

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*

April 28, 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 THE CITY OF VENUS  
FOR TPDES PERMIT NO. WQ0010883002  
TCEQ DOCKET NO. 2025-0467-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-0467-MWD**

**APPLICATION BY CITY OF  
VENUS FOR TPDES PERMIT NO.  
WQ0010883002**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUEST FOR HEARING AND REQUEST FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to request for hearing and request for reconsideration in the above-referenced matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is an application by the City of Venus (Applicant) for a renewal permit, Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0010883002 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter.

**B. Description of Application and Facility**

The Applicant City of Venus seeks to renew TPDES permit No. WQ0010883002 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The Applicant proposes to operate the City of Venus Wastewater Treatment Facility (Facility). The authorization was initially issued on March 22, 2019. The Facility has not been

constructed. The Facility would be an activated sludge process plant operated in the conventional mode. The Facility would be located approximately 0.5 miles southwest of the intersection of Farm-to-Market Road 157 and Farm-to-Market Road 2258, in the City of Venus, Ellis County, 76084. The treated effluent would be discharged to an unnamed tributary, then to Armstrong Creek, then to Cottonwood Creek, then to North Fork Chambers Creek, then to Chambers Creek above Richland-Chambers Reservoir in Segment No. 0814 of the Trinity River Basin.

### **C. Procedural Background**

The TCEQ received the application on September 21, 2023, and declared it administratively complete on October 27, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on December 20, 2023, in the *Waxahachie Sun*, on December 19, 2023, in the *Cleburne Times Review*, and on December 22, 2023, in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision was published on March 19, 2024, in the *Cleburne Times Review* and *La Prensa Comunidad*, and on March 20, 2024, in the *Waxahachie Sun*. A public meeting was held on July 11, 2024, at the Venus Civic Center. The public comment period ended at the close of the public meeting on July 11, 2024. The Chief Clerk mailed the Executive Director (ED)'s decision and Response to Comments (RTC) on January 23, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was

February 24, 2025.<sup>1</sup> The Commission received timely hearing requests from Dr. Martha Johnson and a request for reconsideration from Robyn Farrell.

## **II. Applicable Law**

### **A. Requests for a Contested Case 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 Title 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 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;
- (3) request a contested case hearing;

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<sup>1</sup> On February 25, 2025, the Commission received hearing requests from Robyn Farrell, Rene Griffn, and Phyllip Farrell, and requests for reconsideration from Phillip Farrell, Rene Griffn, and Nick Griffn. Because these hearing requests and requests for reconsideration were not timely filed, OPIC did not consider them in its analysis.

- (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 § 55.201(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 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 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. Request for Reconsideration**

Any person may file a request for reconsideration of the ED's decision

under Title 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 Request**

#### **A. Right to Hearing**

As a threshold matter, Texas Water Code (TWC) section 26.028(d) states that the Commission may approve an application to renew a permit without a public hearing under certain conditions. *See also* 30 TAC §§ 50.113(d)(4), 55.211(d)(4). Commission Rule 55.201(i)(5) provides that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if:

- (A) the applicant is not applying to increase significantly the quantity of waste to be discharged or change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TAC § 55.201(i)(5); see TWC § 26.028(d).

Applying these requirements to the application under consideration, first, because this application is for renewal of an existing permit, the draft permit would not increase the quantity of waste that could be discharged, or change the pattern or place of discharge, from the existing permit.

Second, effluent limitations and monitoring requirements would remain the same as existing permit requirements. Thus, the activity to be authorized by the renewal permit would maintain the quality of waste authorized to be discharged.

Third, the public meeting was held on July 11, 2024, at the Venus Civic Center. Fourth, within the RTC, the ED has considered and responded to all timely and significant public comments.

Finally, as of September 1, 2024, the Applicant's compliance history classification is "satisfactory," and the Facility's compliance history classification is "high." Therefore, OPIC does not identify any concerns regarding the Applicant's ability to comply with a material term of the permit.

In sum, OPIC finds that because each requirement contained in 30 TAC § 55.201(i)(5) has been satisfied, no right to a contested case hearing exists in this case. If the Commission disagrees and finds there is a right to hearing on this application, OPIC provides the following analysis of the hearing request.



## **B. Whether the Requestor is an Affected Person**

The Commission received timely hearing requests from Dr. Martha Johnson. The hearing requests raised concerns regarding flooding,<sup>2</sup> potential impact on the use of her property, and loss of income. The hearing requests stated that Dr. Johnson owns agricultural land, including property on both sides of Cottonwood Creek, in the path of the proposed effluent discharge into Armstrong Creek. Dr. Johnson is not included in the Affected Landowner Map attached with the application, which shows adjacent properties and properties on the discharge route within one mile downstream. According to the ED's map, Dr. Johnson is located over five miles from the Facility point. At such a distance, OPIC is unable to find that Dr. Johnson is likely to be impacted by the Facility's operations in a way that differs from the general public as required by 30 TAC § 55.203(a). The intervening distance diminishes any likelihood that the regulated activity will impact her health, safety, or use of property. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Therefore, OPIC finds that Dr. Johnson does not qualify as an affected person.

## **III. Analysis of Request for Reconsideration**

On February 24, 2025, the Commission received a request for reconsideration from Robyn Farrell expressing concerns about lack of land ownership by applicant, regionalization, buffer zone requirements, compliance history, and inaccurate application. While these concerns may be relevant and

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<sup>2</sup> The concerns regarding flooding are not within the Commission's jurisdiction.

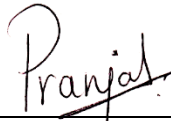
material to the decision on this application, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the ED's decision should be reconsidered. OPIC cannot recommend reconsideration without the benefit of such a record and must therefore recommend denial of Robyn Farrell's request for reconsideration.

#### **IV. Conclusion**

For the reasons discussed above, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter. If the Commission finds that a right to hearing exists, OPIC respectfully recommends the Commission find that Dr. Johnson does not qualify as an affected person. OPIC also respectfully recommends denying Robyn Farrell's request for reconsideration.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
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Pranjal M. Mehta

**MAILING LIST  
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TCEQ DOCKET NO. 2025-0467-MWD**

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REQUESTER(S):

See attached list.

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