadside 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. This constant saturation can negatively impact the adjacent roadbed and pavement, resulting in negative impacts to the state, jeopardizing roadway safety and increasing future maintenance and construction costs.
- 4) Other discharge options not located on TxDOT ROW exist for this WWTP. The property being developed has another tributary which flows away from state ROW and ultimately to Dry Creek. This discharge option is a feasible alternative that would not negatively impact the state. Although an exception can be made,
- 5) The applicant has stated that a reuse permit has also been submitted to TCEQ, but has not yet been approved. This is another "feasible and prudent" alternative to discharging into state ROW. Depending on the conditions in the reuse permit, TxDOT may support this alternative. Considering the implications of approval of the discharge permit without the reuse permit approval, TxDOT requests a contested case hearing.

TxDOT previously provided comments to TCEQ on these matters, as submitted by Kandice Coppala ([Kandice.Coppala@txdot.gov](mailto:Kandice.Coppala@txdot.gov)) and received by TCEQ on 2/26/2024. TxDOT received no responses to these comments from TCEQ.

Going forward, please direct any communication directly to Diana Schulze, Area Engineer for the TXDOT Bastrop Area Office. Her contact info is below.

Diana Schulze  
Area Engineer – TXDOT Bastrop Area Office  
174 SH 21 East  
Bastrop, Texas 78602  
512-321-2195  
[Diana.Schulze@txdot.gov](mailto:Diana.Schulze@txdot.gov)

Thank you

**Jennifer Cox**

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, September 27, 2024 12:07 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016303001  
**Attachments:** EXECUTED Reply to Exec Dir Response to Comments - TCEQ TPDES Permit Application with certificate.pdf

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** ssmith@abaustin.com <ssmith@abaustin.com>  
**Sent:** Friday, September 27, 2024 10:26 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016303001

**REGULATED ENTY NAME** CEDAR CREEK WWTP

**RN NUMBER:** RN111681797

**PERMIT NUMBER:** WQ0016303001

**DOCKET NUMBER:**

**COUNTY:** BASTROP

**PRINCIPAL NAME:** CEDAR CREEK MH LLC

**CN NUMBER:** CN606110708

**NAME:** Sharon Smith

**EMAIL:** [ssmith@abaustin.com](mailto:ssmith@abaustin.com)

**COMPANY:** Armbrust & Brown, PLLC

**ADDRESS:** 100 CONGRESS AVE Suite 1300  
AUSTIN TX 78701-4072

**PHONE:** 5124352300

**FAX:**

**COMMENTS:** Please see the attached comments on behalf of Carr Family Partnership, Ltd.

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
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512-435-2300

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Sharon J. Smith  
(512) 435-2342  
ssmith@abaustin.com

September 27, 2024

## ***Via efile***

Texas Commission on Environmental Quality  
Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from **Cedar Creek MH, LLC** for **TPDES Permit No. WQ0016303001** (the "Application"); Reply to Executive Director's Response to Comments.

Dear Chief Clerk:

Carr Family Partnership, Ltd. ("Carr Family") files this confirmation of its Request for Hearing in reply to the Executive Director's Response to Public Comment (the "Response").

On November 10, 2023 Carr Family filed with the TCEQ comments on the Application, and requested a contested case hearing on the issues of water quality of the effluent as affecting use of the Property; the potential for odor to intrude on the Property, and effects of emissions causing odor on health, and as a nuisance, affecting use of the Property; the potential for sludge to intrude on the property; lack of right to use the Property to transport or pool effluent; the absence of an actual watercourse through which the effluent would flow; and lack of need for the facility in light of noncompliance with the TCEQ's regionalization policy.

Carr Family replies to the Executive Director's Response in the order of Comments and Responses listed therein:

Response 1: The Response states that Carr Family and other parties expressed concern for nuisance odors. The Response states that the Applicant intends to abate and control odor nuisance using the option of siting the treatment units at least 150 feet from the nearest property line.

However, the Carr Family also expressed concern regarding the health risks resulting from the presence of hydrogen sulfide that would be signaled by odors emanating from the facility. Further, with regard to air emissions from the wastewater treatment process, Carr Family noted concern about storage and use of chlorine gas onsite. Carr Family also stated concern about management of sludge from the treatment facility onsite, as well as transport on and from the site to any offsite facility. The Response does not address any of these issues. The Response states that the permit does not limit legal remedies in response to activities that may result in injury to human health or property. However, that is shutting the door after the horse is out of the barn. Under the general mandate for protection of human health and the environment contained in Chapters 5 and 26 of the Texas Water Code, the TCEQ should decline to issue a permit authorizing activities that may result in injury to human health or property, rather than putting the burden on the citizens and property owners to seek a remedy by filing a lawsuit after harm has occurred.

