

COPY

TCEQ DOCKET NO. 2008-0142-MWD

APPLICATION BY TURNER CREST  
VILLAGE WASTE WATER  
COMPANY, LLC, CALDWELL  
COUNTY, TEXAS  
FOR WASTEWATER DISCHARGE  
PERMIT NO. WQ0014831001

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2008 MAY -8 11 32 AM '08

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

APPLICANT'S RESPONSE TO REQUEST FOR CONTESTED CASE HEARING

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant Turner Crest Village Waste Water Company, LLC ("Applicant") files this Response to Request for Contested Case Hearing by Aaron Arguien ("Arguien") and urges the Commission to deny the hearing request.

I.

INTRODUCTION AND FACTUAL BACKGROUND

On or about July 2, 2007, Applicant applied to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for a new TPDES Permit No. WQ0014831001 to authorize the discharge of municipal wastewater. The proposed wastewater treatment facility will serve the Turner Crest Village development in Caldwell County. The permit application was declared administratively complete on August 3, 2007, and notice of the application was mailed to interested persons and adjacent landowners as required by law. Public notices were later published on August 16 and 25, 2007. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on October 25, 2007, and the public comment period ended on November 26, 2007.

On or about October 16, 2007, Arguien filed a letter with the TCEQ requesting a contested case hearing and expressing concerns regarding the potential for flooding of his

property as a result of the wastewater treatment facility.<sup>1</sup> Arguien asserts that he owns approximately nineteen acres of property on Greenhouse Road in Martindale, Texas. The property apparently lies within the floodplain of Morrison Creek.

In his request for hearing, Arguien himself concedes that his property is over two miles downstream from the proposed location for Applicant's wastewater treatment facility.<sup>2</sup> Nonetheless, Arguien requests a hearing regarding the sole issue of the possibility of flooding on his property, should the permit be approved. The hearing request does not otherwise challenge the application or assert any adverse health effects.

Applicant now files this response to Arguien's hearing request and urges the Commissioners to deny the request because Arguien is not an affected person and the issue of flooding is outside the Commission's jurisdiction in TPDES wastewater permitting matters. It should be noted that Caldwell County Judge, H.T. Wright, filed a letter with the Commission on behalf of the Commissioners Court of Caldwell County in strong support of Applicant's permit application and urging its approval. *See* October 17, 2007 Letter from H.T. Wright to Office of Chief Clerk, attached hereto as Exhibit "B".

## **II.**

### **RESPONSE TO HEARING REQUEST BY AARON ARGUIEN**

#### **A. Arguien is Not an Affected Person.**

Arguien does not have standing to obtain a contested case hearing on Applicant's permit application because Arguien is not an affected person as defined and required by Texas law. The Commission may only grant Arguien's request for contested case hearing if it determines that he

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<sup>1</sup> *See* October 16, 2007 Letter and Hearing Request from Aaron Arguien. Arguien's comment and hearing request is the only protest filed against Applicant's permit.

<sup>2</sup> *See* October 16, 2007 Letter and Hearing Request from Aaron Arguien. *See also* Map entitled "Length of Discharge Route from Point of Discharge to Arguien Tract 14,275 Linear Feet Along Stream Bed", a true and correct copy of which is attached hereto as Exhibit "A".

is an “affected person.”<sup>3</sup> Texas law defines an affected person as one with a “justiciable interest related to a legal right, duty, privilege, power, or economic interest.”<sup>4</sup> Interests common to the general public are not sufficient to make one an affected person.<sup>5</sup>

In undertaking the affected person analysis, the Commission may consider a variety of factors, including:

- 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.<sup>6</sup>

In addition, TCEQ policy generally requires that Arguien reside or own property either adjacent to or within one mile downstream of Applicant’s proposed facility to qualify as an “affected person” for purposes of obtaining a contested case hearing. Arguien’s property is located on 545 Greenhouse Rd., Martindale, Texas—over two miles downstream from the Applicant’s proposed point of discharge for the wastewater treatment facility.<sup>7</sup> Arguien’s property is simply too far removed from Applicant’s proposed wastewater treatment facility for him to be affected.<sup>8</sup>

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<sup>3</sup> See TEX. WATER CODE ANN. § 5.556.

