

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 27, 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 ABILENE
FOR TPDES PERMIT NO. WQ0005213000
TCEQ DOCKET NO. 2025-1451-IWD**

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 black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-1451-IWD

APPLICATION BY	§	BEFORE THE
CITY OF ABILENE	§	TEXAS COMMISSION
FOR TPDES PERMIT	§	ON ENVIRONMENTAL
NO. WQ0005213000	§	QUALITY

**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) files this response to the hearing requests and requests for reconsideration received in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is the application of the City of Abilene for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005213000. The Commission received numerous comments and requests for a contested case hearing as well as multiple requests for reconsideration. For the reasons stated herein, OPIC respectfully recommends the Commission find there is no right to a contested case hearing in this matter and therefore deny all hearing requests. Additionally, OPIC respectfully recommends that the Commission deny all pending requests for reconsideration.

B. Description of Application and Facility

On March 7, 2023, the City of Abilene (Applicant) applied to TCEQ for a renewal of TPDES Permit No. WQ0005213000 to authorize the discharge of water treatment waste. Water treatment wastes will be discharged at an annual average

flow of 1.09 million gallons per day (MGD), with a daily maximum of 1.38 MGD during Phase I, and at an annual average flow of 1.51 MGD, with a daily maximum of 1.81 MGD during Phase II via Outfall 001. The Applicant proposes to operate the Possum Kingdom Raw Water Roughing Facility (the Facility), which will be a reverse osmosis water treatment facility. The facility is located at 105 East Elliot Street, in the City of Breckenridge, Stephens County.

When the Facility begins operating, the treated effluent will be discharged via Outfall 001 directly to Possum Kingdom Lake in Segment No. 1207 of the Brazos River Basin. The designated uses for Segment No. 1207 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

TCEQ received the application on March 7, 2023. On June 16, 2023, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English in the *Breckenridge American* on July 26, 2023, and in Spanish in *La Presna Comunidad* on June 22, 2023. The technical review of the application was completed on February 13, 2024. The Notice of Application and Preliminary Decision was published in English in the *Breckenridge American* on February 28, 2024, and in Spanish in *La Presna Comunidad* on March 5, 2024. The Commission determined to hold a public meeting, and the Notice of Public Meeting was published in the *Breckenridge American* on May 15, 2024. Consistent with the notice, a public meeting was held on June 18, 2024, at the Possum Kingdom Lake Chamber of Commerce in the City of Graford. The public comment period ended

at the close of the public meeting on June 18, 2024. The Chief Clerk mailed the ED's Decision and Response to Comments (RTC) on June 26, 2025. The deadline for filing requests for a contested case hearing or reconsideration of the Executive Director's decision was July 28, 2025. The Commission received numerous comments and requests for a contested case hearing.

II. Applicable Law

A. Requests for Hearing

This application was filed on or 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) (SB 709). 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 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.

Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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, safety, and 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 ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

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 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 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. Discussion

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, the City is not applying to increase the quantity of effluent authorized for disposal, or change the pattern or place of disposal 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 will maintain the quality of waste authorized to be discharged.

Third, the public was provided notice of the right to request a public meeting on this application and a public meeting was held on June 18, 2024, at the Possum Kingdom Lake Chamber of Commerce. Fourth, within the RTC, the ED has considered and responded to all timely and significant public comments.

Finally, Applicant's compliance history for the five-year period prior to the date the permit application was received by the ED raises no issues regarding Applicant's ability to comply with a material term of the permit. As required by

TCEQ rules, the City and site have been rated and classified pursuant to 30 TAC Chapter 60. This site is not currently rated and has a classification of “unclassified”. The City’s rating and classification is 0.06 and “high”. By rule, a “high” compliance history classification applies to a performer who has an above-satisfactory compliance record. *See* 30 TAC § 60.2(a)(1). Sites that have no compliance information are designated as "unclassified." *See* 30 TAC § 60.2(b). Additionally, OPIC has identified no enforcement actions initiated within the previous five years. Given the City’s and the site’s compliance histories of “high” and “unclassified,” respectively, OPIC concludes the relevant compliance history raises no issues regarding 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.

B. Requests for Reconsideration

The Commission received a timely request for reconsideration by John Queralt. Counsel for Possum Kingdom Lake Association also submitted a request for reconsideration on behalf of the group and a number of its individual members. These requests ask the ED to reconsider its decision that the permit application meets the requirements of applicable law on the basis that Possum Kingdom Lake is used recreationally and could become contaminated. They also raise issues with the modeling conducted in support of the draft permit and note that a USGS flow meter installed upstream of the discharge shows little to no

inflows into the receiving waters. This issue was raised during the public comment period, and was addressed in the ED's Response to Public Comment (RTC), which states that critical low-flow conditions were considered when evaluating appropriate effluent limits for the discharge. The RTC further states that the effluent limitations in the draft permit will maintain and protect the existing instream uses and comply with the Texas Surface Water Quality Standards even during periods of low flow.

The requests additionally assert that an underwater inspection confirms that the as-built design of the diffuser does not match the design submitted as part of the application and modeled by TCEQ staff. This issue was raised during the public comment period, and as stated in the ED's RTC, it is the Applicant's responsibility to construct and install a diffuser consistent with the information provided in the application submitted to TCEQ. The RTC notes that the diffuser report covering the design and installation of the diffuser was stamped and sealed by the Applicant's licensed professional engineer, and further, that the Applicant may be subject to administrative, civil and criminal penalties for knowingly making any false statement, representation, or certification on any report, record, or other document submitted.

