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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 3, 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 OAK NATIONAL HOLDINGS, LLC FOR NEW TPDES PERMIT NO. WQ0016566001 TCEQ DOCKET NO. 2026-0792-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. 2026-0792-MWD

APPLICATION BY OAK NATIONAL HOLDINGS, LLC FOR NEW TPDES PERMIT NO. WQ0016566001	**§ § § §**	**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 Oak National Holdings, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016566001. The Commission received timely hearing requests from the City of Forney, the City of Dallas, and the North Texas Municipal Water District. For the reasons stated herein, OPIC respectfully recommends that the Commission find that the City of Forney and the North Texas Municipal Water District are affected persons and further recommends that the Commission grant their hearing requests.

B. Description of Application and Facility

Applicant applied for TPDES Permit No. WQ0016566001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day, and a two-hour peak not to exceed 347 gallons per minute. The Applicant proposes to operate Cook Additions Wastewater Treatment Facility (WWTF) to serve a residential development in Kaufman County.

The proposed WWTF would be a membrane bioreactor (MBR) system. Treatment units would include fine screens, an aerobic tank, two anoxic tanks, membrane cells, a sludge press, and an Ultraviolet (UV) disinfection system. If the permit is issued, the treated effluent will be discharged to a ditch, then to Mustang Creek, then to East Fork Trinity River in Segment No. 0819 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for the ditch and Mustang Creek. The designated uses for Segment No. 0819 are primary contact recreation and intermediate aquatic life use. The Executive Director (ED) has concluded that the effluent limits in the draft permit will maintain and protect the existing instream uses.

C. Procedural Background

The permit application was received on June 28, 2024, and declared administratively complete on July 31, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 22, 2024, in the *Forney Messenger*. The NORI was also published in Spanish on August 19, 2024, in *Tex Mex News*. The Notice of Application and Preliminary Decision was

published in English on March 20, 2025, in the *Forney Messenger*, and in Spanish on March 19, 2025, in *La Prensa Comunidad*. The public comment period for this application ended on April 21, 2025. The ED mailed the Response to Comments on June 17, 2026, and the deadline for requesting a contested case hearing or reconsideration of the ED's decision was July 17, 2026.

II. APPLICABLE LAW

The permit 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 § 55.201(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. 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).

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 requestors are affected persons

The City of Forney

Joe Freeland submitted a timely comment and hearing request on behalf of the City of Forney (Forney). According to the map created by ED staff, the proposed WWTF is 0.31 miles from Forney's city limits, and 0.24 miles from Forney's extraterritorial jurisdiction (ETJ). The concerns raised in the request include water quality, notice, application accuracy, compliance with buffer zone requirements, location of the discharge point, whether the proposed WWTF is in violation of TCEQ's regionalization policy, and whether there is a need for the proposed permit.

Governmental entities, including local governments, with authority under state law over issues raised by the application, may be considered affected persons.[1] Furthermore, when determining whether local governments are affected persons, factors related to their statutory authority over or interest in the issues relevant to the application should be considered.[2] Forney has demonstrated that it has authority under state law over the issues it has raised because it has an interest in protecting the health and safety of its citizens and its public assets within its territorial jurisdiction under Texas Local Government Code §§ 42.001 and 212.044. Further, there is substantial proximity between Forney's city limits and the proposed WWTF, and effluent from the WWTP would flow down Mustang Creek through the center of Forney, including a number of city-owned parks. Forney's concerns are therefore protected by the law under

[1] 30 TAC § 55.203(b).
[2] 30 TAC § 55.203(c).

which the application will be considered. For these reasons, OPIC finds that the City of Forney qualifies as an affected person.

The North Texas Municipal Water District

Lauren Kalicek submitted a timely comment and hearing request on behalf of the North Texas Municipal Water District (NTMWD or District). According to the comment and request, the proposed WWTF seeks to collect, transport, treat, and discharge wastewater within the regional area designated to NTMWD by TCEQ. The concerns raised in the request include application accuracy, regionalization concerns and whether there is a need for the proposed permit.