Response 2: The Response states that other parties inquired about flooding, and asserted that an incorrect FEMA map was used. Carr Family, in its original comments, also challenged whether the discharge route, including the “unnamed tributary,” is actually a watercourse through which effluent may flow. The discharge route, as depicted in the Application, would in fact result in effluent pooling on the Property, rather than continuing to Segment No. 1428 of the Colorado Basin, as stated in the Application. The Response does not address Carr Family’s issue.

Response 3: The Response states that Carr Family and others expressed concern for downstream water quality in Segment 1428 of the Colorado River Basin. Carr Family actually expressed concern regarding the effluent quality when the effluent is on the Property, and asserts that the effluent generally will remain on the Property and not reach Segment No. 1248. The Response does not address Carr Family’s issue.

Response 4: The Response states that other parties expressed concern regarding effect to groundwater from the proposed discharge. Carr Family did not raise this concern.

Response 5: The Response states that Carr Family and others expressed concern over the facility’s adherence to the TCEQ regionalization policy. The Response notes that two of the three existing wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility did not respond to inquiry regarding capacity or willingness to expand to accept the proposed volume of wastewater. The Response does not address Carr Family’s issue.

Response 6: The Response states that another party, Simsboro Aquifer Water Defense Fund (“SAWDF”), made comments regarding the discharge location and wastewater treatment plant location. SAWDF’s location comments pertain to whether the correct FEMA map was used, which the Response does not address, and whether the plant foundation will be within the floodplain, which the Response does not address.

Response 7: The Response states that another party, Lost Pines Groundwater Conservation District (“LPGCD”), made comments regarding inadequacy of the antidegradation review at Tier 1 rather than Tier 2. Carr Family did not raise this concern.

Response 8: The Response states that other parties (Van Cook and LCGPD) expressed concern for the health of the livestock and wildlife that utilize Dry Creek. The Response notes that the Texas Surface Water Quality Standards provide that “surface waters cannot be toxic to aquatic or terrestrial organisms.” However, Carr Family expressed concern for the health of livestock on the Property, immediately after the effluent is discharged. Carr Family commented that the Notice of Application and Preliminary Decision (“NAPD”) “states that the receiving water uses are minimal and limited aquatic life use. If this signals that the permit parameters are not stringent, then the effluent may not be suitable for livestock consumption; further, in the event of any treatment upset, there would be higher risk to the cattle, as the effluent being discharged immediately next door will not have had an opportunity for mixing as it might farther ‘downstream.’” The Response does not address Carr Family’s issue.

Response 9: The Response states that LCGPD commented on whether the drinking water supply would be protected. Carr Family did not raise this issue for human consumption, but did raise it for livestock, which will be located on the Property prior to Segment No. 1428, with its higher designated uses.

Response 10: The Response states that LCGPD commented on whether the draft permit contained adequate requirements to ensure proper maintenance and operation of the facility.

The Response discusses TCEQ rule requirements for facility operations and enforcement procedures for violations. As noted at Response 1, Carr Family expressed concern regarding hydrogen sulfide, storage and use of chlorine gas, and sludge management – onsite, including the risk of sludge intrusion on the Property, or preparation for transport offsite. The Response does not address Carr Family's issues.

Response 11: The Response states that TXDOT commented that it had denied a request to discharge wastewater onto TXDOT's right of way. The Response notes that an "applicant is responsible for obtaining any needed permission to use the proposed discharge route." However, Carr Family also stated that Carr Family had not granted an easement for the flow of effluent on the Property. Further, Carr Family challenged whether the "unnamed tributary is actually a watercourse through which the effluent may flow." The Response does not address Carr Family's issues.

Response 12: The Response states that SAWDF made comments inquiring if the draft permit will adversely affect human health. The Response again references Surface Water Quality Standards that are intended to preclude toxic effects on aquatic or terrestrial organisms resulting from contact with or consumption of water. However, as noted at Response 1, Carr Family has expressed concerns that the permit will not adequately protect human health. The Response does not address Carr Family's issues.

