

Brooke T. Paup, *Chairwoman*  
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*

January 17, 2025

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 QUADVEST, L.P. FOR  
WATER QUALITY PERMIT NO. WQ0016143001  
TCEQ DOCKET NO. 2024-1977-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, reading "Eli Martinez".

Eli Martinez, Senior Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2024-1977-MWD**

**IN THE MATTER OF THE  
APPLICATION BY QUADVEST, L.P.  
FOR WATER QUALITY PERMIT NO.  
WQ0016143001**

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING  
REQUEST**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Request in the above-referenced matter and respectfully shows the following.

**I. Introduction**

**A. Summary of Position**

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing request of Robert Humphrey. The requestor is an affected person based on his proximity to the proposed Facility and outfall point. OPIC further recommends the Commission refer the issue listed in Section III.B. for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

**B. Description of Facility**

On April 7, 2022, Quadvest, L.P (Quadvest or Applicant) applied to the TCEQ for a new permit, TPDES Permit No. WQ0016143001, to authorize the

discharge of treated domestic wastewater at a daily average flow not to exceed 0.125 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.25 MGD in the Interim II phase, and a daily average flow not to exceed 0.50 MGD in the Final phase. The Applicant proposes to operate the Westhaven Wastewater Treatment Facility (WWTF), which will serve the Westhaven Subdivision.

The WWTF will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units in the Interim I phase will include a fine screen, an anoxic basin, an aerobic basin, a MBR basin, and a chlorine contact chamber. Treatment units in the Interim II phase will include a fine screen, two anoxic basins, two aerobic basins, two MBR basins, and a chlorine contact chamber. Treatment units in the Final phase will include a fine screen, three anoxic basins, three aerobic basins, three MBR basins, and two chlorine contact chambers. The Facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged to a series of detention ponds, then to an unnamed tributary, then to Japhet Lake, then to an unnamed channel, then to an unnamed pond, then to an unnamed channel, then to the unclassified portion of Spring Creek, then to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use.

### **C. Procedural Background**

The TCEQ declared Quadvest's application administratively complete on August 30, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on January 24, 2023, in the *Houston Business Journal* and in Spanish on February 8, 2023, in the *Houston Chronicle dba La Voz*. A Combined NORI and Notice of Application and Preliminary Decision (NAPD) was published in English on March 29, 2024, in the *Houston Business Journal* and in Spanish on April 10, 2024, in the *Houston Chronicle dba La Voz*. The public comment period ended on May 10, 2024, and the ED's Response to Comments (RTC) was mailed on October 15, 2024. The hearing request period ended November 14, 2024.

A timely hearing request was filed on October 7, 2022, by Mark Merell on behalf of Robert Humphrey.

### **II. Applicable Law**

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under Title 30, 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 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.

30 TAC § 55.201(d).

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:

- (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.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for purposes 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.

30 TAC § 55.203(d).

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

### **III. Analysis of Hearing Request**

#### **A. Whether the requestor is an affected person**

Robert Humphrey's hearing request raises concerns related to the proposed discharge route indicated in the application. The requestor states that "the discharge route stated in the permit is incorrect, (and) discharge will not flow from Japhet Lake to Lynch Lake, but instead flow north from Japhet Lake onto the Lazy W Ranch and thence to Spring Creek, thereby bypassing Lynch Lake."

Mr. Humphrey's request indicates that he owns approximately 500 acres of land in northwest Harris County near the intersection of Mayer Road and FM 362 in Waller—directly across from the planned Westhaven Manor development. The ED indicated in her RTC that the original discharge route described in the August 30, 2022 NORI was revised and subsequently updated in the March 14, 2024 combined NORI/NAPD. The Requestor's hearing request was submitted prior to this update. However, the ED's map created in these proceedings nevertheless indicates that the Requestor's property lies well within a one-mile radius of the proposed Facility and outfall, and the revised discharge route would run directly through the Requestor's property. Given the proximity of the Requestor's property to Applicant's Facility, outfall, and discharge route, OPIC finds that a reasonable relationship exists between the interests claimed and the

activity regulated. Further, his concerns are interests protected by the law under which this application will be considered, and his location increases the likelihood of impacts to health, safety, and use of property. For these reasons, OPIC finds that Mr. Humphrey is an affected person in accordance with 30 TAC § 55.203 and recommends his hearing request be granted.

**B. Which issues raised in the hearing request are disputed**

The hearing request raises the issue of whether the discharge route has been properly characterized in the application and properly addressed by the draft permit. There is no agreement between Requestor and the ED on these issues.

OPIC recommends that the following disputed issue of fact be referred to SOAH for a contested case hearing:

- Whether the discharge route has been properly characterized in the application and properly addressed by the draft permit.

**C. Whether the dispute involves questions of fact or of law**

The issue raised by Mr. Humphrey is an issue of fact. 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. 30 TAC § 55.211(c)(2)(A).



**D. Whether the issue was raised during the comment period**

The issue raised in Mr. Humphrey's request was raised in the comment period and has not been withdrawn. *See* 30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A).

**E. Whether the hearing request is based on issues raised solely in a withdrawn public comment**

No public comments were withdrawn. Therefore, the hearing request is not based on any withdrawn public comments.

**F. Whether the issue is relevant and material to the decision on the application**

The hearing request raises an issue that is relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order 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. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material...it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs"). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

Mr. Humphrey's request questions whether the Application properly characterized the discharge route. Under 30 TAC § 309.12, "[t]he Commission

may not issue a permit for a new facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction, or operational features, minimizes possible contamination of water in the state.” Further, 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 30 TAC 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.” 30 TAC § 307.1. An inaccurate representation of the effluent route would have precluded the ED from conducting a complete and accurate analysis in these respects, and OPIC therefore finds that this issue is relevant and material to the Commission’s decision on this application and is appropriate for referral to SOAH.

**G. Maximum Expected Duration of Hearing**  
SOAH s

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. 30 TAC §

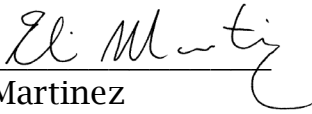
50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC recommends that the duration of hearing on this Application be stated in the Commission's order as 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

#### **IV. Conclusion**

OPIC recommends that the Commission grant the hearing request of Robert Humphrey and refer the matter to SOAH for an evidentiary hearing on the issue in Section III.B above for a hearing duration of 180 days.

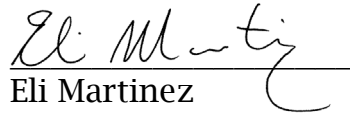
Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the original of the Office of Public Interest Counsel's Response to Hearing Request was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Eli Martinez

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TCEQ DOCKET NO. 2024-1977-MWD**

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