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Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 24, 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 SERENITY RV  
RESORT, LP TPDES PERMIT NO. WQ0015946001  
TCEQ DOCKET NO. 2025-0117-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 "Jennifer Jamison".

Jennifer Jamison, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-0117-MWD**

**APPLICATION BY SERENITY  
RV RESORT, LP, FOR TPDES  
PERMIT NO. WQ0015946001**

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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 or Commission) files this Response to Requests for Hearing and Requests for Reconsideration in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by Serenity RV Resort, LP (Serenity RV or Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015946001. The Commission received comments and a request for a contested case hearing from 32 individual community members regarding this application. For the reasons stated herein, OPIC respectfully recommends the Commission find that Henry and Cathy Green, Annetta Stewart, Martin Brown, and Mark Hunter Echols are affected persons in this matter and grant their pending hearing requests. In addition, OPIC respectfully recommends denial of all requests for reconsideration of the Executive Director's (ED) decision on this application for the reasons detailed below.

## **B. Background of Facility**

Serenity RV has applied to the TCEQ for new TPDES Permit No. WQ0015946001. If issued, the draft permit would authorize discharge of treated domestic wastewater (effluent) at a daily average flow not to exceed 20,000 gallons per day.

The proposed Wastewater Treatment Facility (WWTF) would be located in the city of Port Lavaca, in Jackson County, and would consist of an activated sludge process plant operated in conventional mode with nitrification. Treatment units described in the draft permit include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The proposed discharge route depicts the discharge of treated effluent to a man-made ditch, then to Carancahua Bay in Segment No. 2456 of the Bays and Estuaries. Finally, the effluent limitations in the draft permit, based on a 30-day average, are 10 milligrams per liter (mg/l) five-day carbonaceous biochemical oxygen demand (CBOD5), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 35 colony forming units (CFU) or most probable number (MPN) of Enterococci per 100 ml (milliliter), and 4.0 mg/l minimum dissolved oxygen (DO). In addition, the draft permit states that the effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

### **C. Procedural Background**

TCEQ received Serenity RV's application on November 2, 2020, and declared it administratively complete on January 19, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in the *Jackson County Herald Tribune* on February 10, 2021. The ED completed the technical review of the application on June 30, 2021, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision in the *Jackson County Herald Tribune* on November 24, 2021. The public meeting for this application was held on August 15, 2022, and the public comment period ended at the close of the meeting. The ED's Response to Comments was mailed on December 10, 2024, and the deadline for submittal of a contested case hearing request or request for reconsideration was January 9, 2025.

## **II. APPLICABLE LAW**

### **A. Requests for Hearing**

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 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.

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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall 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 requestors are affected persons**

##### *Individuals who are affected persons*

The Commission received 32 timely hearing requests from concerned community members, including several who own or reside on property near the proposed facility. In analyzing these requests, OPIC must apply the factors and requirements of 30 TAC § 55.201(d) and TAC § 55.203(a), including the requirement that hearing requests articulate a personal justiciable interest.

OPIC finds that Henry and Cathy Green (the Greens), Annetta Stewart, Martin Brown, and Mark Hunter Echols have satisfied all rule requirements and raised at least one personal justiciable interest within the Commission's jurisdiction, thus qualifying as affected persons. The Greens' request raises concerns relating to odor, while requests submitted by Annetta Stewart, Martin Brown, and Mark Hunter Echols cite concerns about detrimental effects on animal life, the environment, water quality, and use and enjoyment of their properties. Each of these concerns are protected by the law under which the application will be considered. For instance, the fact that the Greens' property is located a mere .03 miles from the proposed outfall increases the likelihood that they will be exposed to any odors emanated from the facility or its discharge. Accordingly, a reasonable relationship exists between their concern regarding nuisance odors and the regulated activity per 30 TAC § 55.203(a). Further, the map prepared by ED staff confirms that addresses submitted by all above-named requestors reflects that their properties range between 0.03 miles and 1.2 miles from either the proposed outfall or facility point.