Carr Family states that Carr Family has previously raised disputed issues of fact, which are restated here; that those issues are relevant and material to the Commission's decision on the Application; that those issues have not been resolved by the Executive Director's Response; that the Executive Director's Response does not even touch on some issues raised by Carr Family, including whether the discharge is actually to a watercourse, or will simply pool on Carr Family land; and that those issues are appropriate for referral to SOAH.

As owner of the Property, which is adjacent to the proposed wastewater treatment plant and onto which the effluent would be discharged, Carr Family is an "affected person," with a right to contested case hearing on the issues noted above, and any other issues noted in Carr Family's original comments.

Respectfully,

**ARMBRUST & BROWN, PLLC,**

Attorneys for Carr Family Partnership, Ltd.

By: Sharon J. Smith  
Sharon J. Smith



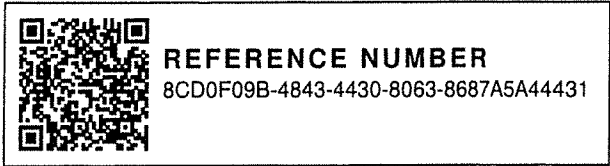
Via Email

Carr Family Partnership, Ltd.  
6402 FM 535  
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randy@carrlawyer.com

Via Email

Doug Rummel, P.E.  
Carlson, Brigance & Doering, Inc.  
5501 West William Cannon Drive  
Austin, Texas 78749  
dougjr@cbdeng.com

**SIGNATURE CERTIFICATE**



**TRANSACTION DETAILS**

**Reference Number**  
8CD0F09B-4843-4430-8063-8687A5A44431

**Transaction Type**  
Signature Request

**Sent At**  
09/25/2024 15:01 EDT

**Executed At**  
09/27/2024 11:01 EDT

**Identity Method**  
email

**Distribution Method**  
email

**Signed Checksum**  
7cdda6fa7c3e5b774bb84d5b5b2bc153496c931de041183f570148b4534abf9f

**Signer Sequencing**  
Disabled

**Document Passcode**  
Disabled

**DOCUMENT DETAILS**

**Document Name**  
Reply to Exec Dir Response to Comments - TCEQ TPDES Permit Application 4874-4200-4195 v 5

**Filename**  
Reply\_to\_Exec\_Dir\_Response\_to\_Comments\_-\_TCEQ\_TPDES\_Permit\_Application\_4874-4200-4195\_v\_5.pdf

**Pages**  
4 pages

**Content Type**  
application/pdf

**File Size**  
117 KB

**Original Checksum**  
d86227ddf9c89302b131123e5111ed6a4946ea444e195d776327f97aa1519f5b

**SIGNERS**

**SIGNER**

**Name**  
Sharon Smith  
**Email**  
ssmith@abaustin.com  
**Components**  
1

**E-SIGNATURE**

**Status**  
signed  
**Multi-factor Digital Fingerprint Checksum**  
e816cc1fbdac831c9fe63e631b7c4f71521ccf612bcb6eb39570443645adc83f  
**IP Address**  
216.201.214.194  
**Device**  
Chrome via Windows  
**Typed Signature**  
*Sharon J. Smith*  
**Signature Reference ID**  
847C0261

**EVENTS**

**Viewed At**  
09/27/2024 11:01 EDT  
**Identity Authenticated At**  
09/27/2024 11:01 EDT  
**Signed At**  
09/27/2024 11:01 EDT

**AUDITS**

**TIMESTAMP**

09/25/2024 15:01 EDT  
09/25/2024 15:01 EDT  
09/26/2024 16:58 EDT  
09/27/2024 11:01 EDT  
09/27/2024 11:01 EDT  
09/27/2024 11:01 EDT

**AUDIT**

Christy Trahan (ctrahan@abaustin.com) created document 'Reply to Exec Dir Response to Comments - TCEQ TPDES Permit Application\_4874-4200-4195\_v\_5.pdf' on Firefox via Windows from 54.144.112.110.  
Sharon Smith (ssmith@abaustin.com) was emailed a link to sign.  
Sharon Smith (ssmith@abaustin.com) was emailed a reminder.  
Sharon Smith (ssmith@abaustin.com) viewed the document on Chrome via Windows from 216.201.214.194.  
Sharon Smith (ssmith@abaustin.com) authenticated via email on Chrome via Windows from 216.201.214.194.  
Sharon Smith (ssmith@abaustin.com) signed the document on Chrome via Windows from 216.201.214.194.