<sup>4</sup> *Id.* § 5.115(a). See also 30 TEX. ADMIN. CODE § 55.203(a).

<sup>5</sup> TEX. WATER CODE ANN. § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

<sup>6</sup> 30 TEX. ADMIN. CODE § 55.203(b).

<sup>7</sup> See Ex. “A”. See also Arguien’s October 16, 2007 Hearing Request (stating “[m]y property is approx. 12000 feet from the actual waste water treatment facility”).

<sup>8</sup> In addition, Arguien’s property is not adjacent to Applicant’s property.

Further, Arguien's concerns about potential flooding are not matters within the jurisdiction of TCEQ in TPDES wastewater permitting matters.<sup>9</sup> Chapter 26 of the Texas Water Code specifies that the permit process concerns the regulation of discharges of pollutants into the waters of the State and the protection and control of water quality in the State.<sup>10</sup> Applicant's permit does not authorize or attempt to regulate discharges across private property that might occur as a result of flooding.<sup>11</sup> As discussed in greater detail below, flooding is a separate issue and unrelated to the permitting process. The potential for flooding and its effect on surrounding property is not regulated by the Commission's TPDES permitting process.

In the end, Arguien's concern regarding possible flooding is merely an interest common to the general public. Such general concerns are insufficient to warrant a contested case hearing on a TPDES permit.<sup>12</sup> Accordingly, Arguien is not an affected person, and he does not have standing in this case. Arguien's request for a contested case hearing on Applicant's permit should be denied.

**B. Applicant Disputes All Issues Raised by the Hearing Request and Such Issues are Not Relevant or Material to the Commissioners' Decision on the Application.**

Arguien requests a contested hearing premised solely on his concern that his property is within the Morrison Creek floodplain, which is downstream from the Applicant's facility. This concern, however, bears no relevance on the issuance of Applicant's permit. The draft permit requires Applicant's wastewater treatment facility to comply with the requisite effluent limits and water quality requirements irrespective of whether Applicant faces dry conditions or rainfall

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<sup>9</sup> See Executive Director's Response to Comment, p. 3.

<sup>10</sup> TEX. WATER CODE ANN. §§ 26.011, 26.027.

<sup>11</sup> Draft Permit to Discharge Wastes No. WQ0014831001, p. 1.

<sup>12</sup> See TEX. WATER CODE ANN. § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

events and flooding. Moreover, the proposed permit does not authorize Applicant to discharge wastewater along private property. The draft permit expressly states:

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.<sup>13</sup>

Therefore, Arguien's concerns about the potential for flooding Morrison Creek and any impact of such flooding on his property are entirely separate from the issues and concerns regulated by the Commission's TPDES permit program. Arguien's hearing request accordingly should be denied, the permit application should be approved, and the Applicant's permit should be issued.

### **III. CONCLUSION**

Arguien does not have standing to obtain a contested hearing regarding Applicant's permit application because Arguien's property is located more than two miles downstream of the point of discharge of the wastewater treatment facility site, and therefore, Arguien is not an affected person. Further, even if Arguien had standing to maintain a protest to Applicant's permit, Arguien's sole objection to the permit, flooding, falls outside TCEQ's jurisdiction in wastewater permitting matters. Accordingly, Applicant requests that the Commissioners deny Arguien's hearing request, approve Applicant's permit application and issue TPDES Permit No. WQ0014831001 to Applicant.

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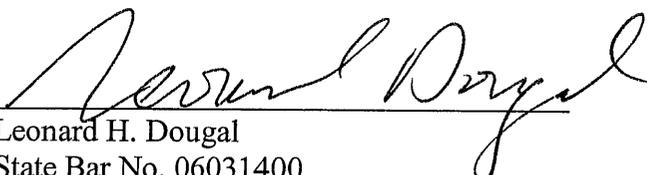
<sup>13</sup> Draft Permit to Discharge Wastes No. WQ0014831001, p. 1.

