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December 29, 2014

Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35, Bldg. F
Austin, Texas 78753

RE: TCEQ Docket No. 2014-1189-IHW; *Application by Ascend Performance Materials Texas Inc. for Renewal and Amendment of RCRA Permit No. 50189 for the Chocolate Bayou Plant in Brazoria County, Texas*

Dear Ms. Bohac:

On behalf of Ascend Performance Materials Texas Inc. (“Ascend”), please find enclosed Applicant’s Response to Hearing Request, with attachments, in connection with the above-docketed matter. These documents are being filed with the Commission electronically, and the original and seven copies will be hand delivered to the Clerk’s office.

As always, should you have any questions concerning the enclosed documents, please let me know.

Sincerely yours,

John J. Vay

cc: Service List

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ASCEND PERFORMANCE MATERIALS, LLC
DOCKET NO. 2014-1189-IHW; PERMIT NO. 50189

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INTERESTED PERSONS:

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TCEQ DOCKET NO. 2014-1189-IHW

APPLICATION BY ASCEND		
PERFORMANCE MATERIALS TEXAS INC.	§	BEFORE THE
FOR RENEWAL AND AMENDMENT OF		TEXAS COMMISSION ON
RCRA PERMIT NO. 50189 FOR THE	§	ENVIRONMENTAL QUALITY
CHOCOLATE BAYOU PLANT IN		
BRAZORIA COUNTY, TEXAS	§	

APPLICANT’S RESPONSE TO HEARING REQUEST

Ascend Performance Materials Texas, Inc. (“Ascend”), the applicant in the above-docketed matter, files this *Applicant’s Response to Hearing Request* in response to the request by Mr. Dick Tyson on April 18, 2014, for a contested case hearing. Mr. Tyson’s request concerns Ascend’s application for renewal and amendment of RCRA Permit No. 50189 for Ascend’s Chocolate Bayou Plant in Brazoria County, Texas. Mr. Tyson resides in an apartment building located approximately 10 miles northwest (upstream) of the Chocolate Bayou Plant and has expressed only general concerns about potential impacts to his “enjoyment of boating and fishing and other activities” in area bayous and Chocolate Bay which is located approximately 3 to 7 miles southeast (downstream) of the Chocolate Bayou Plant.

Ascend respectfully requests the Commissioners deny Mr. Tyson’s hearing request based on his: (i) failure to comply with the agency’s regulations at 30 Tex. Admin. Code (“TAC”) § 55.201 (relating to *Requests for Reconsideration or Contested Case Hearing*); (ii) failure to demonstrate he is a “person affected” as defined by the TCEQ’s enabling statutes and rules including Tex. Water Code § 5.115(a) (relating to *Persons Affected in Commission Hearings*), Tex. Health and Safety Code § 361.003(24) (relating to *Definitions; Person Affected*), and 30 TAC § 55.203(c) (relating to *Determination of Affected Person*); and (iii) failure to establish a concrete and particularized injury in fact that is actual or imminent, fairly traceable to the issuance of the permit as proposed, and likely to be redressed by a favorable decision on his complaint. *See Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 416–17 (Tex. 2013).

BACKGROUND

Description of Facility:

Ascend is the owner of a 2,514-acre chemical manufacturing facility referred to as the Chocolate Bayou Plant (the former Monsanto – Solutia complex) which is located on FM 2917 approximately 11 miles southeast of the City of Alvin in Brazoria County, Texas. *See* Attachments 1 and 2. Ascend produces a variety of intermediate chemicals at the facility which

are used in the production of nylon, plastics and synthetic fibers found in thousands of commercial and industrial products such as carpet, tires and apparel, as well as agricultural, animal feed and personal care products. Nearly one thousand employees and contractors work at the Chocolate Bayou Plant. Production at the complex originally commenced in 1962, and there are a series of active and inactive industrial solid and hazardous waste management units (“WMUs”) at the current facility (*e.g.*, container storage areas, surface impoundments, landfills, and boilers). The various WMUs are subject to stringent federal and state regulations and the provisions of a Resource Conservation and Recovery Act (“RCRA”) permit and compliance plan issued by the TCEQ (Permit No. 50189). Ascend is currently seeking a renewal of its RCRA permit and compliance plan and an amendment to add an additional container storage area and six additional land disposal cells adjacent to the currently active RCRA landfill facility. The permit renewal and amendment are necessary to support the existing and future operations at the Chocolate Bayou Plant.

