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Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 30, 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 MANOR
FOR TPDES PERMIT NO. WQ0014129002
TCEQ DOCKET NO. 2025-0828-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing 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. 2025-0828-MWD

**APPLICATION BY THE CITY
OF MANOR FOR TPDES
PERMIT NO. WQ0014129002**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS 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 Requests for Hearing 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 the City of Manor (Applicant) for an amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014129002. The Commission received timely comments and hearing requests from several individuals, in their individual and collective capacities, on behalf of Wilbarger Creek Conservation Alliance (WCCA). For the reasons stated herein, OPIC respectfully recommends that the Commission find that WCCA and Pamela Fowler are affected persons, and further recommends that the Commission grant their hearing requests.

B. Description of Application and Facility

The City of Manor applied to the TCEQ for a major amendment to a TPDES permit to authorize the expansion of an existing facility and to increase the discharge of treated domestic wastewater from a daily average flow limit of 0.50 million gallons per day (MGD) to a daily average flow limit not to exceed 0.60 MGD in the Interim III phase, and a daily average flow limit not to exceed 0.80 MGD in the Final phase.

The facility is an activated sludge process plant operated in the conventional single-stage nitrification mode. Treatment units in the Interim I phase include a bar screen, two aeration basins, a sludge digester, a final clarifier, a tertiary filter, and a chlorine contact chamber. Treatment units in the Interim II phase include two bar screens, four aeration basins, two sludge digesters, two final clarifiers, two tertiary filters, and two chlorine contact chambers. Treatment units in the Interim III phase would include two bar screens, eight aeration basins, four sludge digesters, four final clarifiers, four tertiary filters, four chlorine contact chambers, and a dechlorination chamber. Treatment units in the Final phase would include three bar screens, sixteen aeration basins, eight sludge digesters, eight final clarifiers, seven tertiary filters, eight chlorine contact chambers, and a dechlorination chamber.

The facility is located approximately 0.40 miles east of the intersection of Farm-to-Market Road 1100 and U.S. Highway 290 in Travis County. Fully expanded, the facility would serve new development in the eastern portion of Manor, Manor Heights, Manor Heights South, and a future 62-acre development.

The discharge route is first to Cottonwood Creek, then to Wilbarger Creek, then to the Colorado River above La Grange in Segment. No. 1434 of the Colorado River Basin. The designated uses for Segment No. 1434 are primary contact recreation, public water supply, and exceptional aquatic life use.

C. Procedural Background

The application was received on May 15, 2023, and declared administratively complete on August 1, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on August 11 and 18, 2023, in the *Manor Journal*, and in Spanish on August 10 and 17, 2023, in *El Mundo*. The Notice of Application and Preliminary Decision was published in English on February 23, 2024, in the *Manor Journal*, and in Spanish on February 22, 2024, in *El Mundo*. The comment period for the application closed on March 25, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on April 10, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was May 12, 2025.

II. APPLICABLE LAW

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).

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;

- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

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 HEARING REQUESTS

A. Whether the requestor is an affected person

Wilbarger Creek Conservation Alliance and its Individual Members

The Wilbarger Creek Conservation Alliance (WCCA), individually and collectively through its Board and members Pamela Fowler, Jon Beall, Anne Brockenbrough, Marilyn Kelinske, and Thomas Graham submitted timely hearing requests. WCCA is a 501(c)(3) nonprofit corporation and land trust whose mission is to protect the water quality, wildlife, and working farms and ranches

of the Wilbarger Creek Watershed in Travis County and Bastrop County. WCCA holds conservation easements that protect 9,993 linear feet of Cottonwood Creek and the adjoining floodplain in the vicinity of 12915 Britta Olson Road and 13053 Britta Olson Road in Manor, upstream from the Cottonwood Creek wastewater facility. According to its mission and conservation easement, WCCA has a real property interest and legal obligation to protect the wellbeing of Cottonwood Creek. For these reasons, OPIC finds that WCCA's stated purposes are germane to the interests it seeks to protect. *See* 30 TAC § 55.205(b)(3). Furthermore, WCCA seeks prospective or injunctive relief for its members, rather than damages or any type of relief that would inure solely to any individual member; therefore, the participation of any individual member is not required. *See* 30 TAC § 55.205(b)(4).

In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. Here, Pamela Fowler has been identified as a member of WCCA. Ms. Fowler's family currently farms 11.5 acres along Cottonwood Creek and lives on two additional acres located at 12406 Ballerstedt Road, Elgin. According to the map created by ED staff, Ms. Fowler's address is 1.10 miles from the facility. In the request document, Ms. Fowler indicates that the discharge route would flow through her property. Jon Beall has also been identified as a member of WCCA. Mr. Beall owns 115 acres of mixed farm and conservation land along Wilbarger Creek. Mr. Beall's property is located at 17312 Littig Road, Elgin, and the entirety of Mr. Beall's property is subject to

a conservation easement that requires him, in part, to enhance and protect ecosystems for wildlife and conduct other conservation activities. According to the map created by ED staff, Mr. Beall's property is 1.36 miles from the facility and in close proximity to the discharge route. Anne Brockenbough has also been identified as a member of WCCA. Ms. Brockenbough owns and operates a ranch located at 11318 Jones Road in Manor, which, according to the ED's map is 2.37 miles from the facility. WCCA's requests also identified two additional members, Marilyn Kelinske and Thomas Graham. The request notes that Ms. Kelinske is a member of WCCA but is not seeking individual status as an affected person. According to the map created by ED staff, Ms. Kelinske resides 1.57 miles from the facility and upstream of the confluence of Wilbarger Creek and Cottonwood Creek. Finally, the ED's map indicates that Mr. Graham is located 1.33 miles from the facility, and in proximity to the discharge route.¹