**IV.**  
**PRAYER**

Applicant Turner Crest Village Waste Water Company, LLC respectfully prays that the Commissioners deny Aaron Arguien's request for a contested case hearing and approve and issue TPDES Permit No. WQ0014831001 to Applicant.

Respectfully submitted,

JACKSON WALKER L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
512-236-2000  
Fax No. 512-236-2002

By:   
Leonard H. Dougal  
State Bar No. 06031400  
Courtney E. Cox  
State Bar No. 24045711

ATTORNEYS FOR APPLICANT

**CERTIFICATE OF SERVICE**

This is to certify that on this 8<sup>th</sup> day of May, 2008, a true and correct copy of the foregoing document was served on the following parties via the manner indicated below:

Ms. LaDonna Castañuela (MC-105)  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

*Via Hand Delivery*

Ms. Kathy Humphreys (MC-173)  
Texas Commission on Environmental Quality  
Environmental Law Division  
12100 Park 35 Circle  
Austin, Texas 78753

*Via Facsimile 239-0606*

Mr. Blas Coy (MC-103)  
Office of Public Interest Council  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

*Via Facsimile 239-6377*

Ms. Bridget Bohac (MC-108)  
Office of Public Assistance  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

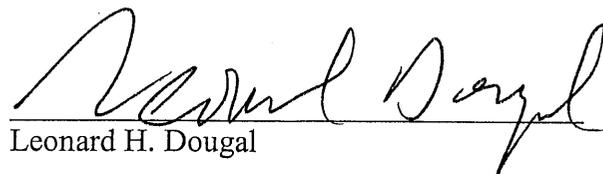
*Via Facsimile 239-4007*

Mr. Aaron Arguien  
P.O. Box 145  
Martindale, Texas 78655

*Via Certified Mail,  
Return Receipt Requested*

Mr. Kyle Lucas (MC-222)  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution  
12100 Park 35 Circle  
Austin, Texas 78753

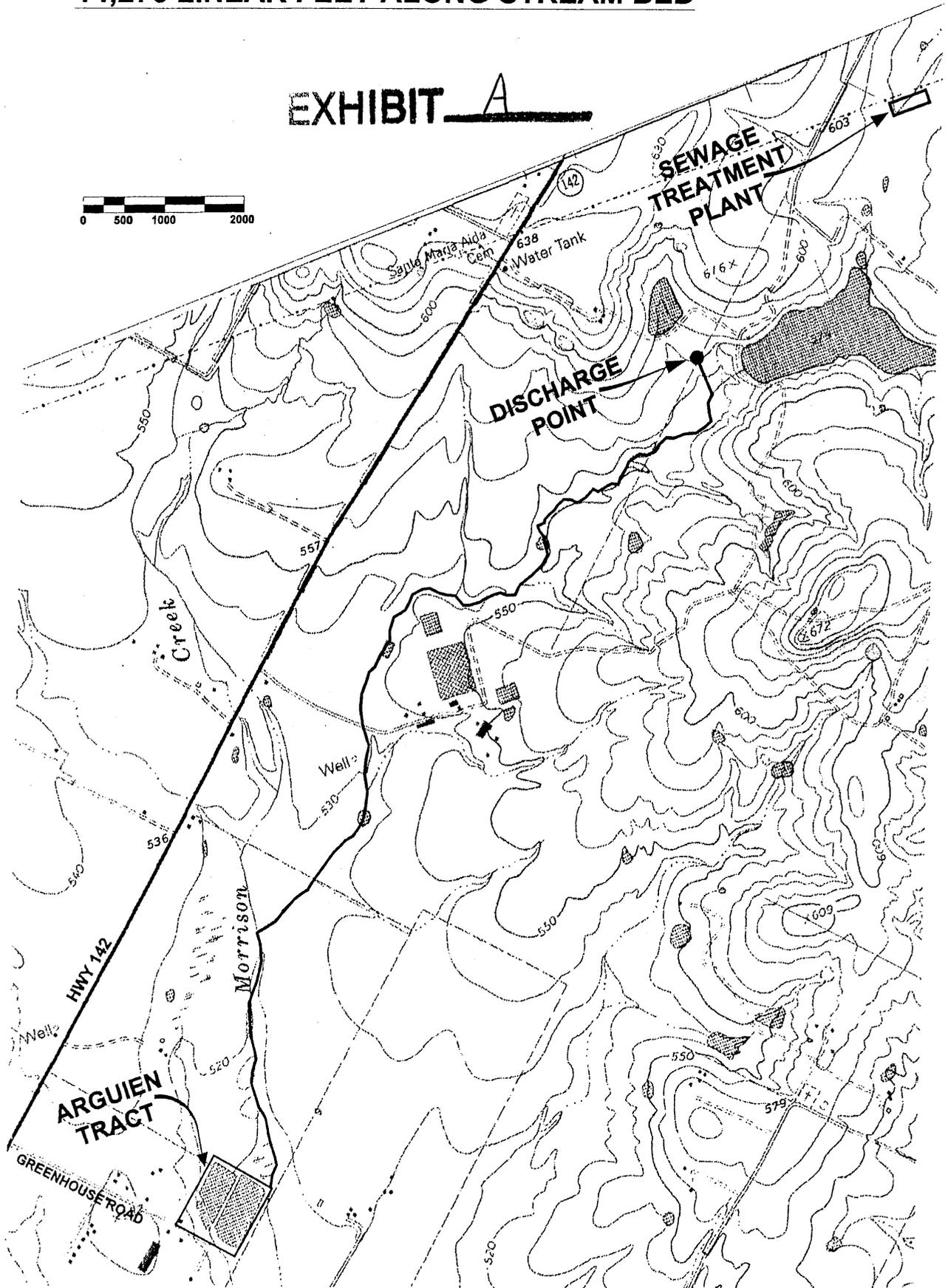
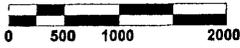
*Via Facsimile 239-4015*

