

TCEQ DOCKET NO. 2025-0079-MWD

**APPLICATION OF THE OASIS OF
TEXAS LP FOR TPDES PERMIT NO.
WQ0016436001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

APPLICANT’S RESPONSE TO HEARING REQUESTS

The Oasis of Texas LP (“Applicant”) respectfully submits this Response to Hearing Request in the above-referenced matter.

BACKGROUND

I. FACILITY DESCRIPTION

The Applicant submitted an application to the TCEQ for a new permit, TPDES Permit No. WQ0016436001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The Applicant proposes to operate The Oasis of Texas Wastewater Treatment Facility (WWTF), which will serve The Oasis of Texas Subdivision.

The Oasis of Texas WWTF will be an activated sludge process plant operated in the conventional aeration mode. Treatment units include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary, thence to Sand Creek, thence to Long King Creek, thence to the Trinity River Below Lake Livingston in Segment No. 0802 of the Trinity River Basin. The designated uses for Segment No. 0802 are primary contact recreation, public water supply, and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses.

The proposed facility will be located at approximately 14625 U.S. Highway 59 North, in Polk County, Texas 75960.

II. DEADLINES

The Executive Director issued her decision on November 4, 2024. In order to request a contested case hearing, therefore, the request must have been **received** by TCEQ by December 4, 2024. 30 Texas Admin. Code § 55.201(a) and (c).¹

III. REQUESTS

There are three hearing requesters:² (1) Penny Clarke Evans,³ (2) Elizabeth Miller Grindstaff, and (3) Robert H Miller. The Hearing Requests from each of these three people should be denied for the reasons specified below.

RESPONSES TO SPECIFIC REQUESTS

I. Ms. Penny Clarke Evan’s Hearing Request Should be Denied.

Ms. Clarke Evans’ request (dated August 14, 2024) fails in almost every respect to provide the information required to obtain a contested case hearing and to show that she has a justiciable interest. Her hearing request states:

TCEQ, the Clarke families (Monroe Clarke, David Clarke, Jerry Clarke, Josh Clarke, Jay Clarke, Homer Barnes, Jerri Boyd, David Evans and myself) are requesting a CONTESTED CASE HEARING. Thank you.

Ms. Evans fails to state any interest that is protected under the law pursuant to 30 Tex. Admin Code § 55.203(c)(1). She does not show how her interest is different than an interest common to

¹ The ED’s Initial Decision states: “A request for a contested case hearing or reconsideration of the executive director’s decision must be **received** by the Chief Clerk’s office no later than 30 calendar days after the date of this letter.” (emphasis in original).

² Jerry Clarke submitted a hearing request, but it was received on December 5, 2024, after the deadline for requesting such a hearing. His hearing request, therefore, will not be considered herein and should not be considered by the Commission.

³ Ms. Penny Clarke Evans submitted requests using two different PO Box addresses –one on Moscow and one in Corrigan. Notwithstanding, she used the same email for both, so it appears that there is only one Penny Clarke Evans.

members of the general public. 30 Tex. Admin Code § 55.203(a). Ms. Evans does not discuss how she personally might be affected by the regulated activity. She only identifies family members that are requesting a contested case hearing (presumably through her). Ms. Evans concerns, whatever they are, are not particular to her and do not constitute a personal justiciable interest.

Moreover, Ms. Evans fails to address the majority of the procedural requirements for seeking a hearing. Specifically, she failed to substantially comply with the following requirements set-forth in 30 Tex. Admin Code § 55.201:

- (1) 55.201(d)(2): She failed 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;
- (2) 55.201(d)(4)(B): She failed to "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." She also failed to "specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law."

In sum, Ms. Evans failed to comply with either the substantive or the procedural requirements for requesting a contested case hearing. Her request should be denied.

