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

David Timberger, Interim Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2026

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 PFLUGERVILLE FOR TPDES PERMIT NO. WQ0014642001 TCEQ DOCKET NO. 2026-0938-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,

Michael McCarthy
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2026-0938-MWD

APPLICATION BY THE CITY OF PFLUGERVILLE FOR TPDES PERMIT NO. WQ0014642001	**§ § §**	**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 or Commission) 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 Pflugerville (the City or Applicant) for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014642001. The Commission received timely comments and hearing requests from Thomas and Ana Lerma, as well as the Wilbarger Creek Conservation Alliance (WCCA). 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.

B. Description of Application and Facility

Applicant applied to the TCEQ for renewal of TPDES Permit No. WQ0014642001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 million gallons per day (MGD) in the Interim

I phase, a daily average flow not to exceed 0.475 MGD in the Interim II phase, a daily average flow not to exceed 0.95 MGD in the Interim III phase, and an annual average flow not to exceed 3.0 MGD in the Final phase. The Applicant proposes to operate the New Sweden Wastewater Treatment Plant (WWTP), a domestic wastewater treatment plant that will serve Cottonwood Creek Sewer Basin for the City of Pflugerville.

The New Sweden Wastewater Treatment Facility will be an activated sludge process plant operated in the single-stage nitrification mode in the Interim I, Interim II, Interim III, and Final phases. Treatment units will include a plant lift station, biological nutrient removal, an aeration basin, chemical phosphorus removal, a final clarifier, an aerobic digestor, two filters, and a chlorine contact chamber in all phases. There will also be a dechlorination basin in the Final phase. The facility is not in operation.

The facility will be located approximately 2,500 feet east of the intersection of Farm-to-Market Road 973 and New Sweden Church Road, Travis County, 78653. If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary, then 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 January 22, 2024, and declared administratively complete on March 20, 2024. The Notice of Receipt and Intent

to Obtain a Water Quality Permit was published in English on June 4, 2024, in the *Austin American Statesman*, and in Spanish on June 3, 2024, in *La Voz Newspaper*. The Notice of Application and Preliminary Decision was published in English on March 12, 2025, in the *Pflugerville Flag*, and in Spanish on March 5, 2024, in *La Voz Newspaper*. The comment period for the application closed on April 11, 2025. The Executive Director's (ED) Response to Comments (RTC) was mailed on June 29, 2026. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was July 29, 2026.

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. 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 to change the pattern or place of disposal from the existing permit.

Second, effluent limitations and monitoring requirements would remain the same as in the existing permit. 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.

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 13.38 and is "satisfactory." By rule, a "satisfactory" compliance history classification applies to a performer who generally complies with environmental regulations. *See* 30 TAC § 60.2(a)(2). 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 "satisfactory" 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.

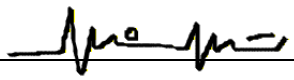
In sum, OPIC finds that because each requirement contained in 30 TAC § 55.201(i)(5) has been satisfied, no right to a contested case hearing exists in this case, and the requests for a hearing should therefore be denied.

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.

Respectfully submitted,

David Timberger
Interim Public Interest Counsel

By: 

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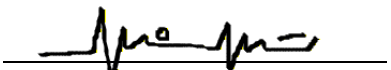
CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, 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 on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Michael McCarthy

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