**Jennifer Cox**

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, May 20, 2024 4:04 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016303001  
**Attachments:** Carr Family - Comment and Protest TPDES Permit Application - Cedar Creek MH - TCEQ 4885-8790-9805.docx

H

**From:** ssmith@abaustin.com <ssmith@abaustin.com>  
**Sent:** Monday, May 20, 2024 1:46 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016303001

**REGULATED ENTY NAME** CEDAR CREEK WWTP

**RN NUMBER:** RN111681797

**PERMIT NUMBER:** WQ0016303001

**DOCKET NUMBER:**

**COUNTY:** BASTROP

**PRINCIPAL NAME:** CEDAR CREEK MH LLC

**CN NUMBER:** CN606110708

**NAME:** Sharon J. Smith

**EMAIL:** [ssmith@abaustin.com](mailto:ssmith@abaustin.com)

**COMPANY:** Armbrust & Brown PLLC for Carr Family Partnership, Ltd.

**ADDRESS:** 100 CONGRESS AVE Suite 1300  
AUSTIN TX 78701-4072

**PHONE:** 5124352342

**FAX:**

**COMMENTS:** This was filed on March 19, 2024, but does not appear in the Commissioners Integrated Database. The letter is not subject to a particular deadline but is a follow up to the requested public meeting that was held.

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

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SHARON J. SMITH  
(512) 435-2342  
[ssmith@abaustin.com](mailto:ssmith@abaustin.com)

March 19, 2024

## *Via efile*

Texas Commission on Environmental Quality  
Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from **Cedar Creek MH, LLC**, for **TPDES Permit No. WQ0016303001**

Dear Chief Clerk:

In a letter dated November 10, 2023 ("*Protest Letter*"), the Carr Family Partnership, Ltd. ("*Carr Family*") protested the Cedar Creek MH, LLC, application for WQ0016303001 ("*Application*"), provided comment on the Application, and requested a public meeting and a contested case hearing on the Application. The Carr Family Property ("*Property*") is contiguous to the proposed facility site and the discharge route, as proposed, would cause effluent to flow onto the Property. As stated in the Protest Letter, the Carr Family is concerned with the water quality of the effluent from the proposed wastewater treatment facility that would be permitted to flow onto the Property; odor and health hazards caused by emissions from the wastewater treatment facility; consequences of a spill; lack of right to use the Property to transport or pool effluent; the absence of an actual watercourse through which the effluent would flow; and lack of need for the facility in light of the TCEQ's regionalization policy. In addition, the Carr Family requested that the Application be reprocessed and renoticed after correction and issuance of a new Notice of Receipt of Application and Declaration of Administrative Completeness ("*NORI*") due to an incorrect address of the facility being included in the NORI, and due to the fact that the NORI was not sent to the correct address for the Carr Family.

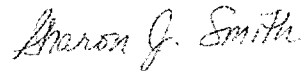
A representative of the Carr Family attended the TCEQ public meeting conducted at the Bastrop Convention & Exhibit Center on February 27, 2024. Comments were taken at the meeting but no information was provided by the TCEQ staff, commenters, or others in attendance that addressed or resolved the issues raised by the Carr Family.

The Carr Family files this letter to confirm that its position on the Application and related issues is unchanged by the public meeting that was conducted, and reiterates its request for a contested case hearing.

Yours Truly,

**ARMBRUST & BROWN, PLLC,**

Attorneys for The Carr Family Partnership, LLC



**BY:** \_\_\_\_\_  
Sharon J. Smith

Via First Class USPS Mail  
Carr Family Partnership, Ltd.  
6402 FM 535  
Cedar Creek, Texas 78612

Via Email  
John Schmeling, P.E.  
Carlson, Brigance & Doering, Inc.  
5501 West William Cannon Drive  
Austin, Texas 78749  
john@cbdeng.com

# ARMBRUST & BROWN, PLLC

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SHARON J. SMITH  
(512) 435-2342  
[ssmith@abaustin.com](mailto:ssmith@abaustin.com)

March 19, 2024

## *Via efile*

Texas Commission on Environmental Quality  
Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from **Cedar Creek MH, LLC**, for **TPDES Permit No. WQ0016303001**

Dear Chief Clerk:

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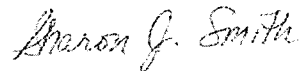
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The Carr Family files this letter to confirm that its position on the Application and related issues is unchanged by the public meeting that was conducted, and reiterates its request for a contested case hearing.