Procedural Background:

Ascend’s RCRA renewal and amendment application was filed on July 13, 2010, and declared administratively complete on July 30, 2010. No public comments were filed in response to the initial public notice. The TCEQ’s Executive Director (“ED”) completed the technical review of the application and issued a preliminary decision and draft permit on March 10, 2014. A single public comment letter containing a request for a public meeting and contested case hearing was filed by Mr. Tyson on his own behalf on April 18, 2014, in response to the second public notice. *See* Attachment 3. The ED subsequently determined that the criteria for holding a public meeting in Brazoria County had not been satisfied in this case (*e.g.*, no “substantial or significant degree of public interest in an application”) under 30 TAC § 55.154(c) (relating to *Public Meetings*).

The ED issued a formal response to Mr. Tyson’s public comments on July 17, 2014 (“RTC”), which was transmitted to Mr. Tyson by the TCEQ’s Chief Clerk on July 22, 2014, along with the written *Decision of the Executive Director* that Ascend’s application meets the requirements of applicable law. Mr. Tyson did not file either a request for reconsideration of the ED’s decision or a further request for a contested case hearing specifying any of the ED’s responses to comments that are disputed, the factual basis of any dispute, or any disputed issues of law or policy as requested in writing by the TCEQ. Ascend subsequently requested a delay in the setting of Mr. Tyson’s hearing request on the Commissioners’ agenda as efforts were made during the months of August, September, and October of 2014, with the assistance of TCEQ’s Office of Alternative Dispute Resolution, to arrange a personal meeting with Mr. Tyson to discuss any of his remaining questions and concerns. The efforts to arrange a personal meeting with Mr. Tyson were not successful.

RESPONSE TO COMMENTS AND THE ADMINISTRATIVE RECORD

The ED's RTC fully addresses Mr. Tyson's general concern regarding the threat to area surface water and groundwater posed by any potential "leakage and runoff" from Ascend's proposed facilities. It should be noted, however, that Mr. Tyson's concern regarding groundwater contamination specifically relates to "groundwater, which also feeds the bayou and bay systems" (*i.e.*, groundwater, if any, that discharges to area surface water). *See* Attachment 3. Additionally, it should be noted that Mr. Tyson's public comments and request for a hearing only express opposition to "this proposed permit amendment" and "leakage and runoff for the hazardous waste management unit and the container storage area." Thus, Mr. Tyson has objected only to the proposed new container storage area and additional land disposal cells comprising the amendment portion of Ascend's pending application and permit, and he has not timely objected to the renewal portion of the pending application and permit.

As reflected in the RTC dated July 17, 2014, and the *Decision of the Executive Director* transmitted to Mr. Tyson on July 22, 2014, the ED determined that Ascend's application satisfied the regulatory requirements designed to protect surface water quality and to protect groundwater quality. Rather than reiterating herein the ED's detailed technical response to Mr. Tyson's concerns and the ED's decision not to make any changes to the final draft permit, Ascend hereby incorporates by reference and affirms the ED's "Response 1" set forth on pages 4 – 11 of the RTC. *See* Attachment 4. Ascend further requests the Commissioners take official notice of the pending RCRA application that was certified by Ascend and which bears the seals of Ascend's professional engineers and other licensed consulting experts including, without limitation, the portions of the application referenced by the ED in the RTC. Additionally, Ascend requests the Commissioners take official notice of the ED's "Technical Summary and Executive Director's Preliminary Decision" dated February 3, 2014 (Attachment 'C' to the *Executive Director's Response to Hearing Request*) and the ED's final draft Permit No. 50189 (Attachment 'E' to the *Executive Director's Response to Hearing Request*).

