

Brooke T. Paup, *Chairwoman*
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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 31, 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 THE VILLAGE AT
GRAPE CREEK, LLC FOR TPDES PERMIT NO. WQ0016363001
TCEQ DOCKET NO. 2024-1985-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 cursive script that reads "Josiah Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1985-MWD

**APPLICATION BY THE
VILLAGE AT GRAPE CREEK,
LLC FOR TPDES PERMIT NO.
WQ0016363001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE 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 Requests for Hearing and Requests for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by The Village at Grape Creek, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016363001. The Commission received timely comments and hearing requests from: Hill Country Underground Water Conservation District (HCUWCD), Stonewall Water Control and Improvement District (Stonewall WCID), Pedernales River Alliance (PRA), Greater Edwards Aquifer Alliance (GEAA), Texas Rivers Protection Association (TRPA), Donny Clark, Patrick Connelly on behalf of Becker Vineyards, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, Katherine Peake, David Peake, Henry Peake, Chris Perrenoud, Kris Weidenfeller, Reed Bass, Jay Choquette, Levi Deike, David Hahn, Dirk Jordan, Jessica Kramer,

Mark Nebgen, Aimee Hodges Ransleben, David Schafer, Barbara Wolf and Keith Darby, Shelley Booth Wright and James Wright, Deborah Youngblood, and Kim Zuberbueler. The Commission received requests for reconsideration from GEAA, HCUWCD, and TRPA. For the reasons stated herein, OPIC respectfully recommends that the Commission find that HCUWCD, Stonewall WCID, PRA, GEAA, Donny Clark, Becker Vineyards, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, Katherine Peake, David Peake, Henry Peake, Chris Perrenoud, and Kris Weidenfeller are affected persons, and further recommends that the Commission grant their hearing requests. OPIC recommends denial of all requests for reconsideration.

B. Description of Application and Facility

The Village at Grape Creek applied to the TCEQ for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The proposed facility would be a membrane bioreactor system. Treatment units would include three fine screens, an equalization basin, an anoxic tank, an aeration basin, a membranes cell, a sludge belt filter press, and an ultraviolet light disinfection system.

The proposed treatment plan would be located approximately 0.65 miles southwest of the intersection of Jenschke Lane and U.S. Highway 290 in Gillespie County. The treated effluent would be discharged to an unnamed tributary, then to the Pedernales River in Segment No. 1414 of the Colorado River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed

tributary. The designated uses for Segment No. 1414 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

The application was received on July 5, 2023, and declared administratively complete on August 29, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on September 6, 2023, in the *Fredericksburg Standard-Radio Post* and in Spanish on September 5, 2023, in *La Prensa Comunidad*. The combined Notice of Application and Preliminary Decision and Notice of Public Meeting was published in English on May 15, 2024, in the *Fredericksburg Standard-Radio Post* and in Spanish on May 14, 2024, in *Tex Mex News*.¹ A public meeting was held on June 13, 2024, at the Inn on Barons Creek in Fredericksburg, and the public comment period ended at the close of that public meeting. The Executive Director's (ED) Response to Comments (RTC) was mailed on October 9, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was November 8, 2024.

II. APPLICABLE LAW

A. Hearing Requests

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

¹ OPIC notes that the currently available record does not indicate why the Notice of Application and Preliminary Decision and Notice of Public Meeting was published in a different alternative language publication than the Notice of Receipt and Intent to Obtain a Water Quality Permit. See 30 TAC § 39.419(b).

Leg., R.S. (2015). Under 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 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 requestor'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 § 55.20(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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. 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 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.

30 TAC § 55.203(d).

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:

- (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 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 HEARING REQUESTS

A. Whether the requestor is an affected person

Governmental Entities

Hill Country Underground Water Conservation District

Paul Babb submitted timely comments and a hearing request on behalf of HCUWCD. The request indicates that HCUWCD is “a political subdivision of the state authorized by Chapter 8844, Special District Local Laws Code, and Chapter 36, Water Code, to protect and manage the quality and quantity of the Trinity Aquifer within the boundaries of its jurisdiction, which includes the proposed discharge site.” The request further states that a district may make and enforce rules to provide for conserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater. The Pedernales River in Segment No. 1414 of the Colorado River Basin recharges into the aquifer and supplies public and private wells with water for domestic and commercial uses, including agriculture.