Yours Truly,

**ARMBRUST & BROWN, PLLC,**

Attorneys for The Carr Family Partnership, LLC



**BY:** \_\_\_\_\_  
Sharon J. Smith

Via First Class USPS Mail  
Carr Family Partnership, Ltd.  
6402 FM 535  
Cedar Creek, Texas 78612

Via Email  
John Schmeling, P.E.  
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5501 West William Cannon Drive  
Austin, Texas 78749  
john@cbdeng.com

**Renee Lyle**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Friday, November 10, 2023 1:10 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016303001  
**Attachments:** Carr Family - Protest TPDES Permit Application - TCEQ 4856-9399-6943 v.6.pdf

PM  
H

**From:** ssmith@abaustin.com <ssmith@abaustin.com>  
**Sent:** Friday, November 10, 2023 1:02 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016303001

**REGULATED ENTY NAME:** CEDAR CREEK WWTP

**RN NUMBER:** RN111681797

**PERMIT NUMBER:** WQ0016303001

**DOCKET NUMBER:**

**COUNTY:** BASTROP

**PRINCIPAL NAME:** CEDAR CREEK MH LLC

**CN NUMBER:** CN606110708

**NAME:** Sharon J. Smith

**EMAIL:** [ssmith@abaustin.com](mailto:ssmith@abaustin.com)

**COMPANY:** Armbrust & Brown, PLLC

**ADDRESS:** 100 CONGRESS AVE STE 1300  
AUSTIN TX 78701-2744

**PHONE:** 5124352342

**FAX:** 5124352360

**COMMENTS:** Please see the attached protest on behalf of Carr Family Partnership, Ltd.



# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

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512-435-2300

FACSIMILE 512-435-2360

Sharon J. Smith  
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ssmith@abaustin.com

November 10, 2023

## *Via efile*

Texas Commission on Environmental Quality  
Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from **Cedar Creek MH, LLC** (“*Applicant*”), for **TPDES Permit No. WQ0016303001** (“*Application*”)

Dear Chief Clerk:

This firm represents Carr Family Partnership, Ltd. (“*the Carr Family*”). The Carr Family’s business address and phone number are:

Carr Family Partnership, Ltd.  
6402 FM 535  
Cedar Creek, Texas 78612  
(512) 897-9724

## SUMMARY

The eastern boundary of the Carr Family Property (“*Property*”) is contiguous to the western boundary of the facility site identified in the Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater, Permit No. WQ0016303001 (“*NAPD*”). (See “Attachment No. 1” for Wastewater Facility and Drainage Overview, “*Overview*”.) The Carr Family property is located at 125 Old Bastrop Road, Cedar Creek, Texas, 78612. The proposed facility site address stated in the NAPD is 2883 State Highway 71 (“*SH 71*”), Bastrop, Texas, 78612. (As discussed further below, the facility actually appears to be in Cedar Creek.)

The Carr Family is concerned with the water quality of the effluent from the proposed wastewater treatment facility, as it will flow through drainage ways that are located within or adjacent to the Property; emissions from the wastewater treatment facility, including potential odors, as well as storage and use of chlorine gas; consequences of a spill if sludge is hauled from the site; and lack of right to use the Property to transport effluent. Further, the facility is within the wastewater certificated area of Aqua Water Supply Corporation, raising for the Carr Family the question of need for the facility in light of the TCEQ’s regionalization policy.

The Carr Family is an “affected person” with a “personal justiciable interest.” The Carr Family **protests this application; requests that the TCEQ conduct a public meeting** regarding this permit application, at which the Carr Family and other area property owners and residents may address TCEQ staff and receive answers to their questions regarding the permit application; and **requests a contested case hearing** for taking of testimony and review of evidence regarding the above issues and any other relevant matters. Prior to any of the above

actions, however, as further discussed below the Carr Family requests that the **application be returned to the executive director as administratively incomplete**, and be reprocessed and renoticed after correction and issuance of a new Notice of Receipt of Application and Declaration of Administrative Completeness (“*NORP*”).

