

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN INTERIM ORDER concerning the application by Smiling Mallard Development, Ltd. for new TPDES Permit No. WQ0016077001; TCEQ Docket No. 2023-0863-MWD.

On September 27, 2023, the Texas Commission on Environmental Quality (Commission) considered during its open meeting requests for hearing and reconsideration concerning the application by Smiling Mallard Development, Ltd. (Applicant) for new TPDES Permit No. WQ0016077001. The application seeks authorization to discharge treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day (gpd). The proposed wastewater treatment facility will be located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State Highway 6, in Brazos County, Texas.

The requests for hearing and reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the requests for hearing and reconsideration filed by the Executive Director and the Office of Public Interest Counsel; all timely public comment; and the Executive Director's Response to Public Comment and Amended Response to Public Comment.

After evaluation of all relevant filings, the Commission determined that Herb Flanagan is an affected person and granted his request for hearing. The Commission determined that the remaining hearing requests and requests for reconsideration be denied.

The Commission next determined whether the granted request for hearing raised disputed issues of fact or mixed questions of fact and law that were raised by an affected person during the comment

period, and which are relevant and material to the decision on the application. The Commission determined that the following issue met those requirements and directed that it be referred to the State Office of Administrative Hearings (SOAH) for contested case hearing: Whether the draft permit adequately protects against nuisance odors in accordance with 30 Texas Administrative Code § 309.13(e).

The Commission also determined to refer the matter to the Commission's Alternative Dispute Resolution Program, to run concurrently with SOAH preliminary scheduling efforts. Finally, the Commission specified that the maximum duration of the contested case hearing shall be 180 days from the date of the preliminary hearing until the proposal for decision is issued by SOAH.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- 1) The hearing request of Herb Flanagan is hereby GRANTED;
- 2) The remaining hearing requests and requests for reconsideration are hereby DENIED;
- 3) The following issue is REFERRED to SOAH for a contested case hearing on the application: Whether the draft permit adequately protects against nuisance odors in accordance with 30 Texas Administrative Code § 309.13(e);
- 4) The matter is REFERRED to the Commission's Alternative Dispute Resolution Program to run concurrently with SOAH's scheduling process;
- 5) The maximum duration of the hearing is SET at 180 days from the date of the preliminary hearing until the date the proposal for decision is issued by SOAH; and
- 6) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY



Jon Niemann, Chairman

10/2/23

Date Signed