

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 14, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Re: **EAGLESTAR INVESTMENTS, LLP**
TCEQ DOCKET NO. 2009-1001-MWD

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

P.O. Box 13087

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512-239-1000

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DOCKET NO. 2009-1001-MWD

APPLICATION BY	§	BEFORE THE
EAGLESTAR INVESTMENTS, LLP	§	TEXAS COMMISSION ON
PROPOSED PERMIT NO. WQ0014918001	§	ENVIRONMENTAL QUALITY

**OFFICE OF THE PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST**

To the Members of the Texas Commission on Environmental Quality:

The Office of the Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to a hearing request in the above-referenced matter.

I. Introduction

On July 29, 2008, Eaglestar Investments, LLP ("Eaglestar" or the "Applicant") applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) permit. The permit would authorize the construction and operation of a new municipal wastewater treatment plant. The proposed plant would be located approximately 1,800 feet northeast of the intersection of Woodlands Parkway and FM 2978 in Montgomery County.

Under the proposed permit, the facility would be allowed to discharge treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The proposed facility would serve the Fort Bend Municipal Utility District No. 134. The treated effluent would be discharged to Bear Branch; then to Bear Branch Reservoir; then to Bear Branch; then to Panther Branch; then to Lake Woodlands; then to Panther Branch; and then to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Bear Branch and high aquatic life uses for Bear Branch Reservoir. The

designated uses and dissolved oxygen criteria for Segment No. 1008 are high aquatic life uses, public water supply, and contact recreation.

Eaglestar's application was declared administratively complete September 4, 2008. The first notice was published September 17, 2008 in the *Houston Chronicle* and *La Voz de Houston*. An amended first notice was published December 31, 2008 in the same newspapers. On February 25, 2009, the second notice was published using the same newspapers. The Executive Director's (ED) Response to Comments (RTC) was mailed May 28, 2009, and the deadline for hearing requests was June 29, 2009.

On January 26, 2009, the TCEQ received a timely hearing request from Jesus Gallegos. For the reasons stated herein, OPIC recommends that the Commission grant Jesus Gallegos' hearing request.

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 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, 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.

III. Analysis of Hearing Request

A. Whether the requestor is an affected person

Jesus Gallegos states that his residence is built directly in back of the proposed treatment plant, and he has invested over \$2 million in his property. Mr. Gallegos further states that he does not want odor within his residence.

According to maps prepared by the ED and Applicant (attached hereto), Mr. Gallegos' property is adjacent to the Applicant's property and within a quarter mile of the proposed plant. Mr. Gallegos' stated concern is odor, and nuisance odor is addressed by TCEQ regulations concerning domestic wastewater plant siting.¹ When combined with his proximity to the proposed plant, Mr. Gallegos' interest in odor prevention becomes an interest which is not common to members of the general public. The TCEQ regulates domestic wastewater plant siting with one of the purposes being prevention of nuisance odors.² Therefore, a reasonable relationship exists between Mr. Gallegos' interest in odor prevention and the TCEQ's regulation of wastewater treatment plants. Based on his personal justiciable interest, OPIC finds that Jesus Gallegos qualifies as an affected person in this matter.

B. Which issues raised in the hearing request are disputed

The issue raised in the hearing request is disputed.

¹ See 30 TAC § 309.13.

² *Id.*

C. Whether the dispute involves questions of fact or of law

The disputed issue involves questions of fact.

D. Whether the issues were raised during the public comment period

The issue was raised during the public comment period.

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

The hearing request is not based on issues raised solely in a public comment which has been withdrawn.

F. Whether the issues are relevant and material to the decision on the application

Mr. Gallegos has raised the issue of odor. The issue of odor is specifically addressed by TCEQ regulations concerning the siting of domestic wastewater plants.³

Therefore, odor is an issue which is relevant and material to the Commission's decision on this application.

