

TCEQ DOCKET NO. 2008-0421-IWD

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TAIWAN SHRIMP VILLAGE	§	BEFORE THE	
ASSOCIATION, INC. & ARROYO	§		CHIEF CLERKS OFFICE
AQUACULTURE ASSOCIATION, INC.	§	TEXAS COMMISSION ON	
PROPOSED AMENDMENT TO	§		
TPDES PERMIT NO. WQ0003596000	§	ENVIRONMENTAL QUALITY	

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO HEARING REQUESTS**

**To the members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to hearing requests.

**I. Introduction**

On April 30, 2002, Taiwan Shrimp Village Association, Inc. and Arroyo Aquaculture Association, Inc. ("Taiwan Shrimp Village" or the "Applicant") applied to the TCEQ for a major amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit for their shrimp farm in Cameron County. The proposed major amendment would remove the prohibition of discharge from the facility during the months of January through March and revise the Arroyo Colorado Water Quality Study requirement to reduce influent and effluent sampling frequencies. The current permit authorizes the discharge of pond effluent at a combined daily average flow not to exceed 100,000,000 gallons per day via Outfalls 1 and 2. The facility is located approximately 1.4 miles east of the intersection of FM 2925 and FM 1897 in Arroyo City. The effluent from Outfall 1 is discharged directly to the Arroyo Colorado Tidal. The effluent from Outfall 2 is discharged to a drainage ditch, then to the Arroyo Colorado Tidal in Segment No. 2201 of the Nueces-Rio Grande Coastal Basin. The unnamed drainage ditch has high aquatic life

use, and the designated uses for Segment No. 2201 are high aquatic life use and contact recreation.

The application was declared administratively complete November 20, 2002, and on December 21, 2002, the first notice was published in the *Valley Morning Star*. The second notice was published September 12, 2006 in the same newspaper. The public comment period closed October 12, 2006. On November 16, 2006, a public meeting was held, and the Executive Director's (ED) Response to Comments (RTC) was filed February 4, 2008. The deadline for hearing requests was March 12, 2008, and the TCEQ received timely hearing requests from the following people: Tom Aycock, Robert Collier, James Green, Norman Green, Hugh and Linda Koch, Bobbie and Billy Scaife, Aldena and Herbert Wagoner, and Gene Yates.

For the reasons stated herein, OPIC recommends that the hearing requests of Robert Collier, James Green, Norman Green, Hugh and Linda Koch, Bobbie and Billy Scaife, and Gene Yates be granted, and the hearing requests of Tom Aycock and Aldena and Herbert Wagoner be denied.

## II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), 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 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 executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

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 restriction 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; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

Section 55.209(e) states that a response to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

### **III. Analysis of Hearing Requests**

#### **Whether the requestor is an affected person**

##### **1. Robert Collier**

Dr. Collier states that his home is 50 yards east of the facility's drainage ditch. The map prepared by the ED's staff (attached hereto) confirms his location. Dr. Collier is concerned about water quality and states that the facility's discharge is comparable to

sewage. He also states that the discharge can be seen from the fishing pier, and it spreads upstream and downstream, depending on the tide. Dr. Collier further states that the facility's discharges interfere with his ability to use and enjoy his property. These interests are protected by the law under which this application will be considered. When combined with Dr. Collier's proximity to the facility, these concerns give Dr. Collier a personal justiciable interest in the application, which is not common to members of the general public, and he therefore qualifies as an affected person.

**2. James Green**

James Green is concerned that discharges from this facility will threaten wildlife and habitat and permanently damage the natural tidal flow of the Laguna Atascosa Wildlife Refuge. While Mr. Green does not state his location and distance relative to the facility, the ED's map shows that Mr. Green is within one mile of the facility's outfalls. A reasonable relationship exists between Mr. Green's interest in wildlife and the potential impact of the facility's discharges on wildlife and associated habitat. Given Mr. Green's proximity to the facility and the reasonable relationship between his interest and the regulated activity, OPIC finds that he has a personal justiciable interest in this application and therefore qualifies as an affected person.

