

BAKER BOTTS LLP

August 29, 2008

006240.0205

BY HAND DELIVERY

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor, Room 1101
Austin, Texas 78753

Re: TCEQ Docket No. 2008-0746-IWD; *Application for Water Quality TPDES Permit Amendment for Industrial Wastewater Permit No. WQ0001353000*

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced and numbered proceeding please find an original and twelve (12) copies of Diamond Shamrock Refining Company, L.P.'S Response to Request for Contested Case Hearing.

Please file the original and 11 copies of this pleading in the above-referenced matter and return one file-stamped copy to the messenger. A copy of the above referenced document is being served on the persons in the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions concerning this filing, please do not hesitate to contact me at the number above.

Sincerely,


Sara M. Burgin

Enclosures

cc: Attached Service List

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CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ DOCKET NO. 2008-0746-IWD

2008 AUG 29 PM 3: 58

IN THE MATTER OF THE RENEWAL AND §
AMENDMENT APPLICATION OF §
DIAMOND SHAMROCK REFINING §
COMPANY, L.P., WATER QUALITY §
PERMIT NO. WQ0001353000 §

BEFORE THE

TEXAS COMMISSION ON

CHIEF CLERKS OFFICE

ENVIRONMENTAL QUALITY

**DIAMOND SHAMROCK REFINING COMPANY, L.P.'S RESPONSE
TO REQUEST FOR CONTESTED CASE HEARING**

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

COMES NOW APPLICANT DIAMOND SHAMROCK REFINING COMPANY, L.P. and files this its Response to Request for Contested Case Hearing, and in support thereof, would respectfully show the following:

I. INTRODUCTION AND SUMMARY OF APPLICATION AND PROPOSED PERMIT

Diamond Shamrock Refining Company, L.P. ("Diamond Shamrock") submitted its Permit Renewal Application with Major Amendment for Water Quality Permit No. WQ0001353000 ("TPDES Permit No. 01353") to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") on December 31, 2004 for its refinery located in Three Rivers, Live Oak County, Texas ("Refinery"). The Refinery refines crude oil to produce transportation fuels and other petroleum products. The Refinery currently holds TPDES Permit No. 01353, which authorizes the disposal of wastewater via direct discharge and by land application.

To ensure continued Refinery operations in compliance with applicable statutory and regulatory provisions, and to maintain production of petroleum products to meet demand, the major amendment sought the following changes to limitations and requirements at direct

discharge outfall 001: 1) an overall increase in daily average permitted flow of wastewater from 0.8 million gallons per day (“MGD”) to 1.5 MGD; 2) an increase in daily maximum permitted flow from 1.6 MGD to 3 MGD; 3) an increase in effluent limitation loadings for specific parameters corresponding to the daily average and daily maximum flow increases including loadings based on existing federal effluent guidelines; 4) delete monitoring and reporting requirements for total values of antimony, arsenic, barium, cadmium, chromium, lead, selenium, and silver, as well as for cyanide, hexavalent chromium, mercury, and fecal coliform; and 5) not renew the monitoring requirements included in Other Requirement No. 4 for benzene, ethyl benzene, toluene, total xylene, and MTBE. Diamond Shamrock also requested the following changes to the land application requirements: 1) an increase in the total size of the irrigation tract from 1,376 acres to 1,438 acres and of the minimum irrigation area from 341.5 acres to 474 acres; 2) an increase in the hydraulic application rate from 2.95 acre-feet/acre per year to 3.54 acre-feet/acre per year; and 3) delete irrigation influent and effluent monitoring requirements for selenium.