The issues raised in the request include concerns about water quality, groundwater availability, runoff, effluent limitations in the draft permit, and the discharge of pharmaceuticals, microplastics, and certain other compounds. Governmental entities with authority under state law over issues raised by the application may be considered affected persons. 30 TAC § 55.203(b). When determining whether a governmental entity is an affected person, factors related to their statutory authority over or interest in the issues relevant to the application should be considered. 30 TAC § 55.203(c). HCUWCD's concerns are protected by the law under which the application is considered. Further, the proposed discharge site is within its jurisdiction. In combination, these factors give HCUWCD a personal justiciable interest different from that of the general public. Therefore, OPIC finds that HCUWCD qualifies as an affected person.

Stonewall WCID

Mark Nebgen submitted a timely comment and hearing request on behalf of Stonewall WCID. The request indicates that Stonewall WCID is an affected person under 30 TAC § 55.203 because it is a governmental entity. Stonewall WCID was created pursuant to Article 16, Section 59 of the Texas Constitution and finds its authority under Chapter 51 of the Texas Water Code. The District has the functions, powers, authority, rights, and duties to accomplish its purposes. Those purposes include the supply of water for municipal and domestic uses, as well for power and commercial purposes.

The issues raised in the request include concerns about water quality and human health. Governmental entities with authority under state law over issues

raised by the application may be considered affected persons. 30 TAC § 55.203(b). When determining whether a governmental entity is an affected person, factors related to their statutory authority over or interest in the issues relevant to the application should be considered. 30 TAC § 55.203(c). Stonewall WCID's concerns are protected by the law under which the application is considered. Further, the proposed facility and discharge route are located in close proximity to the community of Stonewall, which is serviced by the District. In combination, these factors give Stonewall WCID a personal justiciable interest different from that of the general public. Therefore, OPIC finds that Stonewall WCID qualifies as an affected person.

Groups and Associations

Pedernales River Alliance and Greater Edwards Aquifer Alliance

Lauren Ice submitted timely comments and hearing requests on behalf of PRA and GEAA. PRA is a non-profit community organization based in Gillespie County. Its purpose is to protect ground and surface water in the Pedernales River Watershed from the threat of over-development, pollution, and depletion. PRA is a membership organization and has members who live and own property in close proximity to the proposed facility. GEAA is a non-profit organization that promotes effective broad-based advocacy for the protection and preservation of the Edwards and Trinity Aquifers, their springs, watersheds, and the Texas Hill Country lands that sustain them. GEAA has members who live and own property in close proximity to the proposed facility and discharge location. For these

reasons, OPIC finds that PRA's and GEAA's stated purposes are germane to the interests they seek to protect.

In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. Here, Kris Weidenfeller has been identified as a member of both PRA and GEAA. Mr. Weidenfeller owns approximately 46 acres directly adjacent to the proposed facility. His proximity is reiterated by his presence on the map created by ED staff and Applicant's Adjacent Landowner map and list. Additionally, Donny Clark has been identified as a member of PRA. According to the map created by ED staff, Mr. Clark resides 0.42 miles downstream of the proposed facility and along the discharge route.² Furthermore, PRA and GEAA seek prospective or injunctive relief for their members, rather than damages or any type of relief that would inure solely to any individual member; therefore, the participation of any individual member is not required.

This hearing request raised concerns regarding odor, runoff, flooding, groundwater impacts, water quality, wildlife, the need for the requested capacity, adequate design calculations, application accuracy, recreational uses, compliance with the Texas Surface Water Quality Standards, and compliance with the necessary antidegradation requirements.