**3. Norman Green**

Norman Green states he lives approximately 0.9 mile downstream from the shrimp farm's discharge ditch, and the ED's map confirms his location. He is concerned about the water quality of the arroyo and odor from the facility's discharge. Given the combination of Mr. Green's proximity to the facility and his stated concerns regarding

water quality and odor, OPIC finds that he has a personal justiciable interest in this application and therefore qualifies as an affected person.

**4. Hugh and Linda Koch**

Hugh and Linda Koch state that their residence is across the street from the discharge ditch, and they own other property adjacent to the shrimp ponds. The ED's map confirms that the Kochs are within a mile of both outfalls. The Kochs are concerned about odor and flies from the facility; health effects; contact recreational use of the arroyo; and compliance history. The Kochs' proximity to the facility combined with their interest in the impact of the facility on their health, use of property, and use of the arroyo gives the Kochs a personal justiciable interest in this application, and they therefore qualify as affected persons.

**5. Bobbie and Billy Scaife**

The Scaifes state that their property is approximately three miles east of the junction of 1847 and 2925, at 37565 Rio Loop Road. The ED's map locates the Scaifes just beyond one mile from the facility's outfalls. The Scaifes are concerned about water quality, odor, and the impact of the facility's discharges on fishing. These interests are protected by the law under which this application will be considered. When combined with the Scaifes' proximity to the facility, these concerns give the Scaifes a personal justiciable interest which is not common to members of the general public, and they therefore qualify as affected persons.

**6. Gene Yates**

Gene Yates states that his property is directly north of the facility and has waterfront on the arroyo. The ED's map confirms that Mr. Yates is immediately adjacent

to the facility and the outfalls. Mr. Yates is concerned about water quality, plant life and wildlife, and recreational use of the arroyo, including swimming and fishing. These concerns are interests protected by the law under which this application will be considered. When combined with Mr. Yates' proximity to the facility, these concerns give him a personal justiciable interest which is not common to members of the general public, and he therefore qualifies as an affected person.

**7. Tom Aycock**

Mr. Aycock states that the proposed amendment will degrade the water quality of the Arroyo Colorado and the Laguna Madre. However, his request does not state his location and distance relative to the facility. Mr. Aycock's location also does not appear on the ED's map. Without knowing Mr. Aycock's proximity to the facility, OPIC cannot determine whether he possesses the requisite personal justiciable interest to qualify as an affected person.

**8. Aldena and Herbert Wagoner**

The Wagoners state that their property is three miles east of the junction of 1847 and 2925, at 37515 Rio Loop Road. The ED's map locates the Wagoners just beyond one mile from the facility's outfalls. The Wagoners object to allowing the facility to increase its discharges into the arroyo but fail to state how they will be personally affected by this application. In spite of the Wagoners' proximity to the facility, because they have not stated a specific concern as to how the facility would affect them, OPIC cannot find that they have demonstrated the requisite personal justiciable interest to qualify as affected persons.

**Which issues raised in the hearing requests are disputed**

All of the issues raised in these hearing requests are disputed.

**Whether the dispute involves questions of fact or of law**

All of the disputed issues involve questions of fact.

**Whether the issues were raised during the public comment period**

All of the issues were raised during the public comment period.

**Whether the hearing request is based on issues raised solely in a public comment which has been withdrawn**

None of the hearing requests are based on issues raised solely in a public comment which has been withdrawn.

**Whether the issues are relevant and material to the decision on the application**

**1. Water Quality**

The issue of water quality in the Arroyo Colorado Tidal concerns the responsibility of the TCEQ for water quality under Texas Water Code (TWC) Chapter 26 and the Texas Surface Water Quality Standards found in 30 TAC Chapter 307. The issue of water quality is therefore relevant and material to the Commission's decision on this application.

