

DOCKET NO. 2025-0079-MWD

APPLICATION BY THE OASIS	§	BEFORE THE
OF TEXAS LP FOR TPDES	§	
PERMIT NO. WQ0016436001	§	TEXAS COMMISSION ON
	§	
	§	ENVIRONMENTAL QUALITY

**CLARKE FAMILY’S REPLY TO:
APPLICANT’S RESPONSE TO HEARING REQUESTS
AND TO THE EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

To the Members of the Texas Commission on Environmental Quality:

Jerry C. Clarke and Penny Clarke Evans (the “Clarke Family”) file this Reply to Applicant’s Response to Hearing Requests and the Executive Director’s Response to Hearing Requests in the above-captioned matter and respectfully submit the following:

I. Introduction

The Oasis of Texas LP (the “Applicant”) filed an application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016436001. The Clarke Family timely filed comments and a hearing request.

The Applicant is requesting to discharge treated domestic wastewater at a daily average flow of up to 50,000 gallons per day. The facility would be a sludge process plant located at 14625 U.S. Highway 59 North in Polk County, Texas. The effluent would be discharged to what Applicant refers to as a “tributary”, which would then flow to Sand Creek, then to Long King Creek, then to the Trinity River.

At all stages of the application process, the Clarke Family has submitted comments and hearing requests. Specifically:

On **February 5, 2024**, Penny Clarke Evans filed a public comment on the permit, explaining that the Clarke Family owns property along Sand Creek. (See **Exhibit A.**)

On **July 15, 2024**, Penny Clarke Evans emailed a public comment to the TCEQ, explaining the issues with the discharge route and requesting a hearing. (See **Exhibit B.**)

On **August 14, 2024**, Penny Clarke Evans requested a contested case hearing. (See **Exhibit C.**)

On **November 29, 2024**, Jerry C. Clarke submitted a letter to the TCEQ, explaining that he is the second property owner “downstream” from discharge point and that the discharge will affect the health of his cattle and grandchildren. Clarke requested a contested case hearing. (See **Exhibit D.**)

II. Applicable Law

The application is subject to the procedural rules adopted by Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Pursuant to 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must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment that has been withdrawn, and must be based only on the affected person’s timely comments. The Clarke Family and their hearing requests meet all these rules.

Section 55.201(d) states that a hearing request must substantially comply with the following: (1) give the name, address, daytime phone number, and, if applicable, the 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; and (5) provide any other information specified in the public notice of application.

According to 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) 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.

Pursuant to § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request, 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.

Pursuant to 30 TAC § 55.211(c)(2)(A)(ii), 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 Executive Director's Response to Comments, and that are relevant and material to the Commission's decision on the application.

Pursuant to 30 TAC § 55.211(c)(2)(B)-(D), the hearing request must also be timely filed with the Chief Clerk and comply with the requirements of § 55.201.

III. Clarke Family's Hearing Request

A. The Clarkes are affected persons with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that would be affected by the application in a manner not common to the general public.

The Clarke Family timely filed comments and hearing requests with the Commission, explaining that their property is the second property downstream from the discharge point. Additionally, the landowner map and list from Applicant shows that the discharge route would run directly through the Clarke Family property.

The Clarke Family has repeatedly expressed concerns about the discharge route. They have also expressed concerns about the effects the facility will have on water quality on their property, the effects on the health and safety of their cattle and family, and the erosion that will occur on their property. The Clarke Family's interests are protected under the law and should be considered, according to the rules for determining an affected person. 30 TAC § 55.203(c)(1). Further, with regard to the discharge route over the Clarke Family property, there is a reasonable relationship between the Clarke Family's claimed interest and regulated activity. 30 TAC § 55.203(c)(3). The Clarke Family also has pointed out in their comments and hearing requests that the discharge over their property will affect their health and safety, the health and safety of their cattle, and the use of

their property (30 TAC § 55.203(c)(4)) as well as impact their natural resources on their property (30 TAC § 55.203(c)(5)).

Based on the above, the Clarke Family has clearly shown that they are affected persons with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that would be affected by the application in a manner not common to the general public.

B. The Clarke Family expressly requested a contested case hearing.

The Clarke Family timely requested a contested case hearing, and it appears no one is disputing the same, as the Executive Director stated that the Clarke Family timely requested a contested case hearing in the Executive Director's Response to Hearing Requests and as the Applicant does not dispute the timeliness of the contested case hearing request in the Applicant's Response to Hearing Requests.

C. The Clarke Family raised disputed issues of fact that are relevant and material to the commission's decision on the application which were raised by the requestor during the comment period and not withdrawn.

In their filings with the TCEQ, the Clarke Family has disputed whether an "unnamed tributary" exists on their property. They have expressed concerns about the discharge route across their property and the Applicant's mischaracterization of the route. Additionally, the Clarke Family has questioned the adequacy of the permit to protect the water quality of the water that will flow over their property and whether they and their property will suffer damages because of the inadequacies in the application and permit to protect their rights. All of these disputed issues of fact were raised during the comment period and have not been withdrawn.