Diamond Shamrock developed dual methods of effluent disposal at the Refinery to allow for beneficial reuse of effluent by land application, but also to authorize direct discharge when land application would be inconsistent with irrigation requirements. The changes requested to TPDES Permit No. 01353 reflect Diamond Shamrock’s need to increase the capacity of both effluent land disposal and direct discharge in order to ensure that Diamond Shamrock can accommodate daily discharge needs in compliance with permit limitations and requirements during both exceedingly wet weather and under normal weather conditions.¹

¹ The need to increase permitted land application acreage and direct discharge flows is demonstrated by Diamond Shamrock's need to obtain two Emergency Orders authorizing increased direct discharge flows during exceedingly wet periods in late 2002 and early 2007. In 2007, for example, the cumulative rainfall at Three Rivers during January to June 2007 was measured at 35.5 inches, compared to typical rainfall of 11 inches for the same time

The Executive Director recommended in its decision dated April 4, 2008, that the proposed permit meets all statutory and regulatory requirements and should be issued. The proposed permit incorporates several provisions added by TCEQ permitting staff, including: 1) maintaining monitoring and reporting requirements for total chromium, hexavalent chromium, total copper, total mercury, total selenium, and total silver; 2) more stringent daily average concentration limitations for dissolved oxygen and total dissolved solids (“TDS”); 3) any applicable water quality-based permit limits; 4) substituting a “carbonaceous biochemical oxygen demand (5-day)” parameter for the existing “biochemical oxygen demand (5-day)” parameter because ammonia (as nitrogen) is also limited in the proposed permit; 5) updating certain boilerplate language; and 6) requiring sampling of Outfall 002 under certain conditions for several parameters.² Diamond Shamrock supports these additional provisions included in the proposed permit.

Diamond Shamrock has a very good history of compliance with environmental requirements and has achieved “average” classifications for both the Refinery and the company under TCEQ’s compliance history ranking. An “average” compliance history rating means that a company or site generally complies with environmental regulations. Accordingly, the Executive Director determined that Diamond Shamrock and the Refinery are operating in compliance with rules and regulations and that the proposed permit should be issued. *See* Response to Comments (“RTC”), Response to Comment 8.

Based on the foregoing and because requestors are not “affected persons,” as discussed below, Diamond Shamrock believes that the Commissioners are justified in the denial

period (based on an average annual rainfall of 21.45 inches according to the National Weather Service). TPDES Permit No. 01353 limits Diamond Shamrock’s authorization to land apply effluent during wet periods and necessary direct discharges exceeded flow limits.

² Note that several of the provisions were added in response to public comment. *See* Response to Comment No. 29.

of the hearing request in this matter. Importantly, even if requestors could be considered “affected persons,” the interests they claim are affected by Diamond Shamrock’s application and proposed permit relate only to the land application portion of the proposed permit. Accordingly, if the Commissioners were to conclude a contested case hearing is appropriate, Diamond Shamrock respectfully requests that such hearing be limited to disputed issues of fact relevant and material to the land application of wastewater that Diamond Shamrock has identified in Section V below.

II. PROCEDURAL BACKGROUND

The application was declared administratively complete on February 24, 2005. Diamond Shamrock published the Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment on March 16, 2005 in *The Progress*. Notice of the completion of TCEQ’s technical review of the application was received by Diamond Shamrock in a TCEQ letter dated December 21, 2006. Diamond Shamrock published the Notice of Application and Preliminary Decision on April 11, 2007 in *The Progress*.³ The public comment period closed on May 11, 2007. The Executive Director issued his Response to Comments and Decision (“RTC”) on April 4, 2008. The period of time to request a contested case hearing or seek reconsideration of the Executive Director’s decision ended on May 5, 2008. Following issuance of the RTC, two related individuals, Virginia and Lloyd Stewart (“Stewarts”) filed a request for a contested case hearing. No requests for reconsideration of the Executive Director’s decision were filed. No other contested case hearing requests were filed.

³ The Executive Director has discretion to suspend processing of an application if notice is not published within 45 days of receiving the notice from the Chief Clerk. See 30 TEX. ADMIN. CODE (“T.A.C.”) § 39.405. The Executive Director did not suspend processing of Diamond Shamrock’s application and Diamond Shamrock published notice as required by TCEQ’s rules on April 11, 2007. See Response to Comments, Comment 6, at p. 6.

