

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

March 10, 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 HARRIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 531 FOR TPDES PERMIT NO.
WQ0016334001
TCEQ DOCKET NO. 2025-0116-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 "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0116-MWD

**APPLICATION BY
HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT No. 531
FOR TPDES PERMIT No.
WQ0016334001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**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 Harris County Municipal Utility District No. 531 (Harris County MUD 531 or Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0016334001. The Commission received timely hearing requests from William Ely, Madhu Sekharan, Darrin Whatley, Lisa Atkinson, Charlene Jones, and Laura Weathersby. The Commission received timely requests for reconsideration from Laura Ashford, Charlene Jones, Cory Lehmann, and Madhu Sekharan. For the reasons stated herein, OPIC respectfully recommends that the Commission find that William Ely, Madhu Sekharan, and Darrin Whatley 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

Harris County MUD 531 applied to the TCEQ for a new TPDES permit to authorize the discharge of effluent at a daily average flow not to exceed 0.05 million gallons per day (MGD) in the Interim phase and 0.10 MGD in the Final phase. The draft permit includes a bar screen for preliminary treatment in both the Interim and Final phases. The proposed facility would be an activated sludge process plant, operated in the complete mix mode with secondary clarification. Treatment units across both of the permit's phases would consist of a final clarifier, two sludge digesters, and a chlorine contact chamber. There would be one aeration basin in the Interim phase and an additional aeration basin in the Final phase. Sludge generated at the proposed facility would be disposed of at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or a facility that further processes sludge.

The proposed discharge route is first via pipe to a detention pond, then through a series of pipes to another detention pond, then to the Schiel Road storm sewer, then to a dry-bottom pond and ditch, then to Little Cypress Creek, then to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The proposed facility would be located approximately 0.5 miles southwest of the intersection of Mueschke Road and Schiel Road in Harris County.

C. Procedural Background

The application was received on April 28, 2023, and declared administratively complete on June 21, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on July 6, 2023, in the *Houston Chronicle* and in Spanish on July 6, 2023, in *El Perico*. The combined Notice of Application and Preliminary Decision and Notice of Public Meeting was published in English on May 1, 2023, in the *Houston Chronicle* and in Spanish on May 1, 2023, in *El Perico*. A public meeting was held on June 3, 2024, at SPJST Lodge 196 in Cypress, 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 December 3, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was January 2, 2025.

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 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.

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

William Ely

William Ely submitted a timely combined comment and hearing request. Mr. Ely gave his address as 20715 Orange Poppy Drive, Cypress, which according to the map created by ED staff is 0.94 miles from the facility point, 1.02 miles from the discharge location, and 0.13 miles from the discharge route. In his request Mr. Ely articulated concerns about the hearing process, whether construction would be permitted prior to the issuance of the permit, whether an alternative location for the proposed facility was available, nuisance odors, noise and light pollution, and property values. 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. Ely's proximity to the facility, the discharge location, and the 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. Ely 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 William Ely is an affected person.

Madhu Sekharan

Madhu Sekharan submitted timely comments and a hearing request. Mr. Sekharan gave two addresses. The first of these is his home residence of 16614 Radiant Lilac Trail, Cypress, which according to the map created by ED staff is 0.94 miles from the facility point, 1.02 miles from the discharge location, and 0.13 miles from the discharge route. The second of these is a property owned by his late mother, whose estate he manages. Mr. Sekharan gave that address as 20111 Chad Arbor Trail, Cypress, which according to the map created by ED staff is 0.35 miles from the facility point, 0.42 miles from the discharge location, and 0.06 miles from the discharge route. In his request Mr. Sekharan articulated concerns about the proposed facility's impact on human health, the Applicant's compliance with the relevant notice requirements, and whether there is

enforcement for compliance issues after a permit has been issued. These interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Mr. Sekharan's proximity to the facility, the discharge location, and the 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. Sekharan 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 Madhu Sekharan is an affected person.

Darrin Whatley

Darrin Whatley submitted timely comments and a hearing request. Mr. Whatley gave his address as 16218 Morning Pine Trail, Cypress, which according to the map created by ED staff is 0.07 miles from the facility point, 0.13 miles from the discharge location, and 0.01 miles from the discharge route. In his request Mr. Whatley articulated concerns about nuisance odors associated with the proposed facility, the impacts on local wildlife, and adverse effects on property values. 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. Whatley's proximity to the facility, the discharge location, and the 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. Whatley 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 Darrin Whatley is an affected person.

Lisa Atkinson

Lisa Atkinson submitted a timely combined comment and hearing request. Ms. Atkinson gave her address as 20810 Durand Oak Court, Cypress, which according to the map created by ED staff is 1.13 miles from the facility point, 1.17 miles from the discharge location, and 1.07 miles from the discharge route. In her hearing request Ms. Atkinson failed to articulate any specific concerns. Given Ms. Atkinson's failure to describe any personal justiciable interest, OPIC cannot find that Ms. Atkinson would be affected in a manner not common to the general public.

Charlene Jones

Charlene Jones submitted a timely combined comment and hearing request. Ms. Jones gave her address as 20434 Scenic Woods Drive, Cypress, which according to the map created by ED staff is 0.62 miles from the facility point, 0.66 miles from the discharge location, and 0.62 miles from the discharge route.