Each of the Clarke Family's disputed facts are relevant and material to the Commission's decision on the application at issue. According to 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state, a

discharge route as an operational feature of a proposed facility is a proper consideration. According to the Texas Surface Water Quality Standards, found in Chapter 307 of Title 30 of the Texas Administrative Code: “It is the policy of this state and the purpose of this chapter **to maintain the quality of water in the state consistent with public health and enjoyment....**” 30 TAC § 307.1. Thus, the Clarke Family’s disputing the proposed facility’s ability to abide by this very state’s policy with regard to water quality is of utmost relevance to the Commission’s decision on the permit for that facility.

The Water Quality Standards also mandate that: (1) “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” (30 TAC § 307.6(b)(4)); (2) “Surface 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)); and (3) “Nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use” (30 TAC § 307.4(e)). All of these standards are at issue with regard to the Clarke Family’s concerns and disputes.

Finally, the Clarke Family has expressed concerns regarding erosion that will occur on their property due to the discharge. Although Applicant has argued that erosion is not an appropriate factor in this application process, Section 309.12 of Title 30 of the Texas Administrative Code states otherwise. According to the rule:

The 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, the commission may consider the following factors: (1) active geologic processes.... [30 TAC § 309.12.]

“Active geologic process” is defined as “[a]ny natural process which alters the surface and/or subsurface of the earth, including, but not limited to, *erosion*.” 30 TAC § 309.11 (emphasis added).

Therefore, the Clarke Family’s concerns regarding erosion on their property are relevant to the Commission’s decision regarding the permit at issue in this case.

IV. Conclusion

Based on the above, the Clarke Family has clearly established that they are affected persons in this matter who have timely and properly requested a contested case hearing.

Respectfully submitted,

/s/ Penny Clarke Evans

/s/ Jerry C. Clarke

Penny Clarke Evans

Jerry C. Clarke

P.O. Box 445

Moscow, Texas 75960-0445

CERTIFICATE OF SERVICE

I hereby certify that on February ___, 2025, I filed The Clarke Family's Reply to Applicant's Response to Hearing Requests and the Executive Director's Response to Hearing Requests with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via electronic mail or by deposit in the U.S. Mail.

—

/s/ Penny Clarke Evans

/s/ Jerry C. Clarke

Penny Clarke Evans

Jerry C. Clarke

MAILING LIST
THE OASIS OF TEXAS LP
TCEQ DOCKET NO. 2025-0079-MWD

FOR THE APPLICANT:

Via e-mail:
David J. Tuckfield
The AL Law Group PLLC
12400 West Highway 71, Suite 350-150
Austin, Texas 78738
david@allawgp.com

Via e-mail:
Erin Banks
WWD Engineering
9217 Highway 290 West, Suite 110
Austin, Texas 78736
erin.banks@wwdengineering.net

Via e-mail:
Jack Dillon
The Oasis of Texas LP
P.O. Box 337
Moscow, Texas 75960
wjackdillon@gmail.com

FOR THE EXECUTIVE DIRECTOR:

Via e-mail:
Caleb Shook, Staff Attorney
TCEQ
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
caleb.shook@tceq.texas.gov

Via e-mail:
John Hearn, Technical Staff
TCEQ
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
john.hearn@tceq.texas.gov

Via e-mail:
Ryan Vise, Director
TCEQ
External Relations Division

Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
pep@tceq.texas.gov

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Via e-mail:
Kyle Lucas, Attorney
TCEQ
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Via e-filing:
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
<https://www14.tceq.texas.gov/epic/eFiling>

REQUESTORS:

Penny Clarke Evans
P.O. Box 34
Corrigan, Texas 75939-0034

Penny Clarke Evans
P.O. Box 445
Moscow, Texas 75960-0445

Elizabeth Miller Grindstaff
2000 Arcady Lane
Corsicana, Texas 75110-2684

Robert H. Miller
3300 Cherry Lane
Austin, Texas 78703-2718

EXHIBIT A

From: penny_c_e@hotmail.com <penny_c_e@hotmail.com>
Sent: Monday, February 5, 2024 11:22 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016436001

REGULATED ENTITY NAME THE OASIS OF TEXAS

RN NUMBER: RN111836177

PERMIT NUMBER: WQ0016436001

DOCKET NUMBER:

COUNTY: POLK

PRINCIPAL NAME: THE OASIS OF TEXAS LP

CN NUMBER: CN605810373

NAME: Penny C Evans

EMAIL: penny_c_e@hotmail.com

COMPANY:

ADDRESS: PO BOX 445
MOSCOW TX 75960-0445

PHONE: 9364336144

FAX:

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COMMENTS: On behalf of the Clarke families, property owners along Sand Creek, we are respectfully requesting a public meeting with TCEQ and the developer of the Oasis of Texas before approval of permit application WQ0016436001. Thank you.