III. MINIMUM REQUIREMENTS FOR A CONTESTED CASE HEARING

A. Only Affected Persons May be Granted a Contested Case Hearing

The Texas Legislature has narrowly defined the universe of “affected persons” who may validly request that a contested case hearing be held by or on behalf of the Commission.⁴ Only those persons who have “a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing” may require that a hearing be held.⁵ “An interest common to members of the general public does not qualify as a personal justiciable interest.”⁶

Pursuant to Section 5.115 of the Texas Water Code, the Commission has adopted rules specifying factors that must be considered in determining whether a person is an “affected person,” 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) the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person; and
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person.⁷

Further, the Commission is required to grant a contested case hearing request by an “affected person” if the request:

raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a

⁴ TEX. WATER CODE §§ 5.556 and 5.115; *see also* 30 T.A.C. §§ 55.201(b)(4), 55.203 and 55.211(c)(2).

⁵ TEX. WATER CODE § 5.115(a).

⁶ *Id.*

⁷ 30 T.A.C. § 55.203(c).

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.⁸

Generalized concerns that do not directly bear on the applicable permitting criteria are not appropriate for referral to a contested case hearing. Commission rules require that a proper hearing request include a discussion of how and why the requestor will be adversely affected in a manner not common to the general public and a list of all relevant and material disputed issues of fact that were raised during the comment period and that form the basis of the hearing request.⁹ Commission rules admonish the requestor to specify the Executive Director's responses to public comment that the requestor disputes and the factual basis of that dispute.¹⁰ The burden is on the requestor to satisfy these requirements and if the hearing request is deficient in these respects, it should be denied.

IV. THE HEARING REQUEST DOES NOT MEET APPLICABLE LEGAL REQUIREMENTS AND SHOULD BE DENIED

The Stewarts' attempt to demonstrate affected person status fails to satisfy the relevant "affected person" criteria as set forth in TCEQ's rules. For example, the Stewarts' fail to establish a reasonable relationship between their allegations of "adverse impact," "nuisance conditions," and groundwater and surface water "contamination" and Diamond Shamrock's proposed permit. Further, their request fails to raise disputed issues of fact that are relevant and material to the Commission's decision on the proposed permit. The Stewarts' primary concern -- the occasional presence of water in an unnamed "draw" located on their property -- is not in dispute and not relevant to Diamond Shamrock's application or the proposed permit because water in the draw is a normal result of wet weather conditions. The Stewarts also raise

⁸ TEX. WATER CODE § 5.556(d); 30 T.A.C. § 55.211(c)(2)(A).

⁹ See 30 T.A.C. § 55.201(d).

¹⁰ See 30 T.A.C. § 55.201(d)(4).

“economic damage” issues that sound in common law and are therefore not within the Commission’s jurisdiction to consider.

A. The Stewarts fail to establish affected person status.

1. The interests claimed are not protected by controlling law.

The Stewarts assert their protest arises from Diamond Shamrock’s interference with their legal right to use and enjoy their land and from “economic damages” caused by Diamond Shamrock. However, these interests are not protected under the Texas Water Code or TCEQ’s implementing regulations. Permits such as the proposed permit do not authorize any injury to persons or property or an invasion of other property rights.¹¹ While the creation of nuisance conditions are prohibited by the proposed permit, such prohibition generally relates to the irrigation and irrigation tracts themselves. The Stewarts fail to describe any alleged nuisance conditions or particular nuisance affects occurring on Diamond Shamrock’s irrigation tracts or their property. Instead, the Stewarts’ claim that “nuisance” conditions exist due to “saturation and flooding in low-lying areas, including the Stewart property.” This claim is completely without merit and, moreover, irrelevant to this proceeding because it is undisputed that water collects in various low-lying areas and draws during wet weather events. This type of natural flooding is completely unrelated to Diamond Shamrock’s irrigation practices and is not a “personal justiciable interest” affected by this proceeding. The Stewarts present absolutely no support for their claim that the presence of water during wet weather events is connected in any way to Diamond Shamrock’s irrigation practices. Importantly, 2.85 inches of rainfall was measured in Three Rivers on April 7, 2007, which was the day before the photographs submitted by Stewarts in support of their hearing request were taken.

¹¹ 30 TAC § 305.122(c).