### COMMENT PERIOD

As a preliminary matter, on Saturday, November 4, 2023, the Carr Family received the NAPD for Permit No. WQ0016303001 (“*Permit*”), forwarded by the U.S. Postal Service (“*USPS*”). The notice was not sent to the Carr Family business address on file with Bastrop Central Appraisal District, the same address noted at the top of this letter, but rather to an address in Del Valle, Texas. Although the notice envelope from TCEQ is postmarked September 26, 2023, the letter was not forwarded by USPS to the correct address until November 2, 2023, and was not received by the Carr Family until less than one week ago. (See “Attachment No. 2” for photograph of the NAPD with the transmittal envelope and mailing information.)

After receipt of the NAPD, a Carr Family representative went in person to the Bastrop County Library. The draft permit was available but the application could not be located by library staff and has not yet been able to be reviewed by the Carr Family. Accordingly, the Carr Family has not had a meaningful opportunity to review the draft permit and has had no opportunity to review the application information on which the draft permit is based.

The TCEQ Commissioners Integrated Database states that the comment period for the Permit ends November 10, 2023. As a result, these comments are preliminary in nature and will be supplemented when the Carr Family can review the application and draft permit. TCEQ rules allow for the comment period to be extended by the executive director for good cause.<sup>1</sup> Because the NAPD was sent to an improper address, and USPS took more than 30 days to forward the NAPD to the Carr Family address, at a minimum the Carr Family respectfully **requests that the executive director extend the comment period for 10 business days, to November 24, 2023** - to allow a reasonable opportunity to review the application materials, and to submit further filings to the TCEQ if the Carr Family identifies additional concerns for discussion at a public meeting or for taking of evidence at a contested case hearing.

### COMMENTS

The NAPD includes a link to a map depiction of the plant site. (See “Attachment No. 3” for Map Linked for Cedar Creek MH, LLC.) That linked map, however, does not provide a representation of the facility site, the discharge route, or other permit-related matters, but merely shows a pin on the property where the proposed facility will be located. Based on the NAPD description of the discharge, it appears the effluent will flow across the Property, exiting to the west to flow across the property of homes and businesses until it reaches Dry Creek and flows under north under SH 71. (See Overview.)

### WATER QUALITY

The Carr Family runs cattle on the Property. The NAPD does not indicate whether the effluent will flow through piping or discharge directly to a surface channel. The Carr Family is concerned about the water quality of effluent flowing across the Property and directly accessible to the cattle. The NAPD states that the receiving water uses are minimal and limited aquatic life use. If this signals that the permit parameters are not stringent, then the effluent may not be suitable for livestock consumption; further, in the event of any treatment upset, there would be

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<sup>1</sup> Title 30 Texas Administrative Code, Section 55.152(a)(8).  
4856-9399-6943, v. 6

higher risk to the cattle, as the effluent being discharged immediately next door will not have had an opportunity for mixing as it might farther “downstream.”

#### ODORS and HEALTH

The Property is within a municipal utility district, Garfield MUD No. 1, which was created for residential and commercial development. The Carr Family is concerned about odors from the proposed wastewater treatment facility because the property on which it is proposed to be located is immediately next door to the planned development. The TCEQ’s own rules acknowledge that odor control from wastewater treatment facilities is necessary,<sup>2</sup> and wastewater treatment odor typically signals hydrogen sulfide in the air. Siting a facility in this close proximity to the Property, with the risk of odors and the related gases, from normal operation as well as upsets, will be harmful and a nuisance to the Carr Family and its use of the Property.

Further, typically a facility of the size indicated in the NAPD would have chlorine gas stored, and potentially used, onsite. The Carr Family is concerned about proper storage and use of the chlorine gas with livestock currently on the Property, and commercial and residential uses of the Property in the future.

In addition, the Carr Family is concerned about management of sludge from the treatment facility - onsite as well as transport on and from the site to any offsite facility. If sludge is to be dried or disposed onsite, odors and potentially the actual sludge could intrude on the Property. The Carr Family has not had an opportunity to review plans for sludge management, onsite or transported, and any incident regarding sludge management could cause contamination of the Property

#### PROPERTY RIGHT

The application materials were not available, and it is not clear from the NAPD that the unnamed tributary is actually a watercourse through which the effluent may flow. TCEQ Instructions for Completing Domestic Wastewater Permit Applications note, “The issuance of a permit does not grant a permittee the right to use the specific discharge route or to use private or public property for conveyance of wastewater along the discharge route . . . . The permittee must acquire all property rights as may be necessary to use the discharge route.”<sup>3</sup> The Carr Family has not granted an easement for the effluent to flow through or over the Property.