While the concerns raised on behalf of PRA and GEAA are protected by the law under which the application will be considered, a reasonable relationship

² All distances are based on the map provided by ED staff.

must exist between those interests and the regulation of wastewater discharges under the permit. As required for group standing under 30 TAC § 55.205, PRA and GEAA timely submitted comments; the interests the groups seek to protect are germane to their purposes; neither the claim asserted nor the relief requested requires the participation of individual members; and PRA and GEAA's combined hearing request identifies members of the groups that would otherwise have standing to request a hearing in their own right. Given Mr. Weidenfeller and Mr. Clark's proximity to the proposed facility and discharge route, the fact that PRA and GEAA's concerns are specific and protected by the law under which this application is considered, and a reasonable relationship exists between their concerns and the regulation of this facility, OPIC finds that PRA and GEAA have personal justiciable interests in this matter and qualify as affected persons.

Texas Rivers Protection Association

David Price submitted a timely comment and hearing request on behalf of TRPA. In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. Here, no specific individuals were identified in this manner.

The hearing request raised general opposition to the proposed facility, citing concerns about water quality and phosphorus levels, as well as suggesting alternative discharge options. While the concerns raised on behalf of TRPA are protected by the law under which the application will be considered, TRPA failed to identify any member who would have standing in their own right to request

this contested case hearing. Because TRPA has not offered a member of the association who would have standing in their own right, the group cannot qualify as an affected person under 30 TAC § 55.205(b).

Affected Individuals Residing in Close Proximity to the Proposed Facility

Donny Clark

The Commission received timely comments and a hearing request from Donny Clark, who resides 0.42 miles from the proposed facility. Mr. Clark's property is directly downstream from the proposed facility along the discharge route. He claims to have a home and a water well, both located close to the discharge route. He is concerned about the proposed facility's potential to affect water quality, water quantity, and local wildlife. These interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Mr. Clark's proximity to the proposed facility and discharge route, a reasonable relationship exists between the interests he seeks to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given his relevant concerns and proximity, OPIC finds that Mr. Clark has demonstrated that he would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Donny Clark is an affected person.

Becker Vineyards

The Commission received timely comments and a hearing request from Patrick Connelly on behalf of Becker Vineyards. Mr. Connelly provides an address 0.64 miles from the proposed facility and claims to operate an outdoor hospitality business on his property near the possible discharge route. He raises concerns about the proposed facility's effect on water quality and potential to emit odors. Particularly, he is concerned that the proposed facility could negatively affect local recreational opportunities and Becker Vineyards' outdoor hospitality business.

These interests are protected by the law under which this application will be considered. See 30 TAC § 55.203(c)(1). Because of Becker Vineyards' proximity to the proposed facility, a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity. See 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. See 30 TAC § 55.203(c)(4)-(5). Given the extent of their proximate outdoor economic activity—OPIC finds that Becker Vineyards has demonstrated that they would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Becker Vineyards is an affected person.

Paul Gabriel Folse and Lisa Folse

The Commission received timely comments and a hearing request from Paul Gabriel Folse and Lisa Folse, who reside 0.35 miles from the proposed facility and discharge route. In their written and oral comments, the Folses claim to have a home, a water well, and a farm located close on their property with bees, crops, and hay for sheep. They are concerned about the proposed facility's potential to affect water quality and the negative impact this could have on their crops and bees. They also raise concerns about the proposed facility's possible impact on the quiet enjoyment of their property by emitting nuisance light, noise, and odors.

Apart from nuisance light and noise, these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of the Folses' proximity to the proposed 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). Further, the requestors' proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given their relevant concerns and proximity, OPIC finds that the Folses have demonstrated that they would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Paul Gabriel Folse and Lisa Folse are affected persons.