Similarly, the Stewarts' alleged "economic damages" to livestock and forage crops are not protected by the Texas Water Code or TCEQ's implementing regulations. Moreover, such economic damages claims are not within the jurisdiction of the Commissioners to consider in this proceeding. Since economic damages sound in common law tort, they are outside of the TCEQ's jurisdiction and will not be affected by the Commissioner's decision on the proposed permit. Nothing in the proposed permit or applicable law would inhibit the Stewarts' ability to bring a damages claim against Diamond Shamrock. As a result, the Commission's consideration of the Stewarts' economic damages claim would amount to improperly adjudicating the merits of such claim.

2. No distance restrictions or limitations are imposed by law.

No distance restrictions or other limitations are imposed by law on the Stewarts' allegedly affected interest. In fact, the proposed permit prohibits the off-site discharge of irrigation water from the irrigation tracts. As acknowledged by the Stewarts, their property is ¼ mile away from Diamond Shamrock's irrigation property and separated by two tracts of land owned by other individuals.¹² One of the tracts of land referred to by the Stewarts as the "Development" property has a significant impoundment that is upstream from the Stewarts on the same unnamed draw that flows across the Stewarts' property.¹³ Diamond Shamrock does not dispute that surface water sometimes ponds and flows through the draw across the Stewarts' property. However, Diamond Shamrock submits that the presence of water in the draw on the Stewarts' property is a function of area weather and rainfall patterns and is not related to or affected by Diamond Shamrock's irrigation practices. Diamond Shamrock's irrigation practices occur at the closest 0.47 mile away and at the farthest 1.5 miles away from the Stewarts'

¹² Neither of these individuals filed comments or a request for a hearing.

¹³ See Attachment 1, which is a USGS map indicating distances and the draw across the Stewarts' property.

property line. In the context of a land application system these are significant distances that support Diamond Shamrock's position that its irrigation practices have no effect on the volume or quality of the water that would otherwise be in the draw.

3. No reasonable relationship exists between the interest claimed and the regulated activity.

The Stewarts' hearing request wholly fails to establish a reasonable relationship between their claimed interests and Diamond Shamrock's permitted irrigation activities. With respect to alleged health effects on livestock, the Stewarts cite anonymous "ranching industry sources" as indicating that non-specific "elevated levels" of certain pollutants "may cause adverse health effects to livestock." (emphasis added). The Stewarts then list the loss of an unspecified number of cows, a calf, and two horses, all without specifying their age, medical conditions, or any other specific conclusions with respect to the cause of death. The Stewarts provide absolutely no support for their claim that their losses have any relationship to Diamond Shamrock. Similarly, the Stewarts make an unsupported contention that elevated levels of unspecified pollutants "may cause" loss of grass and hay crop productivity. (emphasis added). Recall that the edge of the nearest pivot used for irrigation on Diamond Shamrock's property occurs essentially a half mile from the Stewarts' land. It is hard to imagine how the same effluent Diamond Shamrock applies to its irrigation fields that promotes vigorous growth of grasses could cause any harm to grass and hay crop production that is at least a half mile away.

4. There is no likely impact of the regulated activity on the health and safety of Stewarts, the use of their property, or on any natural resource.

As the Executive Director determined, all effluent limitations in the proposed permit comply with applicable technology-based effluent limitations and Texas Surface Water

Quality Standards for aquatic life and human health protection.¹⁴ Specific conditions in the proposed permit such as hydraulic application rate limitations calculated in accordance with TCEQ regulations, effluent quality limitations, operational limitations, and monitoring requirements further protect groundwater and surface water from any adverse impact.¹⁵ Moreover, the proposed permit is a “no-discharge” permit that prohibits the discharge of any effluent from the authorized irrigated areas. As a result, there is simply no potential for impact on the Stewarts themselves or their property from Diamond Shamrock’s permitted irrigation operations.

B. The Stewarts raise no disputed issues of relevant and material fact.

As discussed above, the Stewarts fail to adequately demonstrate that they are “affected persons” because their assertions simply do not meet the established criteria set forth by the TCEQ. As a factual matter, the Stewarts also fail to show that Diamond Shamrock’s irrigation practices cause effluent or any other waters of the State to enter a draw on their property. As discussed above, there is no dispute that during wet weather events, water is present in draws and other low-lying areas. The Stewarts have failed in their burden to establish that any such water is the result of Diamond Shamrock’s irrigation practices. In an apparent attempt to compensate for this deficiency, the Stewarts mischaracterize sections of the proposed permit. However, these mischaracterizations do not raise disputed issues of relevant and material fact.