II. Mr. Elizabeth Miller Grindstaff's Hearing Request Should be Denied.

Ms. Elizabeth Miller Grindstaff's request (dated August 5, 2024) fails in almost every respect to provide the information required to obtain a contested case hearing and to show that she has a justiciable interest. Her hearing request states:

I have reviewed the notice sent to me and my family recently, and we now wish to request a CONTESTED CASE HEARING. The notice describes the path the discharged water will travel from the discharge point ultimately to the Trinity River. However, the developer's parcel has no direct connection to Sand Creek, other than across the land owned by my brother, Robert H. Miller, and there is no "unnamed tributary" there according to current topo maps. More important, Sand Creek in our area is generally dry, and only carries water south toward the Trinity during large rain events. Therefore, I do not believe the geomorphology of any such a "tributary" or even Sand Creek can handle the amount of water to be discharged. Also, did the developer clear the land in accordance with the Migratory Bird Treaty Act? Have they respected the Tricolored Bat? Can you please provide us proof?"

Ms. Grindstaff identifies her address as 2000 Arcady Lane, Corsicana, TX 75110. A simple google map search shows this to be over 100 miles away from the permit site. Given that distance, it is hard to imagine a personal justiciable interest that Ms. Grindstaff might assert. Not only is distance specifically identified as a factor for determining whether a person is an affected person,⁴ but the question of distance is important in determining three of the other five factors that apply to non-governmental entities.⁵ A distance of over 100 miles should disqualify her from any real consideration.

In addition, Ms. Grindstaff appears to be asserting an interest of her brother, not herself. She complains about the discharge route but does not describe how the discharge route may affect

⁴ "In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following: . . . (2) distance restrictions or other limitations imposed by law on the affected interest." 30 Tex. Admin Code § 55.203(c)(2).

⁵ "(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." 30 Tex. Admin Code § 55.203(c). The further away a requestor is, the less there might be an impact or a reasonable relationship.

her personally. She simply fails to assert a personal justiciable interest as required by 30 Tex. Admin Code § 55.203(a).

She raises concerns about the Migratory Bird Treaty Act and the Tricolored Bat, but did not raise such concerns during the comment period. Therefore, she failed to comply with 30 Tex. Admin Code § 55.201(d)(4)(B). Further, she makes no attempt to show how concerns about the Migratory Bird Treaty Act and the Tricolored Bat affect her personally and not members of the public generally.

Moreover, Ms. Grindstaff fails to address the majority of the procedural requirements for seeking a hearing. Specifically, she failed to substantially comply with the following requirements set-forth in 30 Tex. Admin Code § 55.201:

- (1) 55.201(d)(2): She failed 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;
- (2) 55.201(d)(4)(B): She failed to "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." She also failed to "specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law."

In sum, Ms. Grindstaff failed to comply with either the substantive or the procedural requirements for requesting a contested case hearing. Her request should be denied.

III. Mr. Robert Miller's Hearing Request Should be Denied.

Mr. Robert Miller's request should be denied because he fails to show a personal justiciable interest, and his request also fails with respect to certain procedural requirements.

Mr. Miller asserts generally that he is concerned about erosion and contamination.

TCEQ does not have jurisdiction to address erosion issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. Erosion is not an interest to be protected. 30 Tex. Admin Code § 55.203(c)(1).

With respect to "contamination," he does not explain how there is "a reasonable relationship exists between the interest claimed and the activity regulated; [a] likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; [or a] likely impact of the regulated activity on use of the impacted natural resource by the person. 30 Tex. Admin Code § 55.203(c)(3)-(5). His hearing request does not provide the basis for the Commission to determine that he is an affected person "who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application" 30 Tex. Admin Code § 55.203(a).

Moreover, Mr. Miller fails to address the important procedural requirements for seeking a hearing. Specifically, he failed to substantially comply with the following requirements set-forth in 30 Tex. Admin Code § 55.201:

- (1) 55.201(d)(2): He failed identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language . . . how and why the requestor believes he . . . will be adversely

affected by the proposed facility or activity in a manner not common to members of the general public;

- (2) 55.201(d)(4)(B): He failed to “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.” He also failed to “specify any of the executive director’s responses to the requestor’s comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law.”

In sum, Mr. Miller failed to comply with either the substantive or the procedural requirements for requesting a contested case hearing. His request should be denied.

CONCLUSION

All hearing requests should be denied. No person has shown a personal justiciable interest or complied with the procedural requirements for requesting a contested case hearing.

Respectfully submitted,

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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the persons on the attached mailing list following parties as shown below on this 14th day of February 2025 as follows:

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