James and Laura Fritz

The Commission received timely comments and a hearing request from James and Laura Fritz, who reside 1.33 miles from the proposed facility. The Fritzes have property directly downstream from the proposed facility along the discharge route. They own a water well, they fish and swim along the discharge route, and they have pets that play in the river. The Fritzes raise concerns about the proposed facility's potential to affect water quality, human and animal health, local wildlife, and their recreational activities. They also raise concerns about the proposed facility's potential to emit nuisance odors and suggest that the proposed development implement a beneficial reuse plan for their wastewater.

The interests raised by the Fritzes are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of the Fritzes' proximity to the proposed 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). Further, the requestors' proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given their proximity and extensive, specific concerns—OPIC finds that the Fritzes have demonstrated that they would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find James and Laura Fritz are affected persons.

Katherine, David, and Henry Peake

The Commission received timely comments and hearing requests from Katherine Peake on behalf of herself as well as David Peake and Henry Peake. The Peakes have three separate properties, not along the discharge route. Katherine Peake's property is 1.04 miles from the proposed facility. Her children commonly play in the river, she owns a water well, and she is concerned about water quality and its potential effect on human health and local wildlife. David Peake's property is 1.23 miles from the proposed facility and is often used as a short-term rental property. Henry Peake's is 1.81 miles from the proposed facility and is rented out long-term. They both own water wells on the property and are concerned about the proposed facility's potential to affect water quality, human health, local wildlife, endangered species, and their ability to rent their properties.

The interests raised by the Peakes are protected by the law under which this application will be considered. See 30 TAC § 55.203(c)(1). Because of the Peakes proximity to the proposed 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). Further, the requestors' proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. See 30 TAC § 55.203(c)(4)-(5). Given their relevant concerns and proximity, OPIC finds that the Peakes have demonstrated that they would be affected by the application in a way not common to members of the general public as required by 30 TAC §

55.203(a). Therefore, OPIC recommends that the Commission find that Katherine Peake, David Peake, and Henry Peake are affected persons.

Chris Perrenoud

The Commission received timely comments and a hearing request from Chris Perrenoud, who resides 0.71 miles from the proposed facility directly downstream along the discharge route. In her written and oral comments, Ms. Perrenoud claims to operate an outdoor, child- and pet-friendly hospitality business on both sides of the discharge route. She also claims that the property is associated with Public Water System ID No. 0860190.³ She is concerned about the proposed facility's potential to affect water quality, create nuisance odors, and distress local wildlife. Particularly, she is concerned that these possible effects could negatively impact her business.

These interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Ms. Perrenoud's downstream proximity to the proposed facility and discharge route, a reasonable relationship exists between the interests she seeks to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given her extensive outdoor economic interests and proximity—OPIC finds that Ms. Perrenoud has demonstrated that

³ Info about this PWS can be found [here](#). The registration has been active since March 8, 2023, but the system does not appear to be in operation.

she would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Chris Perrenoud is an affected person.

Kris Weidenfeller

The Commission received timely comments and a hearing request from Kris Weidenfeller, who owns three properties in the area—0.32 miles, 0.51 miles, and 3.71 miles from the proposed facility. In his written comments Mr. Weidenfeller claims that he is an adjacent landowner, and his location is confirmed on the application's affected landowner list. Although most of his written comments are in question form, he raises many relevant concerns, including—water quality, nuisance odors, and possible degradation of local wildlife and ecosystem. He also made oral comments at the public meeting that was held in this matter.

These interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Mr. Weidenfeller's proximity to the proposed facility, a reasonable relationship exists between the interests he seeks to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given his relevant concerns and proximity, OPIC finds that Mr. Weidenfeller has demonstrated that he would be affected by the application in a way not common

to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Kris Weidenfeller is an affected person.

Individual Requestors Residing Further from the Facility

The following individuals also submitted hearing requests: Reed Bass, Jay Choquette, Levi Deike, David Hahn, Dirk Jordan, Jessica Kramer, Mark Nebgen, Aimee Hodges Ransleben, David Schafer, Shelley Booth Wright and James Wright, Barbara Wolf and Keith Darby, Deborah Youngblood, and Kim Zuberbueler. While many of these requestors articulated relevant and material concerns, according to the map created by ED staff all reside further than three miles from the proposed facility. Furthermore, none of these requestors are listed on the Applicant's adjacent landowner map. Additionally, several requestors failed to give a physical address, instead listing only PO Box numbers.⁴ Given these requestors' lack of proximity to the proposed facility and the discharge route, or their failure to articulate their proximity, OPIC cannot find that they would be affected in a manner not common to the general public.