For example, the Stewarts incorrectly assert that there is no limit on the amount of irrigation effluent. In fact, the proposed permit includes a maximum hydraulic application rate of 3.54 acre-feet/acre per year and a minimum irrigation area of 474 acres that corresponds to a

¹⁴ See Response to Comment No. 10.

¹⁵ *Id.*

daily average flow of 1.5 MGD as represented in the application. The application states that the total daily average and daily maximum flows of 1.5 and 3.0 MGD, respectively, are flows out of the wastewater treatment plant that may be directed either to irrigation or to discharge via Outfall 001 or to a combination of the two. Additionally, the Stewarts assert that under the proposed permit irrigated effluent need not be treated in the Refinery's wastewater treatment plant prior to irrigation. This is not the case. The "flow schematics" in Attachment I to the application clearly show that process wastewater, groundwater remediation water, and contaminated Refinery storm water are treated in the wastewater treatment plant prior to irrigation. While the proposed permit does allow irrigation of partially treated and untreated wastewaters such as cooling tower blowdown, boiler blowdown, and reverse osmosis reject,¹⁶ these wastewaters are subject to the effluent limitations in the proposed permit.

The Stewarts make much use of their allegation that the proposed permit impermissibly expands the definition of wastewater authorized to be irrigated. The Executive Director clearly explained in the Response to Comments that (1) the referenced changes were made to better clarify what wastestreams are authorized to be applied and (2) this did not expand the list of authorized wastestreams. In the face of this clear response from the Executive Director, Diamond Shamrock submits that this issue is not disputed.¹⁷

V. ANY HEARING ON DIAMOND SHAMROCK'S APPLICATION SHOULD BE LIMITED TO RELEVANT AND MATERIAL DISPUTED ISSUES OF FACT IDENTIFIED BY THE COMMISSION AND THE HEARING SHOULD BE OF A SHORT DURATION

As discussed above, requestors have not met the "affected person" criteria. However, should the Commission nevertheless find that a hearing is warranted, Diamond Shamrock respectfully requests the hearing to be of short duration, not to exceed nine months,

¹⁶ See Application Technical Report 1.0, at p. 7.

¹⁷ See RTC, Response to Comment 4.

and limited to the portion of Diamond Shamrock's application for which requestor has raised, in the Commission's judgment, timely, relevant and material disputed issues of fact. A duration of nine months is ample time for a hearing in this proceeding. The permit application was filed almost four years ago. The public comment period ended on May 11, 2007 and the Executive Director filed the RTC on April 4, 2008. This long period of time has allowed the Stewarts ample time to prepare for any hearing on the application.

Although Diamond Shamrock does not believe the requestors have raised any relevant issues directly related to the status of the permit, if any issues are to be referred, it should be limited only to that portion of Diamond Shamrock's application concerning the land application of effluent. The Stewarts attempt to demonstrate affected person status and raise disputed fact issues centering on the land application portion of Diamond Shamrock's application and the proposed permit. Diamond Shamrock strongly rejects the requestors' unconvincing argument that they should have standing to challenge the entire application, and urges the Commission's concurrence. The Stewarts are not affected persons with respect to the direct discharge from Outfall 001. Their property is not located on or affected by the Nueces River. Importantly, all of the Stewarts' interests allegedly affected by the proposed permit are related to alleged impacts from Diamond Shamrock's irrigation operations. As a result, the Stewarts meet none of the affected person criteria in 30 T.A.C. § 55.203(c) with respect to the direct discharge portion of the application and proposed permit.

Pursuant to 30 T.A.C. § 55.201(d)(4), the Stewarts' request for contested case hearing is required to specify the particular responses in the Executive Director's RTC that they

dispute.¹⁸ Diamond Shamrock has reviewed the responses of the Executive Director that are specifically disputed by the Stewarts and submits that the following issue encompasses the disputed responses that are within the jurisdiction of the TCEQ to consider regarding the pending application should the Commission find that the requestors are an affected party. If the Commission were to decide to refer the application to SOAH, Diamond Shamrock respectfully requests that the Commission limit the referral to SOAH to the following fact question:

1. Whether the beneficial reuse of wastewater by land application in compliance with the limits and requirements set out in the proposed permit will comply with applicable statutes and regulations?