#### REGIONALIZATION

It is the policy of the State of Texas to encourage and promote development and use of regional and area-wide wastewater collection, treatment, and disposal systems.<sup>4</sup> The address for the proposed facility site (whether in Cedar Creek or Bastrop; see further below) appears to be located within the certificated wastewater service area of Aqua Water Supply Corporation. It is not clear from the NAPD why the facility is needed. The application was not available to allow evaluation of any statements therein regarding need for the facility on property within Aqua Water Supply Corporation’s area of certificate of convenience and necessity.

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<sup>2</sup> Title 30 Texas Administrative Code, Chapter 309, “Domestic Wastewater Effluent Limitation and Plant Siting.”

<sup>3</sup> TCEQ Instructions for Completing Domestic Wastewater Permit Applications, Instructions for Domestic Administrative Report 1.0, Section 10, “Point of discharge and discharge route.”

<sup>4</sup> Texas Water Code, Section 26.003, 26.0282, 26.081, and others.

#### ADMINISTRATIVE COMPLETENESS

The NAPD states that the proposed facility site address stated is "2883 State Highway 71, Bastrop, in Bastrop County, Texas, 78612." However, according to Bastrop Central Appraisal District information, the link provided for the electronic map of the general location directs the viewer to 100 acres of property with an address in Cedar Creek, not Bastrop. The address of "2883 State Highway 71, Bastrop," is in the city limits of the City of Bastrop, approximately 15 miles east of the Property, and, like the Cedar Creek location, is also surrounded by undeveloped property. The zip code for the State Highway 71 address in Cedar Creek is 78612; the zip code for the State Highway 71 address in Bastrop is 78602. At best, the application is administratively incomplete if it does not include the correct location of the facility.<sup>5</sup>

The Carr Family is submitting these comments and concerns based on an inference regarding the site location provided in the location link in the NAPD. However, the NAPD states that the link "is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application." But regardless, even if the Carr Family had received the NAPD timely rather than delayed by USPS more than 30 days, if the application includes the incorrect address, then it remains administratively incomplete. As noted above, the application was not available for Carr Family review.

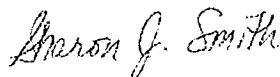
#### CONCLUSION

The Carr Family first requests that the application be returned to the executive director for correction, reprocessing, issuance of a new NORI, and renoticing, by mail and publication, of a NAPD, with complete and accurate information available to the public during the new comment period. If the TCEQ determines not to follow this requirement, the Carr Family requests a 10-business day extension to the comment period, or longer, depending on when the application can be made available for Carr Family review. The Carr Family respectfully requests that the request for contested case hearing be granted on the issues of water quality of the effluent as affecting use of the Property; the potential for odor to intrude on the Property, and effects of the emissions causing odor on health, and as a nuisance, affecting use of the Property; the potential for sludge to intrude on the property; whether the discharge route and flow of effluent through the Property is authorized by law or permission of the Carr Family; noncompliance with the TCEQ's regionalization policy; and any other issues affecting the Carr Family and the Property that are discovered during an extended period for comment based on the extenuating circumstances regarding the forwarding of the NAPD and the lack of availability of the application. The Carr Family also requests that the request for public meeting be granted.

Yours Truly,

**ARMBRUST & BROWN, PLLC,**

Attorneys for The Carr Family Partnership, LLC



BY: \_\_\_\_\_

Sharon J. Smith

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<sup>5</sup> Title 30 Texas Administrative Code, Section 281.17(e)(3).  
4856-9399-6943, v. 6