  
Leonard H. Dougal

CHIEF CLERKS OFFICE  
2008 MAY -8 PM 3:39  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**LENGTH OF DISCHARGE ROUTE FROM POINT OF  
DISCHARGE TO ARGUIEN TRACT  
14,275 LINEAR FEET ALONG STREAM BED**

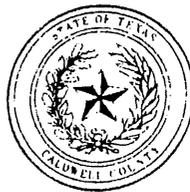
**EXHIBIT A**



H.T. Wright  
County Judge  
512-398-1808

Lori Rangel-Pompa  
County Treasurer  
512-398-1800

James E. "Sonny" Rougeou  
County Auditor  
512-398-1801



**Caldwell County Courthouse**

110 South Main Street  
Lockhart, TX 78648  
FAX: 512-398-1828

Tom Bonn  
Commissioner, Precinct 1

Charles Bullock  
Commissioner, Precinct 2

Neto Madrigal  
Commissioner, Precinct 3

Joe Ivan Roland  
Commissioner, Precinct 4

October 17, 2007

CHIEF CLERKS OFFICE

OCT 19 AM 10:12

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Office of the Chief Clerk  
MC 105 TCEQ  
Post Office Box 13087  
Austin, TX 7871-3087

The Commissioners Court of Caldwell County strongly supports the request by the Turner Crest Village for a waste water discharge permit WQ0014831001 to be used in connection with their proposed subdivision development in Caldwell County. It is our understanding that the TCEQ Staff has preliminarily determined that the areas existing water quality uses or the environment will not be adversely impaired by this permit action.

The Turner Crest Village project, which is a proposed 5000 home gated upscale golfing community, is a significant economic development for the rural area of Caldwell County. This project when completed could double the County's tax base, increase the County's population by 40%, and serve as the economic catalyst that is so desperately need to provide growth opportunities in the County.

Your approval of the Turner Crest Permit WQ0014831001 would be greatly appreciated.

Sincerely,

H. T. Wright  
County Judge

HW/mc  
cc: Bob Richards

EXHIBIT     B