

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

May 23, 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 RAINBOW'S END
PARK, INC. FOR TPDES PERMIT NO. WQ0016513001
TCEQ DOCKET NO. 2025-0698-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink that reads "Josiah Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0698-MWD

APPLICATION BY RAINBOW'S	§	BEFORE THE
END PARK, INC. FOR TPDES	§	TEXAS COMMISSION ON
PERMIT NO. WQ0016513001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST 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 the hearing request received in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is the application of Rainbow's End Park, Inc. for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016513001. The TCEQ Chief Clerk's office received one timely hearing request. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing request of Larry Redden—and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1 and 2 contained in §III.B.

B. Description of Application and Facility

On March 29, 2024, Rainbow's End Park, Inc. (Applicant) applied to TCEQ for new TPDES Permit No. WQ0016513001 (Application) to authorize the discharge of treated domestic wastewater from the proposed Rainbow's End

Wastewater Treatment Facility (the Facility) at a daily average flow not to exceed 60,000 gallons per day. The Facility would be located approximately 0.33 miles southwest of the intersection of Care Center Drive and Highway 146, in Polk County. The Facility would be a submerged fixed bed biofilm reactor package plant. Treatment units in the Interim phase will include an influent fine screen, an influent pump, an aeration tank, a tube settler final settling tank, a sludge holding tank, and a chlorine contact tank. Treatment units in the Final phase will include two influent fine screens, two influent pumps, two aeration tanks, two tube settler final settling tanks, two sludge holding tanks, and two chlorine contact tanks.

The Application, if granted, would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The effluent would be discharged to a roadside ditch, then to an unnamed tributary, then to Copeland 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

TCEQ received the Application on March 29, 2024. On May 3, 2024, the Executive Director (ED) declared the Application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on May 16, 2024, in the *Polk County Enterprise*. The Notice of Application and Preliminary Decision was published on October 6, 2024, in the *Polk County*

Enterprise. The public comment period ended on November 5, 2024. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments on February 4, 2025. The deadline for filing requests for a contested case hearing or requests for reconsideration was March 6, 2025.

II. Applicable Law

This Application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.¹ 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;
- (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

¹ Tex. S.B. 709, 84th Leg., R.S. (2015).

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.²

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.³

² 30 TAC § 55.201(d).

³ 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.⁴

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 the Hearing Request

A. Whether the requestor is an affected person

The Commission received only one hearing request in this matter—from Larry Redden. Mr. Redden submitted timely comments and a timely hearing

⁴ 30 TAC § 55.203(d).

request. In his request, Mr. Redden claims that the discharge route, via the unnamed tributary, enters Copeland Creek on his property. This is confirmed by the Application's adjacent landowner map which shows that the discharge route travels across Mr. Redden's property, and his property is adjacent to the Facility property. The GIS map created by ED staff claims that Mr. Redden is 0.7 miles from the Facility. However, this measurement is from his road address, not his residence. Close examination of satellite images and the adjacent landowner map and list found in the Application shows that Mr. Redden's residence is in fact within 0.5 miles of the proposed Facility and around 150 feet from the proposed discharge route.

In his comments, Mr. Redden raises concerns related to water quality and its potential to affect public health, native animals, livestock, drinking water supply, recreation, property values, and flooding. He is specifically concerned with the Facility's potential to affect the drinking water from his well and the ability of his family to safely fish and recreate in the surface water on his property. Several of these interests are protected by the law under which this Application will be considered.⁵ Additionally, due to Mr. Redden's proximity to the Facility, there is a reasonable relationship between the regulated activity and his claimed interests—particularly those related to water quality and human health.⁶ Finally, his proximity to the Facility and discharge route as well as his reliance on well-water makes it likely that the regulated activity could impact his

⁵ 30 TAC § 55.203(c)(1).

⁶ 30 TAC § 55.203(c)(3).

health and safety, his use of property, and his use of water—the impacted natural resource in this matter.⁷ For these reasons, OPIC finds that Larry Redden qualifies as an affected person and his request for a contested case hearing should be granted.

B. Which Issues Raised in the Hearing Request Are Disputed

The Requestor raised the following disputed issues in both hearing request and timely public comment:

1. Whether the Facility and draft permit would comply with Texas Surface Water Quality Standards and would be adequately protective of water quality, including surface water and groundwater.
2. Whether the Facility and draft permit would be adequately protective of human health and safety, animal life, and use of property.
3. Whether the Facility would affect local property values.
4. Whether the Facility would cause or worsen flooding.

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.⁸ The issues listed above are issues of fact.

D. Whether the Issues Were Raised During the Public Comment Period

All issues were specifically raised by a requestor who qualifies as an affected person during the public comment period.

⁷ 30 TAC § 55.203(c)(4) & (5).

⁸ 30 TAC § 55.211(c)(2)(A).

E. Whether the Hearing Request is Based on Issues Raised Solely in a Withdrawn Public Comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn comments.

F. Whether the Issues are Relevant and Material to the Decision on the Application

The Requestor raises issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.⁹

Water Quality, Human Health and Safety, Animal Life, and Recreation

The affected person in this matter is concerned with adverse effects to water quality—including well water—and its impacts on human health and safety, animal life, and recreation—specifically fishing along the discharge route. The Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapter 307. 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

⁹ *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

of existing industries, and economic development of the state.”¹⁰ 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.”¹¹

Moreover, Section 309.10(b) states, “The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities...on selection of a site that minimizes possible contamination of ground and surface waters...”¹² Therefore, Issue nos. 1 and 2 are relevant and material to the Commission’s decision regarding this Application and are appropriate for referral to SOAH.

Property Values and Flooding

Affected persons raised concerns regarding the proposed Facility’s impact on property value and flooding. The TCEQ does not have jurisdiction under the Texas Water Code to address or consider property values or flooding in its determination of whether to issue a TPDES permit. Accordingly, Issue nos. 3 and 4 are not relevant or material to the Commission’s decision on this Application.

¹⁰ 30 TAC § 307.1.

¹¹ 30 TAC § 307.4(d).

¹² See also 30 TAC § 309.12.

H. 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.¹³ 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

For the reasons discussed above, OPIC finds that Larry Redden has demonstrated that he qualifies as an affected person. Therefore, OPIC respectfully recommends that the Commission grant his hearing request and refer Issue nos. 1 and 2 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

¹³ 30 TAC § 50.115(d)(2).

Respectfully submitted,

Garrett T. Arthur
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CERTIFICATE OF SERVICE

I hereby certify that May 23, 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 on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.

Josiah Mercer
Josiah T. Mercer

MAILING LIST
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TCEQ DOCKET NO. 2025-0698-MWD

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