B. Which issues raised in the hearing requests are disputed

The affected requestors raised the following disputed issues:

1. Whether the draft permit is adequately protective of water quality.

Raised by: HCUWCD, Stonewall WCID, PRA, GEAA, Donny Clark, Becker Vineyards, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, the Peakes, Chris Perrenoud, Kris Weidenfeller.

⁴ OPIC notes that while a PO Box address does not indicate proximity, those individuals who only list their PO Box number could attend the preliminary hearing in order to petition for party status under 30 TAC § 55.211(e). OPIC further notes that no distance restrictions are imposed by law on these requestors' interests. *See* 30 TAC § 55.203(c)(2).

2. Whether the draft permit is adequately protective of groundwater availability.

Raised by: HCUWCD, PRA, GEAA.

3. Whether the draft permit is adequately protective of recreational uses.

Raised by: PRA, GEAA, James and Laura Fritz.

4. Whether the draft permit is in compliance with the Texas Surface Water Quality Standards.

Raised by: PRA, GEAA.

5. Whether the draft permit is adequately protective against excess runoff.

Raised by: HCUWCD, PRA, GEAA

6. Whether the draft permit's effluent limitations are sufficient.

Raised by: HCUWCD.

7. Whether the draft permit is adequately protective of human health.

Raised by: Stonewall WCID, James and Laura Fritz, the Peakes.

8. Whether the draft permit is adequately protective against nuisance odors.

Raised by: PRA, GEAA, Becker Vineyards, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, the Peakes, Chris Perrenoud, Kris Weidenfeller.

9. Whether the draft permit is adequately protective of plants and wildlife.

Raised by: PRA, GEAA, Donny Clark, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, the Peakes, Chris Perrenoud, Kris Weidenfeller.

10. Whether the application articulates the need for the requested capacity and contains adequate design calculations.

Raised by: PRA, GEAA.

11. Whether the permit application was accurate.

Raised by: PRA, GEAA.

12. Whether the draft permit contains the correct antidegradation requirements.

Raised by: PRA, GEAA.

13. Whether the draft permit is adequately protective against flooding.

Raised by: PRA, GEAA.

14. Whether the draft permit is adequately protective against the discharge of pharmaceuticals and microplastics.

Raised by: HCUWCD.

15. Whether the draft permit is adequately protective against noise and light pollution.

Raised by: Paul Gabriel Folse and Lisa Folse.

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. The issues raised here are issues of fact.

D. Whether the issues were raised during the public comment period

Issues No. 1-15 in Section III.B. were specifically raised by affected requestors 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 public comments.

F. Whether the issues are relevant and material to the decision on the application

The hearing requests raised issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Standards, Antidegradation Review, Human Health, Plant and Animal Life, and Recreational Activities.

The affected requestors in this matter raise concerns about adverse effects to water quality and the consequential impacts on human health, animal life, the environment, and their recreational activities. The Commission is responsible for the protection of water quality under Texas Water Code (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...." 30 TAC § 307.1. 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 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.” 30 TAC § 307.4(d). Also, 30 TAC § 307.4(j)(1) requires that existing, designated, presumed, and attainable uses of aquatic recreation must be maintained. Finally, antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission’s antidegradation policy and contains provisions for implementation of the policy. As Chapter 307 designates criteria for the regulation of water quality and governs antidegradation reviews, the protection of human health and safety and animal life, and the maintenance of recreational uses, Issue Nos. 1, 3, 4, 7, 9, and 12 are relevant and material to the Commission’s decision regarding this application.