As previously mentioned, governmental entities with authority under state law over issues raised by the application, may be considered affected persons. Furthermore, when determining whether local governments are affected persons, factors related to their statutory authority over or interest in the issues relevant to the application should be considered. NTMWD's concerns are protected by the law under which the application will be considered. Further, the District has demonstrated that it has authority under state law over the issues it has raised. Finally, there is substantial proximity between the NTMWD's designated regional area and the proposed WWTF. Therefore, OPIC finds that NTMWD qualifies as an affected person.

The City of Dallas

Helen Gilbert submitted a timely comment and hearing request on behalf of the City of Dallas. Dallas' comments and request raised similar concerns over

regionalization and need for the discharge, antidegradation, water quality and application accuracy, as well as nuisance odors and the technical capabilities of the applicant. According to the map created by ED staff, the proposed WWTF is 4.11 miles from Dallas' city limits.

While certain concerns raised by Dallas fall within the scope of issues protected by the law governing this application, the City's location is too distant from the proposed WWTF to determine that it would be affected in a manner not common to the general public. While no specific distance limitation exists to determine who may be considered an affected person for purposes of this application, given Dallas' distance from the proposed WWTF, outfall, and discharge route, OPIC cannot conclude that the City of Dallas is likely to be impacted by the facility's operations in a manner that differs from the general public as required by 30 TAC § 55.203(a). OPIC therefore finds that the City of Dallas does not qualify as an affected person.

B. Which issues raised in the hearing requests are disputed

The affected requestors raised the following disputed issues:

1. Whether public notice was sufficient;
2. Whether the application was complete and accurate;
3. Whether the proposed WWTF is protective of water quality; and
4. Whether the proposed WWTF is in violation of TCEQ's regionalization policy.
5. Whether the draft permit complies with applicable buffer zone requirements.
6. Whether the draft permit adequately identified and properly characterizes that functioning of the discharge route.

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 1-6 in Section III.B. were specifically raised by 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 raise some 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).

Public Notice

Forney raised concerns that proper notice for the application was not provided to the appropriate landowners. The Applicant is required by 30 TAC Chapter 39, Subchapter J to provide public notice of the application. The issue of

whether this permit was properly noticed is therefore relevant and material to the Commission's decision to issue or deny this permit, and Issue no. 1 is appropriate for referral to SOAH.

Completeness and Accuracy of the Application

Both affected requestors raised concerns that the application is incomplete, is missing information, and contains inaccurate information. TCEQ rules require that if an applicant becomes aware that it did not submit required facts or submitted incorrect information in a permit application, the applicant is required to promptly submit the needed facts and information. 30 TAC § 305.125(19). Therefore, Issue no. 2 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Water Quality

Forney raised concerns about adverse effects to water quality. 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…."[3] 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,

[3] 30 TAC § 307.1.

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."[4] Finally, 30 TAC § 307.4(e) requires that nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation which impairs an existing, designated, presumed, or attainable use. As Chapter 307 designates criteria for the regulation of water quality, Issue No. 3 is relevant and material to the Commission's decision regarding this application.

Regionalization and Need

Both affected requestors raised concerns about regionalization. Under Texas Water Code § 26.081(a), it is "state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems … to prevent pollution and maintain and enhance the quality of the water in the state." The Texas Water Code further states:

> In considering the issuance … of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit … based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order….

TWC § 26.0282. Accordingly, Issue no. 4 is relevant and material to the Commission's decision on this Application.

[4] 30 TAC § 307.4(d).

Buffer Zones

Forney raised concerns about buffer zones, specifically whether the application meets the requirements. 30 TAC § 309.13 requires certain minimum buffer zone requirements to be met by the applicant. Therefore, Issue no. 5 is relevant and material to the Commission's decision regarding this Application and is appropriate for referral to SOAH

Characterization of the Discharge Route

Forney raised concerns about the point of discharge, and how it is characterized in the application. Proper functioning of a discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state. Further, the Texas Surface Water Quality Standards (Standards) in 30 TAC 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. An inaccurate or inadequate representation of the effluent route could prevent ED staff from conducting a complete and accurate analysis. Therefore, Issue no. 6 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

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.

V. CONCLUSION

Having found that the City of Forney and North Texas Municipal Water District qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue nos. 1-6 specified in Section III.B. for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends that the Commission direct the parties to participate in mediation concurrently with SOAH proceedings.

Respectfully submitted,

David Timberger
Interim Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2026, the original of 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.

_____
Michael McCarthy

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