**2. Nuisance**

The concerns regarding odor and flies can be collectively described as a nuisance issue. Section 307.4(b)(1) states that concentrations of taste and odor producing substances shall not result in offensive odors arising from waters of the state, and flies are

specifically addressed in the proposed permit. Therefore, the issue of nuisance is relevant and material to the Commission's decision on this application.

**3. Animal and Plant Life**

The impact of the facility's discharges on the health and welfare of animal and plant life is an issue covered by the Chapter 307 Texas Surface Water Quality Standards. This issue is therefore relevant and material to the Commission's decision on the application.

**4. Human Health**

The impact of the facility's discharges on human health is an issue covered under the Chapter 307 Texas Surface Water Quality Standards. This issue is therefore relevant and material to the Commission's decision on the application.

**5. Compliance History**

Under TWC § 26.0281, the Commission is required to consider the Applicant's compliance history when deciding whether to grant a permit amendment. Therefore, the issue of compliance history is relevant and material to the Commission's decision on this application.

**6. Recreational Use**

Recreational use of state waters, including fishing and swimming, is an issue covered by both the Texas Water Code Chapter 26 and the Texas Surface Water Quality Standards at 30 TAC Chapter 307. Therefore, this issue is relevant and material to the Commission's decision on the application.

### **Maximum expected duration for the contested case hearing**

OPIC expects a maximum duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

### **IV. Conclusion**

Having found that Robert Collier, James Green, Norman Green, Hugh and Linda Koch, Bobbie and Billy Scaife, and Gene Yates qualify as affected persons, OPIC recommends the Commission grant all of their hearing requests. OPIC cannot find that Tom Aycock and Aldena and Herbert Wagoner qualify as affected persons and therefore recommends the Commission deny these two hearing requests. If additional information is provided in any timely filed replies to this response, OPIC will reconsider its recommendation.

OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

- (1) Will discharges from the facility adversely impact the water quality of the Arroyo Colorado and the Laguna Madre?
- (2) Will discharges from the facility adversely impact animal and plant life?
- (3) Will discharges from the facility create nuisance conditions, including odor and flies?
- (4) Will discharges from the facility adversely impact human health?
- (5) Does the Applicant's compliance history warrant denial or alteration of the proposed permit?
- (6) Will discharges from the facility adversely impact recreational use of state waters, including fishing and swimming?

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By 

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### CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2008, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

  
Garrett Arthur

**MAILING LIST**  
**TAIWAN SHRIMP VILLAGE ASSOCIATION, INC. AND**  
**ARROYO AQUACULTURE ASSOCIATION, INC.**  
**TCEQ DOCKET NO. 2008-0421-IWD**

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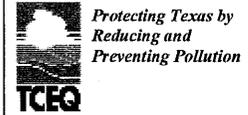
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**Taiwan Shrimp Village Association, Inc. and  
Arroyo Aquaculture Association, Inc.  
Map Requested by TCEQ Office of Legal Services  
for Commissioners Agenda**



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
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March 27, 2008

0 0.1 0.2 0.4 0.6 0.8 1 Miles



Projection: Texas Statewide Mapping System (TSMS)