EXHIBIT B

Vincent Redondo

From: PUBCOMMENT-OCC
Sent: Wednesday, July 17, 2024 8:49 AM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016436001

PM

From: penny_c_e@hotmail.com <penny_c_e@hotmail.com>
Sent: Monday, July 15, 2024 11:14 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016436001

REGULATED ENTY NAME THE OASIS OF TEXAS

RN NUMBER: RN111836177

PERMIT NUMBER: WQ0016436001

DOCKET NUMBER:

COUNTY: POLK

PRINCIPAL NAME: THE OASIS OF TEXAS LP

CN NUMBER: CN605810373

NAME: Penny Clarke Evans

EMAIL: penny_c_e@hotmail.com

COMPANY:

ADDRESS: PO BOX 445
MOSCOW TX 75960-0445

PHONE: 9364336144

FAX:

COMMENTS: On behalf of the Clarke families (Jesse Clarke, David Clarke, Josh Clarke, Jay Clarke, Jerry Clarke, William Barnes, and myself), I am respectfully requesting a meeting with TCEQ to discuss the proposed application, WQ0016436001. It is our understanding that it is the intent of The Oasis of Texas to discharge the wastewater from their development into Sand Creek which is a dry creek; there is no

running water to dilute the wastewater. We are requesting a meeting for clarification on several concerns about this project. Thank you.

EXHIBIT C

From: penny_c_e@hotmail.com <penny_c_e@hotmail.com>
Sent: Wednesday, August 14, 2024 10:11 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016436001

REGULATED ENTY NAME THE OASIS OF TEXAS

RN NUMBER: RN111836177

PERMIT NUMBER: WQ0016436001

DOCKET NUMBER:

COUNTY: POLK

PRINCIPAL NAME: THE OASIS OF TEXAS LP

CN NUMBER: CN605810373

NAME: Penny Clarke Evans

EMAIL: penny_c_e@hotmail.com

COMPANY:

ADDRESS: PO BOX 34
CORRIGAN TX 75939-0034

PHONE: 9364336144

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FAX:

COMMENTS: 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.

EXHIBIT D

November 29, 2024

Ms. Kelly Keel, Executive Director
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

Dear Ms. Keel,

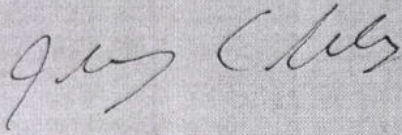
Last week I received a letter from your office informing me of your “preliminary decision” to approve a Texas Pollutant Discharge Elimination System (TPDES) Permit no. WQ0016436001, EPA ID no. TX0145297. Your letter explains that the applicant has applied to TCEQ for a new permit to discharge treated domestic wastewater at a daily average not to exceed 50,000 gallons per day to support the applicant's development of 250 homesites, known as The Oasis, in Polk County, Texas.

I am an owner of property immediately adjacent to that of my cousin, Robert H. Miller, which makes me the second owner “downstream” from The Oasis' planned wastewater discharge point. My father purchased this land more than 75 years ago, and now I own it and run cattle on it just as he did. I own on both sides of Sand Creek where it crosses Old Highway 35. The plans for The Oasis, as I understand them, are to release 50,000 gallons of effluent water per day into the shallow creek on my property, yet I have not been contacted by the developer, their engineer, or attorney. I will not give my consent for that wastewater to cross my property. I realize that the effluent has been treated before it can be released, but my cattle (and even my grandkids) are exposed to that water when, on the rare occasion that the little creek even flows.

Therefore, please accept this letter as my official demand for a public meeting and/or a contested case hearing. My relatives and I have previously made comments through the TCEQ portal and requested a public meeting but have not received any correspondence from your office acknowledging that, other than an auto-generated response, so perhaps the contested case hearing is more appropriate. In addition, the deadline given to me for comment was no more than 15 days in total since the letter dated November 4, 2024, was not received until November 15, and it specifies 30 days to respond, which I believe is statutorily set.

I look forward hearing back from you or your office regarding this matter. Per the Section 6 in the developer's application titled Adjacent Landowner List, I can be reached by certified mail at PO Box 150706, Lufkin, Texas 75915.

Signed,



Jerry C. Clarke

cc: Senator Robert Nichols
Attn: Jake Ellis
PO Box 12068
Capitol Station
Austin, Texas 78711

Representative Trent Ashby
Attn: Linda Parker
Room E2.806, Capitol Extension
PO Box 2910
Austin, Texas 78768

Ms. Erin Banks
WWD Engineering
9217 W. Highway 290, Suite 110
Austin, Texas 78736

Mr. John Hearn, Municipal Permits Team
Wastewater Permitting Section (MC148)
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087