G. Maximum expected duration for the contested case hearing

For the contested case hearing, OPIC estimates a maximum duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

³ *Id.*

IV. Conclusion

Having found that Jesus Gallegos qualifies as an affected person and has raised a disputed issue of fact that is relevant and material to the Commission's decision on this application, OPIC recommends the Commission grant Jesus Gallegos' hearing request.

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

- **Will the proposed plant cause nuisance odors?**

For the contested case hearing, OPIC recommends a duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

Respectfully submitted,

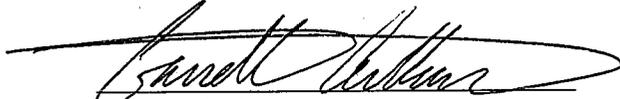
Blas J. Coy, Jr.
Public Interest Counsel

By 

Garrett Arthur
Assistant Public Interest Counsel
State Bar No. 24006771
P.O. Box 13087, MC 103
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512-239-5757
512-239-6377 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2009, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

MAILING LIST
EAGLESTAR INVESTMENTS, LLP
TCEQ DOCKET NO. 2009-1001-MWD

FOR THE APPLICANT:

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Texas Commission on Environmental Quality
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Tel: (512) 239-4000
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**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

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Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
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FOR THE CHIEF CLERK:

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REQUESTER:

Jesus Gallegos
9011 Breckenridge Drive
Magnolia, Texas 77354-5740

Eagle Star Investments Map Requested by TCEQ Legal Services for Commissioner's Agenda



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
September 10, 2009



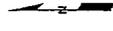
- Legend**
- Hearing Requestor (Tract 4)
 - Facility Property Boundary
 - 1/4-Mile Radius
 - 1-Mile Radius

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS.

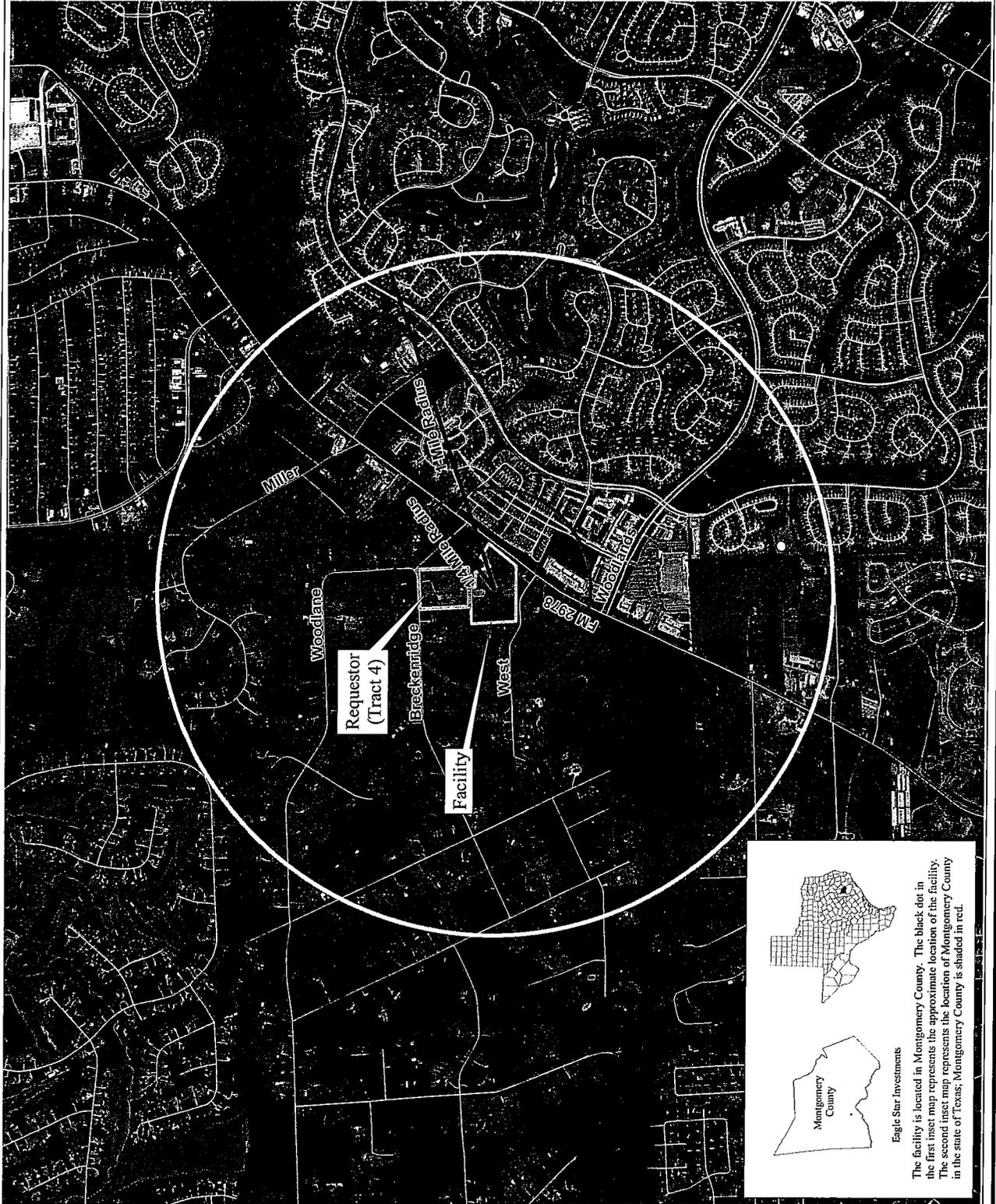
Hearing Requestor addresses were provided by OLS and geocoded using Tele Atlas Streets 2009 geodatabase technology.