Via First Class USPS Mail

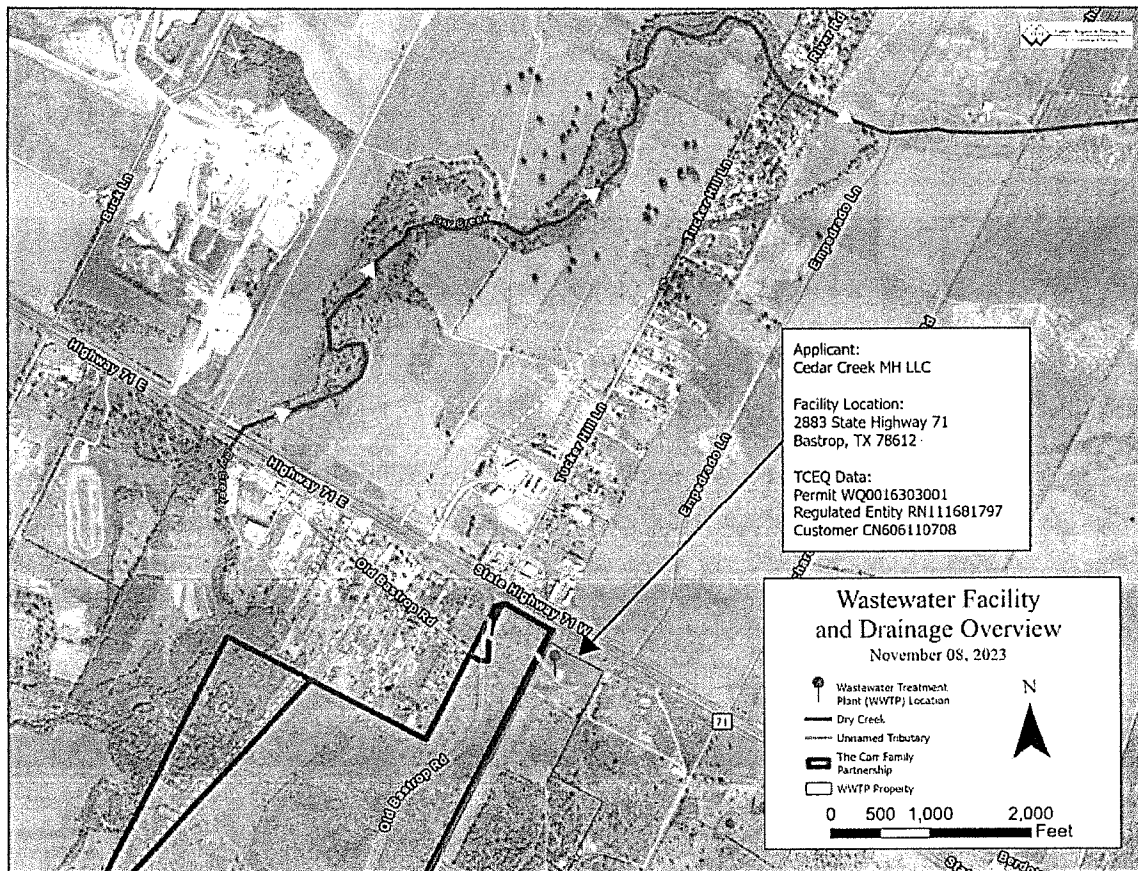
Carr Family Partnership, Ltd.  
6402 FM 535  
Cedar Creek, Texas 78612

Via Email

John Schmeling, P.E.  
Carlson, Brigance & Doering, Inc.  
5501 West William Cannon Drive  
Austin, Texas 78749  
john@cbdeng.com

**ATTACHMENT No. 1**

**Wastewater Facility and Drainage Overview**



## ATTACHMENT No. 2

Photograph of the NAPD with the transmittal envelope and mailing information

### Texas Commission on Environmental Quality



#### NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER

NEW

PERMIT NO. WQ0016303001

**APPLICATION AND PRELIMINARY DECISION.** Cedar Creek MH, LLC, 8350 East Raintree Drive, Suite 220, Scottsdale, Arizona 85260, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (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. TCEQ received this application on February 22, 2023.

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 unclassified receiving water uses are minimal aquatic life use for the unnamed tributary of Dry Creek and limited aquatic life use for Dry Creek. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.  
<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-07.525375,30.1722607&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bastrop County Public Library, 1100 Church Street, Bastrop, Texas.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.



The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment) within 30 days from the date of newspaper publication of this notice.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment), or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en Español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Cedar Creek MH, LLC at the address stated above or by calling Ms. Shelley Young, Consulting Engineer, WaterEngineers, Inc. at 281-373-0500.

Issuance Date: September 26, 2023



Chief Clerk's Office, MC 105  
 Texas Commission on  
 Environmental Quality  
 P.O. Box 13087  
 Austin, TX 78711-3087

OFFICIAL BUSINESS  
 STATE OF TEXAS  
 PENALTY FOR  
 PRIVATE USE



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 DEL VALLE TX 78617

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 CARR FAMILY PARTNERSHIP LTD  
 6402 FM 535  
 CEDAR CREEK TX 78612-3879

FWD

BC: 78612387902 \*0893-02961-02-13

78617001273 FWD



**ATTACHMENT No. 3**

Map Linked for Cedar Creek MH, LLC

