

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

February 14, 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 OASIS OF TEXAS LP
TPDES PERMIT NO. WQ0016436001
TCEQ DOCKET NO. 2025-0079-MWD**

Dear Ms. Gharis:

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

Sincerely,

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

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0079-MWD

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

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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

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 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 Oasis of Texas LP (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016436001. The Commission received timely comments and hearing requests from Penny Clarke Evans and Jerry C. Clarke on behalf of the Clarke family, Robert H. Miller, and Elizabeth Miller Grindstaff. For the reasons stated herein, OPIC respectfully recommends that the Commission find that the Clarke family and Robert H. Miller are affected persons, and further recommends that the Commission grant their hearing requests.

B. Description of Application and Facility

The Oasis of Texas 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 50,000 gallons per day. The proposed facility would be an activated sludge process plant operated in the conventional aeration mode. Treatment units would include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber.

The proposed facility would be located at approximately 14625 U.S. Highway 59 North in Polk County. The treated effluent would be discharged to an unnamed tributary, then to Sand Creek, then to Long King Creek, then 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.

C. Procedural Background

The application was received on October 27, 2023, and declared administratively complete on December 11, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on December 28, 2023, in the *Polk County Enterprise*. The Notice of Application and Preliminary Decision was published on July 4, 2024, in the *Polk County Enterprise*. The public comment period ended on August 5, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on November 4, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was December 4, 2024.

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 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. 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).

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.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestor is an affected person

Clarke Family

Jerry C. Clarke and Penny Clarke Evans submitted timely comments and hearing requests on behalf of the Clarke family. According to the Applicant's Landowner map and list, the discharge route would run directly through Mr. Clarke's property, within one mile downstream from the outfall. Additionally, Mr. Clarke stated in his request that he uses this property to run cattle, and he expressed his worry about the potential effects this facility could have on that practice. The Clarkes raised concerns about the discharge route and erosion.

Their interest regarding the discharge route is protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of the Clarkes' proximity to the facility, a reasonable relationship exists between the interest they seek to protect and the Applicant's regulated activity. *See* 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 justiciable concerns and proximity, OPIC finds that the Clarke family has demonstrated that they would be affected 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 the Clarke family is an affected person.

Robert H. Miller

The Commission received timely comments and hearing requests from Robert H. Miller, whose property is directly adjacent to the proposed facility. Additionally, the proposed discharge route passes directly through Mr. Miller's property, within one mile downstream from the outfall. Mr. Miller's proximity to the proposed facility is confirmed by his presence on the Applicant's Landowner map and list. He is concerned about the discharge route and its characterization in the draft permit, the effects the proposed facility would have on water quality, and the effects of the discharge on erosion. Some of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Mr. Miller'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 justiciable concerns and proximity, OPIC finds that Mr. Miller has demonstrated that he would be affected 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 Robert H. Miller is an affected person.

Elizabeth Miller Grindstaff

Elizabeth Miller Grindstaff made timely comments and hearing requests. Ms. Grindstaff gave her address as 2000 Arcady Lane, Corsicana, which according to the map created by ED staff is 127.77 miles from the proposed facility. Ms. Grindstaff articulated concerns about the discharge route, wildlife, recreation, and the adequacy of the permit's information and its compliance with relevant notice requirements. While Ms. Grindstaff articulated relevant and material concerns, her residence is more than one hundred miles from the proposed facility, and she is not listed on the Applicant's Landowner map nor list. Given Ms. Grindstaff's lack of proximity to the proposed facility and the discharge route, OPIC cannot find that she 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 discharge route has been properly characterized.

Raised by: the Clarke family, Robert H. Miller.

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

Raised by: Robert H. Miller.

3. Whether the draft permit is adequately protective against erosion.

Raised by: the Clarke family, Robert H. Miller.

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. 1-3 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 affected requestors 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).

Discharge Route

The affected requestors in this matter have concerns that the proposed discharge route has been improperly characterized in the application. Proper functioning of a discharge route as an operational feature of the facility may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state. Further, 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 or inadequate representation of the effluent route could prevent ED staff from conducting a complete and accurate analysis. Therefore, Issue No. 1 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Water Quality

The Commission is responsible for the protection of water quality under Texas Water Code Chapter 26 and 30 TAC Chapters 307 and 309. The 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). Finally, 30 TAC § 307.4(e) requires that nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation which impairs an existing, designated, presumed, or attainable use. As Chapter 307 designates criteria for the regulation of water quality and the protection of human health and safety and terrestrial and aquatic life, Issue No. 2 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Erosion

The requestors raised concerns regarding the likelihood that the proposed facility would cause an increase in erosion. With respect to erosion, 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.” In making this determination under 30 TAC § 309.12(1), the Commission may consider active

geologic processes and their impact on groundwater contamination. According to 30 TAC § 309.11(1), active geologic processes consist of any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion. Although Chapter 309 authorizes consideration of “active geological processes,” OPIC interprets these regulatory provisions as being limited to specific existing conditions associated with a proposed site location, rather than potential erosion. Therefore, OPIC finds that Issue No. 3 is not relevant and material to the Commission’s decision on this application.

G. Maximum expected duration for the contested case hearing

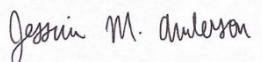
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 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. CONCLUSION

Having found that the Clarke family and Robert H. Miller qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issues No. 1-2 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully submitted,

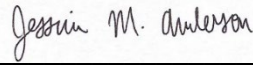
Garrett T. Arthur
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing 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 black ink on a light-colored background.

Jessica M. Anderson

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TCEQ DOCKET NO. 2025-0079-MWD

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