In addition, Martin Brown, Mark Echols, and Annetta Stewart all commented on the tidal nature of Carancahua Bay, citing concerns that any pollutants found in the discharge will accumulate rather than being dispersed into the Gulf of Mexico, thus impacting the water quality of the receiving waters, the use and enjoyment of their properties, and local wildlife. 30 TAC § 55.203(a)(3)-(5).



Given the relevance of requestors' concerns about odor, animal life, water quality, effects on the environment, and use and enjoyment of their properties combined with the proximity of their properties to the facility and outfall, OPIC finds that the above-named individuals each have a personal justiciable interest in this application that is not common to members of the general public. Accordingly, OPIC recommends that the Commission find that each of these requestors are affected persons in this matter pursuant to 30 TAC § 55.203(a).

#### *All remaining Requestors*

As previously stated, all hearing requests must be timely submitted, in writing, and articulate a personal justiciable interest pursuant to 30 TAC § 55.201(d) and § 55.203(a). OPIC has reviewed all remaining requests for hearing and determined that each of the remaining requestors lacks the proximity needed to establish a reasonable relationship between their interests and regulation of the facility, and to distinguish their interests from those common to the general public. Accordingly, OPIC cannot recommend granting any remaining requests as they do not meet one or more requirements set forth by the above-referenced rules.

#### **B. Which issues raised in the hearing requests are disputed**

Affected persons raised the following issues:

1. Whether the draft permit is adequately protective of water quality:
2. Whether the draft permit is adequately protective of the use and enjoyment of the requestors' property,
3. Whether the proposed discharge will adversely impact animal life, including aquatic life; and

4. Whether the draft permit is sufficiently protective against nuisance odors.

**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. All issues raised by the affected persons are issues of fact.

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

Issues 1-4 in Section III. B were specifically raised by the affected persons during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment**

All hearing requests are based on timely comments that have not been withdrawn.

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

The hearing requests of the affected persons raise 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, Animal Life, and Use and Enjoyment**

Requestors raised concerns about adverse effects to water quality and the consequential impacts on aquatic life, animal life, and whether the draft permit will adequately protect the use and enjoyment of their properties. The Commission is responsible for the protection of water quality under Texas Water Code 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). As Chapter 307 designates criteria for the regulation of water quality and the protection of animal life, and uses of relevant water bodies, Issues No. 1-3 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

### **Odor**

Section 309.13(e) of the TCEQ’s rules requires domestic facilities to meet buffer zone requirements for the abatement and control of nuisance odor by

complying with one of three options: 1) ownership of the buffer zone area; 2) restrictive easements from the adjacent property owners for any part of the buffer zone not owned by the applicant; or 3) providing nuisance odor control. As these requirements apply to the permit at issue, requestors' concerns about odor are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

**G. Maximum Expected Duration of 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**

David S. Hall and Heather Broxton submitted timely requests for reconsideration that articulated concerns about potential effects on human health and water quality resulting from accumulation of effluent discharge into Carancahua Bay. While OPIC notes that the concerns expressed are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. As no such record exists yet, OPIC cannot recommend the requests be granted at this time.

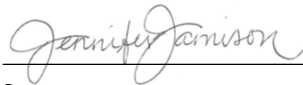
#### **IV. CONCLUSION**

Having found that the Henry and Cathy Green, Annetta Stewart, Martin Brown, and Mark Hunter Echols qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue Nos. 1-4 specified in Section III. B. for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC respectfully recommends denial of the pending requests for reconsideration.

Respectfully submitted,

[Signature on Next Page]

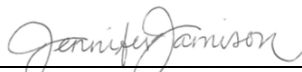
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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2025 the original of the Office of Public Interest Counsel's Response to Hearing Requests 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 hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Jennifer Jamison

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**TCEQ DOCKET NO. 2025-0117-MWD**

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See attached list.

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