Groundwater

Requestors expressed concerns regarding impacts on groundwater near the proposed facility. As discussed above, the Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. 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....” Under 30 TAC § 309.12, the Commission considers several factors relating to a facility’s proposed design, construction, and operational features to evaluate a facility’s potential to cause surface water and groundwater contamination. The rule further provides for consideration of active geologic processes and

groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge and discharge conditions. Therefore, Issue No. 2 is relevant and material to the Commission's decision on this application.

Runoff and Effluent Limitations

Wastewater treatment and effluent limitations at wastewater treatment facilities must maintain water quality in accordance with the TCEQ's surface water quality standards. 30 TAC § 309.1(a). Effluent quality for a domestic wastewater treatment plant permit is addressed under the Commission's rules at 30 TAC § 309.4. In addition, under 30 TAC § 309.12 the siting of a facility should minimize possible contamination of both surface water and groundwater. Accordingly, Issue Nos. 5-6 are relevant and material to the Commission's decision regarding this application.

Nuisance Odors

TCEQ regulates nuisance conditions under 30 TAC § 309.13(e) which requires applicants to implement a nuisance odor abatement plan. Further, permits issued by TCEQ do not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of their property. Because 30 TAC § 309.13 addresses nuisance conditions as described by requestors, Issue No. 8 is relevant and material to the Commission's decision on this application.

Need for Requested Capacity, Adequacy of Design Calculations, and Application Accuracy

Requestors raised concerns regarding the need for the requested capacity and the adequacy of the design calculations. According to TCEQ's Instructions for Completing the Domestic Wastewater Permit Application, failure to provide sufficient justification of need for the permit may result in a recommendation for denial. Additionally, TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. 30 TAC § 305.125(19). Therefore, Issue Nos. 10-11 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Flooding

TCEQ's jurisdiction is established by statute and does not include authority under the Texas Water Code or its regulations to address or consider flooding when making a decision on issuance of this permit. Therefore, Issue No. 13 is not relevant and material to the Commission's decision on this application.

Discharge of Pharmaceuticals and Microplastics

A requestor raised concerns about the discharge of pharmaceuticals and microplastics in waters nearby the proposed facility. Neither the TCEQ nor the EPA has promulgated rules or criteria limiting emerging contaminants, which includes pharmaceuticals, in wastewater. There is no clear regulatory regime or rules available to address the treatment of pharmaceuticals in domestic

wastewater. Therefore, Issue No. 14 is not relevant and material to the Commission's decision on this application.

Noise and Light Pollution

Requestors raised concerns about the proposed facility's creation of noise and light pollution. This application is for a TPDES permit, which authorizes the discharge of effluent to water in the state. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider issues related to effects of light and noise pollution when deciding whether to issue a TPDES permit. Therefore, Issue No. 15 is not relevant and material to the Commission's decision regarding this application.

G. 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. 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 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.

IV. REQUESTS FOR RECONSIDERATION

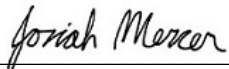
The Commission received requests for reconsideration of the ED's decision from GEAA, HCUWCD, and TRPA. These requests for reconsideration reiterated the same issues raised in their hearing requests. While OPIC is recommending a hearing and referral of the issues encompassing these requestors' concerns as expressed in their requests for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that any of the requests for reconsideration be granted. As no such record currently exists, OPIC cannot recommend the requests be granted at this time.

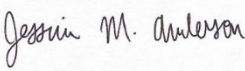
V. CONCLUSION

Having found that HCUWCD, Stonewall WCID, PRA, GEAA, Donny Clark, Becker Vineyards, Paul Gabriel Folse and Lisa Folse, James and Laura Fritz, Katherine Peake, David Peake, Henry Peake, Chris Perrenoud, and Kris Weidenfeller qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue Nos. 1-12 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny the pending requests for reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025, 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 to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

A handwritten signature in cursive script that reads "Jessica M. Anderson". The signature is written in dark ink on a light-colored background.

Jessica M. Anderson

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