The request document raised concerns related to water quality, wildlife and vegetation, recreational uses, excessive contaminants including phosphorus and nitrates, regionalization, facility malfunctions and monitoring frequency, and cumulative impacts. While the concerns raised on behalf of WCCA are protected by the law under which the application will be considered, a reasonable relationship must exist between those interests and the regulation of wastewater discharges under the permit. As required for group standing under 30 TAC § 55.205, WCCA submitted timely comments; the interests the group seeks to

¹ OPIC notes that Thomas Graham did not submit any comments during the public comment period. Mr. Graham did not appear as a requestor until the submission of Christopher Smith's May 12, 2025, letter, which was filed after the close of the comment period.

protect are germane to its purpose; neither the claim asserted nor the relief requested requires the participation of individual members; and WCCA's hearing request identifies a member of the group that would otherwise have standing in their own right. Given Ms. Fowler's proximity to the proposed facility and discharge route, the fact that WCCA's concerns are specific and protected by the law under which this application is considered, and a reasonable relationship exists between its concerns and the regulation of this facility, OPIC finds that WCCA has personal justiciable interests in this matter and qualifies as an affected person. Additionally, given Ms. Fowler's proximity and the concerns she articulated in this request, OPIC finds that Pamela Fowler qualifies as an affected person in her individual capacity. OPIC further notes that the other individual requestors failed to demonstrate affectedness or compliance with the standing requirements. Therefore, OPIC cannot find that Jon Beall, Anne Brockenbough, and Thomas Graham qualify as affected persons in their individual capacities.

B. Which issues raised in the hearing request are disputed

The affected requestors raised the following disputed issues:

1. Whether the draft permit is adequately protective of water quality.
2. Whether the draft permit is adequately protective of wildlife and vegetation.
3. Whether the draft permit is adequately protective of recreational uses.
4. Whether the draft permit is adequately protective against excessive phosphorus, nitrates, and other contaminants.
5. Whether the draft permit is compliant with TCEQ's regionalization policy.

6. Whether the draft permit is adequately protective against facility malfunctions and whether its monitoring frequency is adequately protective.
7. Whether the draft permit contains adequate consideration of cumulative impacts.

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. 1-7 in Section III.B. were specifically raised by the 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 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, Plant and Animal Life, Recreational Activities, and Other Contaminants

The affected requestors in this matter raised concerns about adverse effects to water quality and the consequential impacts on human health, animal life, the environment, and recreational activities. 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). Also, 30 TAC § 307.4(j)(1) requires that existing, designated, presumed, and attainable uses of aquatic recreation must be maintained. Finally, antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission’s antidegradation policy and contains provisions for implementation of the policy. As Chapter 307 designates criteria for the regulation of water quality and governs antidegradation reviews, the protection

of human health and safety and animal life, and the maintenance of recreational uses, Issues No. 1-4 are relevant and material to the Commission's decision regarding this application.

Regionalization

TCEQ's regionalization policy comes from Section 26.081 of the Texas Water Code, which implements "the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." TCEQ's wastewater permit application requires the applicant for a new permit to provide information concerning other wastewater treatment facilities that exist near the applicant's proposed treatment facility site. The applicant is required to state whether any portion of the applicant's proposed service area is located in an incorporated city, whether its proposed service area is located within another utility's certificate of convenience and necessity area, and whether there is a facility, or any sewer collection lines located within the three-mile area surrounding the proposed facility site. Accordingly, Issue No. 5 is relevant and material to the Commission's decision on this application.

Facility Malfunctions and Monitoring Frequency

The affected requestors articulated concerns about potential facility malfunctions and the frequency of monitoring that would limit the extent of those malfunctions. In order to be in compliance with their permit, Applicant must ensure that the facility and all of its systems of collection, treatment, and

disposal are properly operated and maintained. Operational Requirements in the draft permit require the facility to be operated and maintained by operators holding a valid certificate of competency at the required level, as defined by 30 TAC Chapter 30, Subchapter J. Further, the draft permit describes the conditions under which the facility must operate and contains maintenance and operational safeguards intended to minimize the occurrence of operational mishaps. Additionally, the draft permit requires the Applicant, upon request by the ED, to take appropriate samples and provide proper analysis to demonstrate compliance with Commission rules. Sampling, analysis, and reporting for compliance must be performed by the Applicant according to the draft permit's provisions. Accordingly, Issue No. 6 is relevant and material to the Commission's decision on this application.

Cumulative Impacts

The affected requestors raised concerns related to the cumulative impact of multiple discharges into the existing waterbody. In the case of permits with oxygen-demanding constituents modeling is done to enable each permit to be drafted such that the permit by itself, and in combination with any other permits authorizing discharge flowing into the same waterbodies, will not result in any adverse impacts to the dissolved oxygen criteria assigned in 30 TAC Chapter 307. Accordingly, Issue No. 7 is relevant and material to the Commission's decision on this application.

G. Maximum expected duration for the contested case hearing

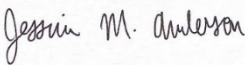
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 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. CONCLUSION

Having found that WCCA and Pamela Fowler qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issues No. 1-7 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully submitted,


Garrett T. Arthur
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing 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

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TCEQ DOCKET NO. 2025-0828-MWD**

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See attached list.

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