As discussed above, OPIC finds that a contested case hearing is not available in this matter. OPIC has considered the Protestants' contentions and the ED's corresponding responses in the RTC, and we find that an evidentiary record on the issues they have raised would be necessary for OPIC to make a recommendation to the Commission on whether the ED's decision should be

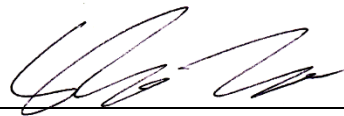
reconsidered. OPIC notes that the ED has evaluated and responded to each of these concerns in its RTC. In light of the ED's previous consideration, and in the absence of an evidentiary record, OPIC cannot recommend reversal of the ED's decision or remand of the application to the ED based on the contentions advanced by the Protestants.

IV. Conclusion

Having found that, as a matter of law, no right to hearing exists in this case, OPIC respectfully recommends the Commission deny the pending hearing requests. Finally, OPIC respectfully recommends the Commission deny the requests for reconsideration.

Respectfully submitted,

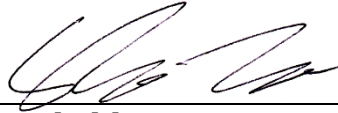
Garrett T. Arthur
Public Interest Counsel

By: 

Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144

CERTIFICATE OF SERVICE

I hereby certify that October 27, 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.

A handwritten signature in black ink, appearing to read 'Sheldon P. Wayne', is written over a horizontal line.

Sheldon P. Wayne

**MAILING LIST
CITY OF ABILENE
TCEQ DOCKET NO. 2025-1451-IWD**

FOR THE APPLICANT
via electronic mail:

Jason T. Hill
J.T. Hill, PLLC
3800 North Lamar Boulevard, Suite 200
Austin, Texas 78756
jason@jthill.com

Matthew Dane, P.E.
Director of Water Utilities
City of Abilene
P.O. Box 60
Abilene, Texas 79604
matthew.dane@abilenetx.gov

Luce Dunn, P.E.
Enprotec/Hibbs & Todd, Inc.
P.O. Box 3097
Abilene, Texas 79604
luci.dunn@e-ht.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Maricela Zertuche, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
maricela.zertuche@tceq.texas.gov

Alexander Owens, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4653 Fax: 512/239-4430
alexander.owens@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION
via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

See attached list.

REQUESTER(S)

Chris Beeson
1601 Forum Cir
Unit 145
Graford, TX 76449

Janel Bullock
749 En 12Th St
Abilene, TX 79601

Jent & Stacy Burke
8725 County Road 300
Graham, TX 76450

Terry Carey
Po Box 1
Caddo, TX 76429

Sue Cathey
715 Dove Ln
Graford, TX 76449

Blake & Michelle Davis
8967 County Road 300
Graham, TX 76450

Colleen & Mark Feighner
460 E Jeter Rd
Bartonville, TX 76226

Patrick A Gorman
3504 Mcniel Ave
Wichita Falls, TX 76308

Kathy Halgriamon
8925 County Road 299
Graham, TX 76450

Greg Hamilton
9087 County Road 300
Graham, TX 76450

Sam Heard
17925 Private Road 3003
Graham, TX 76450

Jena Taver & Justin Jackson
8301 County Road 300
Graham, TX 76450

Steve Jordan
9195 Private Road 2993
Graham, TX 76450

Chad Jordan
3034 S Keller Rd
Mineral Wells, TX 76067

Cody Jordan
3034 S Keller Rd
Mineral Wells, TX 76067

Teri Kramer
4913 Pershing Ave
Fort Worth, TX 76107

James P Lattimore Jr
1755 Park Road 36
Graford, TX 76449

Will Lunsford
9087 County Road 300
Graham, TX 76450

Shannon J Mackinnon
703 M Anthony Loop
Graford, TX 76449

Rock Maserang
4812 Fm 1148
Graham, TX 76450

Barbara & Waley Mcreynolds
17901 Private Road 3003
Graham, TX 76450

Michael M Mikeska
6317 Orchid Ln
Dallas, TX 75230

Thomas R Perkins
302 Windjammer Way
Wichita Falls, TX 76308

Gregory L Peterson
100 Sandalwood Ct
Weatherford, TX 76085

Jeff Peterson
4459 Chapel Rd
Graham, TX 76450

Orville & Virginia Pirraglia
9134 Private Road 2993
Graham, TX 76450

J Tom Pruett
4837 Pike Rd
Graham, TX 76450

John Queralt
3936 Bent Elm Ln
Fort Worth, TX 76109

John Reilly
621 Homewood Dr
Plano, TX 75025

Mr Wade Roberson
155 Crooked Creek Ln
Aledo, TX 76008

Debbie & Edward Rulestead
1309 Nw 15Th St
Andrews, TX 79714

Grady & Jame Sanders
8365 County Road 300
Graham, TX 76450

Paul C Sarahan
Enoch Kever PLLC
7600 N Capital Of Texas Hwy
Bldg B, Ste 200
Austin, TX 78731

Paul Christopher Sarahan
Earth & Water Law LLC
6801 Jester Wild Dr
Austin, TX 78750

William Foster Simmons
Gorden Simmons Service
301 Doe Ln
Graham, TX 76450

Tracy Talbot
8799 County Road 299
Graham, TX 76450

Dawn Warchesik
9087 County Road 300
Graham, TX 76450

Mr Lee L Warchesik
3148 English Creek Dr
Azle, TX 76020

Jo Wilson
6428 Barkwood Ln
Dallas, TX 75248

Thomas Wright
N-Tex Construction
4630 Chapel Rd
Graham, TX 76450