Measurements provided are estimates and have not been measured with precise ground-based instrumentation.

The DOQQ (Digital Orthophoto Quarter Quadrangle) aerial imagery was obtained from the USDA Farm Service Agency's National Agriculture Imagery Program (NAIP). The imagery is from 2009 at one-meter resolution.



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 its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



Eagle Star Investments

The facility is located in Montgomery County. The black dot in the first inset map represents the approximate location of the facility. The second inset map represents the location of Montgomery County in the state of Texas; Montgomery County is shaded in red.

Attachment 2 – Downstream Landowners List

Corresponds to Domestic Administrative Report 1.1, Item 1.c, Page 12

1 EAGLE STAR INVESTMENTS LLP
14 CRESTED PINES CT
THE WOODLANDS, TX 77381-4835

2 PERRY, ANDREW & LAURIE FIELDS
2390 COUNTY RD
HALLETTSVILLE, TX 77964-5185

3 BYRD, RAYMOND D & KAY L
9103 BRECKENRIDGE DR
MAGNOLIA, TX 77354-5742

4 PENA, MARIA TERESA ESPINOSA
9011 BRECKENRIDGE DR
MAGNOLIA, TX 77354-5740

5 KEELS, JEFF L & MELINDA
27 TURTLE ROCK CT
SPRING, TX 77381-4800

6 MCNEILL, ROBERT S
16622 TORRINGTON CT
SPRING, TX 77379-7544

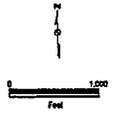
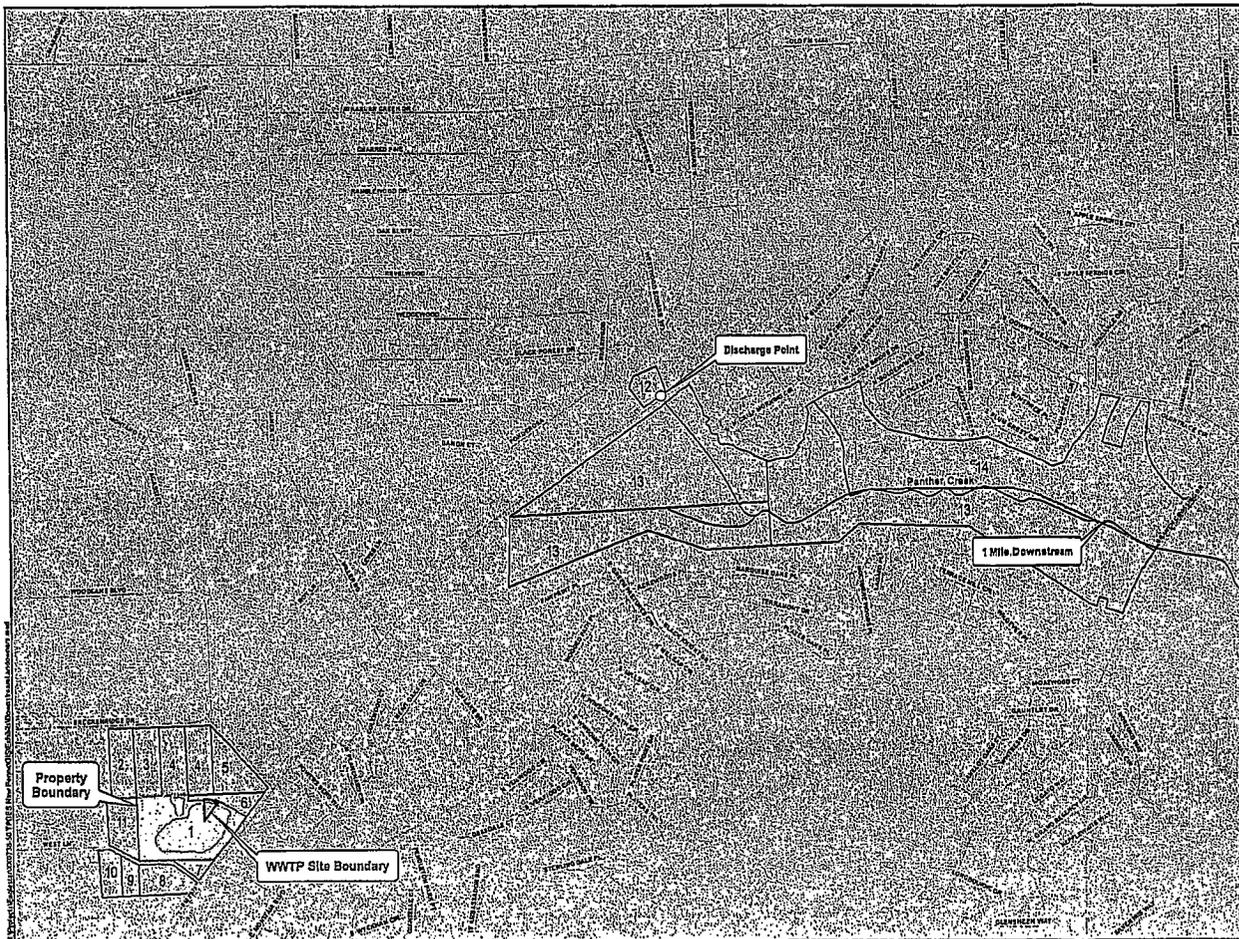
7 HALL, JOHNNY L & ELVA
13334 NORTHSHORE DR
MONTGOMERY, TX 77356-5329

8 BOLIYO LLC
26207 INTERSTATE 45
THE WOODLANDS, TX 77380

9 LASSITER, KATIE ESTATE OF
C/O BOBBIE HYDE PO BOX 684
DRIPPING SPRINGS, TX 78620-0684

10 FREEMAN, LUANN MATARELLI-ESTATE OF
1317 SARAH BROOKS DR
KELLER, TX 76248-2049

11 MCLEAN, DALE J & MOLLIE A
8626 WEST LN
MAGNOLIA, TX 77354-5902



- Discharge Point
- ◊ WWTP Site Boundary
- ▭ Property Boundary
- 1 Mile Downstream

EAGLESTAR INVESTMENTS, L.L.C.

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New TPDES Permit Application
 Downstream Land Owners Map
 A Complete Permit Application Report 11.1 and 11.2
 Date: July 2008 Project #: 200718-01 Sheet #: 2