Scale 1:52,310

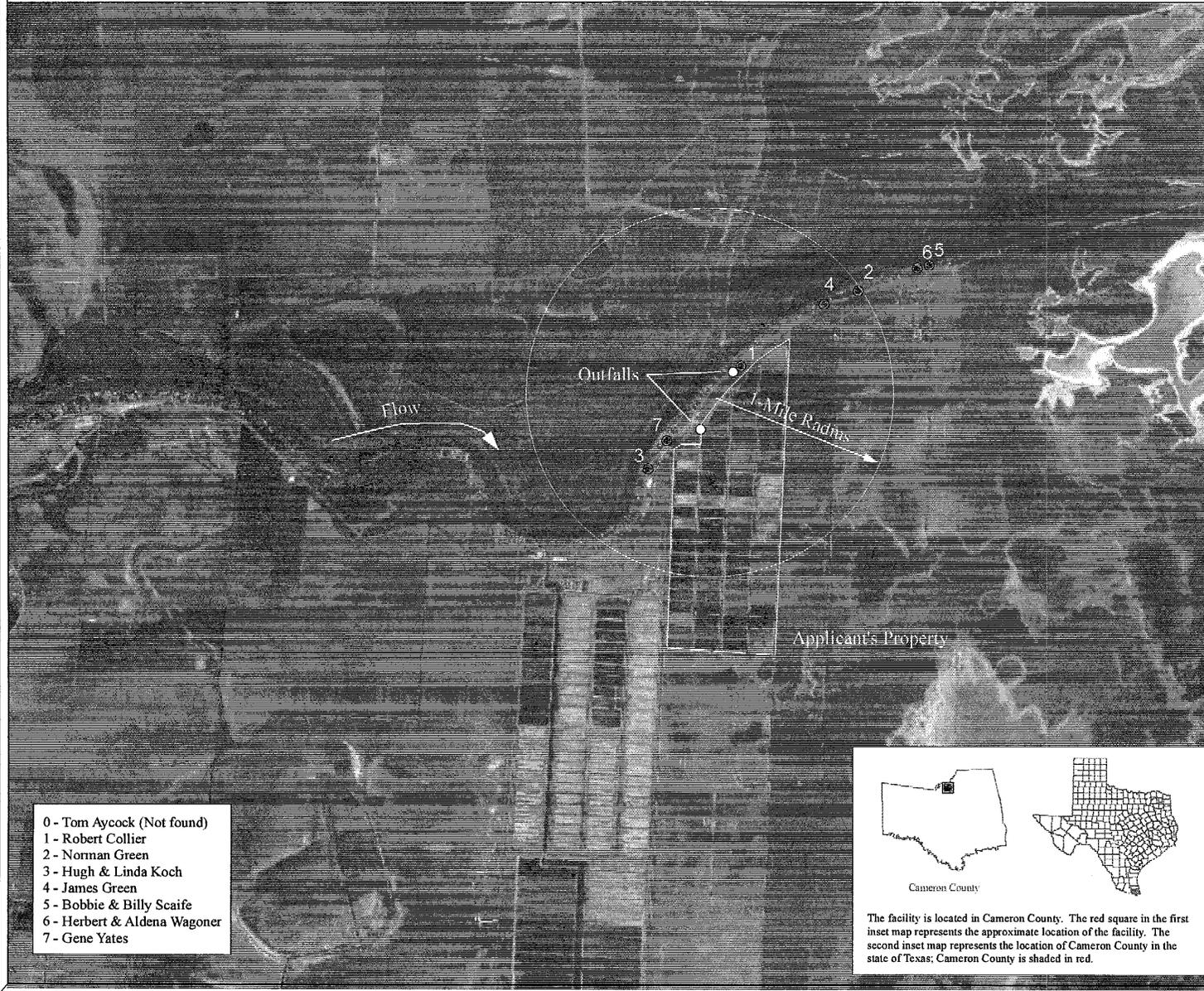
**Legend**

○ Wastewater Outfall

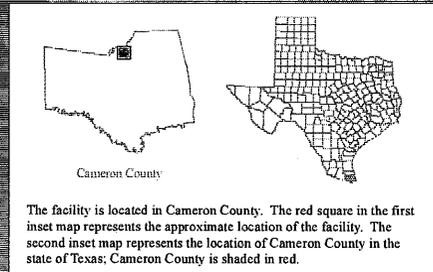
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information and the requestor information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tc061\_1-1.

**This map depicts the following:**

- (1) The approximate location of the applicant's property. This is labeled "Applicant's Property".
- (2) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".
- (3) Outfalls. This is labeled "Outfalls".



- 0 - Tom Aycock (Not found)
- 1 - Robert Collier
- 2 - Norman Green
- 3 - Hugh & Linda Koch
- 4 - James Green
- 5 - Bobbie & Billy Scaife
- 6 - Herbert & Aldena Wagoner
- 7 - Gene Yates



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.