Because the Stewarts dispute several Executive Director Responses to Comments that are based upon long standing and commonly applied requirements that the Executive Director incorporates into essentially all Texas land application permits, including calculation of authorized application rate, Diamond Shamrock respectfully requests that the Commissioners direct the Executive Director to be a party to any contested case hearing on this proceeding.

Diamond Shamrock has reviewed the Stewarts' hearing request and submits that the following issues are not appropriate for referral to SOAH because they are not disputed issues of fact that are relevant and material to the Commission's decision on the application, within the jurisdiction of the Commissioners to consider regarding the pending application, or being contested by requestors:

1. Notice. The Stewarts' allegations regarding proper notice raises no disputed fact question. As the Executive Director found, notice was proper under Texas Water Code § 26.028 and 30 T.A.C. §§ 39.11 and 39.151. There is no fact question with

¹⁸ Although the hearing request also includes a generalized statement asserting that the request may encompass other issues raised during the comment period, Diamond Shamrock submits that each requestor had an opportunity to identify any specific additional issues and did not. As a result, none of the remaining issues need be referred.

respect to the TCEQ and Diamond Shamrock including all necessary and relevant information in mailed and published notices, Diamond Shamrock providing a proper list and map of affected landowners, and mailed notice being properly sent to all affected landowners. [Encompasses requestor's disputes with responses 2, 3, 4, 5 and 7]

2. Compliance History. The Stewarts' allegations regarding compliance history raises no disputed fact question. The TCEQ's compliance history review is conducted according to the Texas Water Code and TCEQ regulations. The Stewarts do not assert that TCEQ has incorrectly calculated Diamond Shamrock's compliance history score or ranking. The Stewarts' assertion that Diamond Shamrock's "history of poor compliance" is contrary to TCEQ's uncontroverted compliance history determination, and thus the Stewarts fail to raise a disputed fact issue. [Encompasses requestor's disputes with response 8]
3. Flooding. Flooding and storm water drainage issues are not relevant to the Texas Land Application Permit ("TLAP") application proceeding. The proposed permit does not regulate the discharge of storm water from the irrigation area, thus the Stewarts' allegations related to flooding and drainage issues raise no disputed fact question. [To the extent such issues are encompassed in requestors' dispute with responses 18, 19, 20, and 23]
4. Common law issues. As discussed above, the Stewarts raise "economic damage" issues related to livestock and forage crops. Permits such as the proposed permit do not authorize any injury to persons or property or an invasion of other property rights. 30 TAC § 305.122(c). As a result, the Commissioners' jurisdiction does not extend

to issues or claims based on common law, which sound in common law and are subject to the jurisdiction of the Texas courts. [To the extent such issues are encompassed in requestors' dispute with responses 10, 11, 12, 15, and 17]

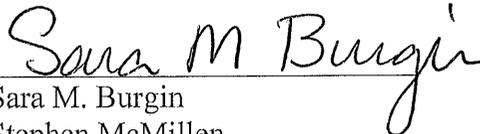
5. RTC responses to comments 6 and 28 have been adequately addressed, according to the requestors in their hearing request dated May 2, 2008.

VI. CONCLUSION

For the reasons set forth above, Diamond Shamrock believes that the Commissioners are justified in the denial of the hearing request in this matter. If the Commissioners should disagree, Diamond Shamrock respectfully requests that any contested case hearing be of limited duration, not to exceed nine months, and be limited to only on those relevant and material disputed issues of fact related to the land application of wastewater that Diamond Shamrock has identified above. Diamond Shamrock also respectfully requests that the Commissioners direct the Executive Director to be a party to any contested case hearing.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: 

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CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of this response was served on the following individuals as indicated below, on the 29th day of August, 2008:

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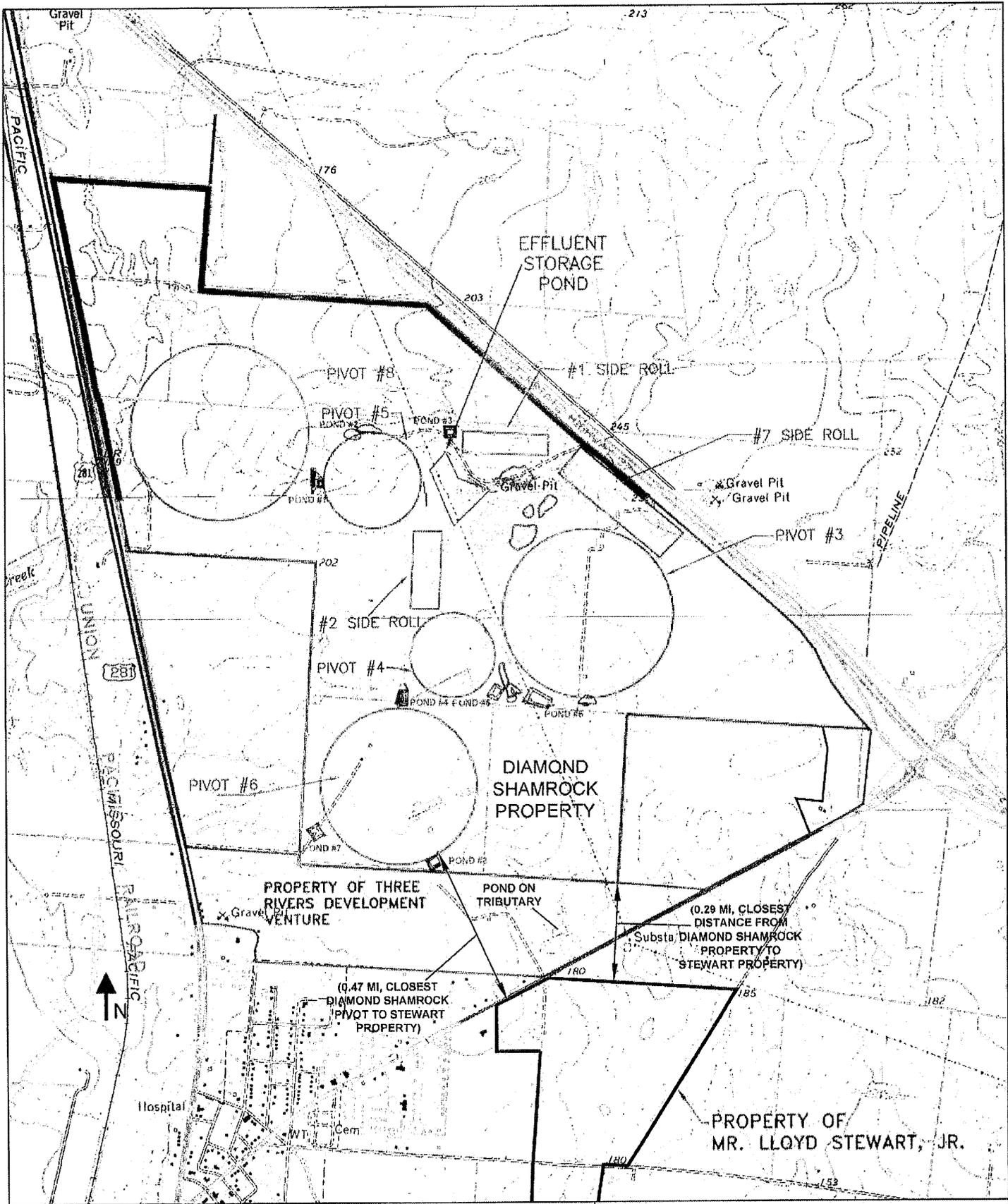
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CHIEF CLERKS OFFICE

Sara M Burgin
Sara M. Burgin



1" = 2,000'

JAMES MIERTSCHIN & ASSOCIATES, INC
 ENVIRONMENTAL ENGINEERING

DIAMOND SHAMROCK THREE RIVERS REFINERY