

To: Texas Commission on Environmental Quality

From: Wilbarger Creek Conservation Alliance (WCCA)
Pamela Fowler, WCCA Board Member
Jon Beall, WCCA President and Board Member
Anne Brockenbrough, WCCA VP and Board Member
Marilyn Kelinske, M.D., WCCA Board Member
Thomas Graham, WCCA Member

Re: TPDES PERMIT NO. WQ0014129002 – Application by
City of Manor for a Major Amendment

**REPLY TO EXECUTIVE DIRECTOR'S AND OPIC'S
RESPONSE TO HEARING REQUESTS**

1. Proximity is not a basis for denying Protestants' hearing requests because they will be affected.

The Executive Director recommends that the Commission deny all hearing requests in this docket solely based on proximity. As the Commissioners are aware, this is not the first time proximity has been cited as the reason to deny standing to WCCA and its members in a hearing request for wastewater discharge permits in Wilbarger Creek. In Docket No. 2023-0370-MWD, TCEQ denied standing to WCCA and three of its members because their properties were allegedly too far from the discharge to be affected. The agency's decision in that docket was reversed in April 2025 and is the subject of a pending appeal. *See WCCA et al. v. TCEQ*, D-1-GN-23-004031 (Apr. 7, 2025).

The protestants disagree that proximity alone is a valid basis for denying a hearing request. However, even applying the Commission's proximity approach announced in other cases, including Docket No. 2023-0370-MWD, the Protestants are affected persons in this docket.

In Docket No. 2023-0370-MWD, the Commissioners discussed the role of proximity in determining standing and cited the recent City of Liberty Hill application for Permit No. WQ0014477001, former Commissioner Nierman focused on two factors that may support affected person status for downstream landowners, even if they are located a

significant distance from a WWTP discharge: (1) the volume of the discharge, and (2) whether there was actual evidence of impacts and a history of noncompliance.

Here, the volume of the discharge is 800,000 gpd, which, although lower than other permitted discharges, is still significant given the small size and low flows of Wilbarger Creek. Regarding noncompliance, the Protestants' May 10, 2025, reply to the ED's RTC filed in this docket summarizes the City of Manor's recent compliance history, both for the Cottonwood Creek facility and the other facilities the City operates. (See pages 8-10 of that document and referenced attachments.) That discussion, which we incorporate by reference, reveals that inspections of the Cottonwood Creek facility consistently document violations and the DMRs regularly show exceedances of permit limits. The same document also describes evidence of impairment in Cottonwood and Wilbarger Creeks, including both analytical data collected by WCCA and TCEQ's water quality reports.

Finally, the location of the Protestants' properties to this discharge is closer than those in other dockets where the Commission has denied standing. Specifically, in Docket No. 2023-0370-MWD, the distance from the discharge to the nearest WCCA member property was approximately 2.5 miles; here, it is 1.1 miles. We note that OPIC, which recommended denial of all requests in Docket No. 2023-0370-MWD, recommends granting Pamela Fowler's hearing request in this docket. Therefore, at a minimum, the Commission should grant Fowler's hearing request and find that Fowler has standing and WCCA has associational standing.

2. Request for continuance of the July 23, 2025, public meeting.

The undersigned counsel are not available to attend the July 23, 2025, public meeting due to prior commitments. Although we do not plan to make additional comments, we would like to be present to answer any questions the Commissioners may have. Therefore, we request a continuance of this application to the first available agenda date after July 23.

Respectfully submitted,

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