In her hearing request Ms. Jones articulated only her concern about the proposed facility's effect on property values. The Texas Legislature sets the TCEQ's jurisdiction by statute, and the TCEQ has not been given jurisdiction under the Texas Water Code to address or consider property values in its determination of whether to issue a water quality permit. Accordingly, concern about property values is not a personal justiciable interest. Given Ms. Jones' failure to describe any personal justiciable interest, OPIC cannot find that Ms. Jones would be affected in a manner not common to the general public.

Laura Weathersby

Laura Weathersby submitted a timely combined comment and hearing request. Ms. Weathersby gave her address as 15438 Juniper Cove Court, Cypress, which according to the map created by ED staff is 1.17 miles from the facility point, 1.22 miles from the discharge location, and 0.92 miles from the discharge route. In her hearing request Ms. Weathersby failed to articulate any specific concerns. Given Ms. Weathersby's failure to describe any personal justiciable interest, OPIC cannot find that Ms. Weathersby 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 against nuisance odors.

Raised by: William Ely, Darrin Whatley.

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

Raised by: Madhu Sekharan.

3. Whether there was adequate notice of the draft permit.

Raised by: Madhu Sekharan.

4. Whether the draft permit is adequately protective of wildlife.

Raised by: Darrin Whatley.

5. Whether construction is allowed prior to the issuance of the permit.

Raised by: William Ely.

6. Whether there is enforcement for compliance issues after a permit has been issued.

Raised by: Madhu Sekharan.

7. Whether there is a suitable alternative location for the proposed facility.

Raised by: William Ely.

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

Raised by: William Ely.

9. Whether the draft permit is adequately protective of property values.

Raised by: William Ely, Darrin Whatley.

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. 1-9 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 some 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).

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. 1 is relevant and material to the Commission's decision on this application.

Human Health and Wildlife

Requestors raised concerns about adverse effects to water quality and the consequential impacts on human health and animal life. 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). 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, the protection of human health and safety, and the protection of animal life, Issues No. 2 and 4 are relevant and material to the Commission’s decision regarding this application.

Notice

Chapter 39 of TCEQ’s rules contains requirements relating to notice publication, alternative language publication, mailing of notice, and posting of the application in a public place within the county. The issue of whether the

applicant complied with all applicable notice requirements is relevant and material to the Commission's decision on this application. Therefore, Issue No. 3 is appropriate for referral to SOAH.

Construction Prior to Permit Issuance

A requestor raised concerns regarding whether construction of the proposed facility could begin prior to the issuance of the draft permit. Under TWC § 26.027(c), it is a violation of state law to commence construction of a wastewater treatment facility before the TCEQ has issued a permit to authorize the discharge of waste from that facility. Therefore, Issue No. 5 is relevant and material to the Commission's decision on the application.

Enforcement

A requestor expressed concerns about whether there would be enforcement available for potential compliance violations after the permit has been issued. All wastewater treatment facilities must be designed, operated, and maintained consistent with the provisions of applicable TCEQ rules, and these provisions require that a facility is properly operated and always maintained. An unauthorized discharge in violation of the draft permit can precipitate an enforcement action brought by TCEQ. However, enforcement of the terms of a TPDES permit does not affect the issuance of said permit. Therefore, Issue No. 6 is not relevant and material to the Commission's decision on the application.

Site Selection

A requestor raised concerns about the site selection for this proposed facility. The Texas Water Code does not include the authority to mandate a

different location for a wastewater treatment facility if the location in the application complies with 30 TAC Chapter 309, Subchapter B, which articulates the Location Standards and 30 TAC § 309.13 pertaining to “Unsuitable Site Characteristics” for a discharge facility. Therefore, Issue No. 7 is not relevant or 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. 8 is not relevant and material to the Commission’s decision regarding this application.

Property Values

Requestors raised concerns regarding the proposed facility’s impact on property value. The TCEQ does not have jurisdiction under the Texas Water Code to address or consider property values or the marketability of adjacent property in its determination of whether to issue a water quality permit. Accordingly, Issue No. 9 is not relevant or 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. REQUESTS FOR RECONSIDERATION

The Commission received requests for reconsideration of the ED's decision from Laura Ashford, Charlene Jones, Cory Lehmann, and Madhu Sekharan. Laura Ashford's request for reconsideration articulated concerns regarding site selection, odors, noise pollution, and property values. Charlene Jones' request for reconsideration articulated a general objection to the permit and a concern about effects on property values. Cory Lehmann's request for reconsideration articulated a general objection to the permit and concerns about use and enjoyment of property, site selection, odors, noise pollution, and property values. Madhu Sekharan's request for reconsideration articulated concerns about waterborne diseases, exposure to pathogens and chemical contaminants, environmental impacts, and sewer overflows.

While OPIC is recommending a hearing and referral of issues encompassing several of these requestors' concerns as expressed in their

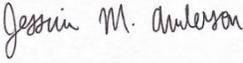
requests for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that any of the requests for reconsideration be granted. As no such record currently exists, OPIC cannot recommend the requests be granted at this time.

V. CONCLUSION

Having found that William Ely, Madhu Sekharan, and Darrin Whatley qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issues No. 1-5 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,

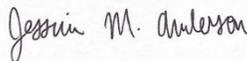
Garrett T. Arthur
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 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.



Jessica M. Anderson

**MAILING LIST
HARRIS COUNTY MUD NO. 531
TCEQ DOCKET NO. 2025-0116-MWD**

FOR THE APPLICANT

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**FOR ALTERNATIVE DISPUTE
RESOLUTION**

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REQUESTER(S):

See attached list.

REQUESTER(S)

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