Pursuant to the Texas Supreme Court's decision in *Texas Commission on Environmental Quality v. City of Waco*, the Commissioners may consider the foregoing documents as part of the administrative record in determining whether Mr. Tyson is in fact a "person affected" under the TCEQ's statutes and regulations. 413 S.W.3d 409 (Tex. 2013); *see also*, *Tex. Comm'n on Env'tl. Quality and Waste Control Specialists, LLC v. Sierra Club*, No. 03-12-00335-CV, 2014 WL 1584511, at *5–6 (Tex. App.—Austin Apr. 18, 2014).

LEGAL AUTHORITY

Form of Hearing Request:

30 TAC § 55.201(a) provides that, "[a] request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting

that the commission reconsider the executive director’s decision or hold a contested case hearing.” 30 TAC § 55.201(a) (emphasis added). Further, as provided in subsection (d) of the regulation, 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. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(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.

30 TAC § 55.201(d)(1)-(5) (emphasis added).

Affected Person Requirement:

Tex. Water Code § 5.556(c) (relating to *Request for Reconsideration or Contested Case Hearing*) provides that “[t]he commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person.” Tex. Water Code § 5.556(c) (emphasis added). In this regard, 30 TAC § 55.211(c)(2) (relating to *Commission Action on Requests for Reconsideration and Contested Case Hearing*) provides that a request for a contested case hearing shall be granted if, among other things, the request is made by an “affected person” and the person complies with the requirements of § 55.201 discussed above. Consistent with Tex. Water Code § 5.115(a), 30 TAC § 55.203(a) provides that: “For any application, 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.”
30 TAC § 55.203(a) (emphasis added).

Additionally, Tex. Health and Safety Code § 361.003(24) provides that:

“Person affected” means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

Tex. Health and Safety Code § 361.003(24) (emphasis added).

In determining whether a person is an “affected person,” the following factors, among others, are required to be considered under the TCEQ’s regulations:

(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; and

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

30 TAC § 55.203(c)(1)-(6) (emphasis added).

Furthermore, in *Tex. Comm’n on Env’tl. Quality v. City of Waco*, the Texas Supreme Court recognized the Austin Court of Appeals’ conclusion that the definition of “affected person” embodies the constitutional principles of standing, thereby requiring a protesting party to “establish a concrete and particularized injury in fact, not common to the general public, that is: (1) actual or imminent; (2) fairly traceable to the issuance of the permit as proposed; and (3) likely to be redressed by a favorable decision on its complaint. 413 S.W.3d 409, 417 (Tex. 2013); see also *Tex. Comm’n on Env’tl. Quality and Waste Control Specialists, LLC v. Sierra Club*, No. 03-12-00335-CV, 2014 WL 1584511, at *5 (Tex. App.—Austin Apr. 18, 2014).

ANALYSIS OF HEARING REQUEST

Mr. Tyson's hearing request does not meet the requirements of 30 TAC § 55.211(c)(2) and should be denied by the Commissioners under § 55.211(b)(2) (relating to *Commission Action on Requests for Reconsideration and Contested Case Hearing*). His hearing request is substantially deficient in several respects including, but not limited to, the following:

First, Mr. Tyson did not substantially comply with the requirements of § 55.201(d) (relating to *Requests for Reconsideration or Contested Case Hearing*) regarding the form and content of his hearing request because:

- (i) Mr. Tyson did not identify his personal justiciable interest affected by the application by including a specific written statement explaining his location and distance relative to Ascend's proposed activity (see § 55.201(d)(2)).
 - Mr. Tyson provides only an address for his apartment on Mustang Road within the City of Alvin. His residence is located approximately 10 miles northwest (upgradient) from the Ascend facility. *See Attachments 5 – 8.*
 - Mr. Tyson describes recreating and enjoying the natural resources “of the greater Alvin community” without providing any location and distance relative to Ascend's proposed activity. The Ascend facility is located in the county, approximately 11 miles southeast of downtown Alvin.
 - Mr. Tyson describes “recreating” on Mustang and Chocolate Bayous without providing any location and distance relative to the Ascend facility. Mustang Bayou rises south of Missouri City in Fort Bend County and runs a distance of approximately 45 miles to the southeast. Chocolate Bayou rises near Manvel in Brazoria County and runs a distance of approximately 30 miles to the southeast. *See Attachments 9 – 10.* Substantial portions of the referenced bayous and associated recreational areas are located well “upstream” of Ascend's facility and include public parks and trails maintained by the City of Alvin along Mustang Bayou and public parks maintained by Brazoria County along Chocolate Bayou. *See Attachments 11 – 12.* A public boat ramp is located approximately 2¼ river miles “downstream” of the Ascend facility where Chocolate Bayou first enters Lost Bay, before it enters Chocolate Bay. None of these recreational areas are in close proximity to the Ascend facility (and are even further from Ascend's inland container storage area and land disposal cells).
 - Mr. Tyson describes recreational “boating and fishing” in Chocolate Bay without providing any location and distance relative to the Ascend facility. Chocolate Bay is an expansive waterbody that opens into West Bay and is crossed by the Gulf Intercoastal Waterway. Chocolate Bay is approximately 7

stream miles from Ascend's proposed land disposal cells (via New Bayou/Mustang Bayou) and approximately 3½ to 6 miles from Ascend's proposed container storage area (via Chocolate Bayou). *See* Attachments 13 – 17.

- (ii) Mr. Tyson did not explain how and why he will be adversely affected by Ascend's proposed activity in a manner not common to members of the general public (*see* § 55.201(d)(2)).
- Mr. Tyson expresses only a general “concern” about leakage and runoff getting into area bayous and thence to Chocolate Bay and “impacting [his] enjoyment” of recreational boating, fishing and other activities. He does not describe how and why such leakage or runoff would ever occur; how and why it would migrate into area bayous; how and why it would be transported all the way to Chocolate Bay; how and why it would actually impact his enjoyment of boating and fishing; and how and why his interest in boating and fishing is sufficiently distinct from members of the general public.
 - Mr. Tyson has not explained how he has a “personal justiciable interest” (not common to members of the general public) as required by the Texas Water Code; he has not explained how he “will suffer actual injury or economic damage” as required by the Texas Health and Safety Code; and he has not set forth a “concrete and particularized injury in fact” (not common to the general public) that is actual or imminent, fairly traceable to the issuance of the permit as proposed, and likely to be redressed by a favorable decision on his complaint as required by recent judicial opinions of the Austin Court of Appeals and the Texas Supreme Court.
- (iii) Mr. Tyson did not list relevant and material disputed issues of fact that were raised during the public comment period (*see* § 55.201(d)(4)).
- Mr. Tyson states only that he is “concerned” about leakage and runoff getting into area bayous and thence to Chocolate Bay. He has not alleged that the design and operation of the proposed Ascend facility (*i.e.*, the additional container storage area and additional land disposal cells) are deficient in any respect whatsoever and would actually result in such leakage or runoff.
 - Mr. Tyson's mere expression of a generalized “concern,” without any affirmative allegation of an application deficiency, is not a listing of “disputed issues of fact” sufficient to support a hearing request.
- (iv) Mr. Tyson did not specify any of the ED's responses to his comments that he disputes and the factual basis of the dispute or list any disputed issues of law or policy (*see* § 55.201(a) and (d)(4)).

- Despite having received the July 22, 2014, letter from the TCEQ’s Chief Clerk describing the procedure for requesting a contested case hearing, Mr. Tyson did not file a document disputing any aspect of the ED’s decision that the permit application meets the requirements of applicable law and the factual basis for such dispute.
 - The Chief Clerk’s letter to Mr. Tyson stated that, “you should: 1) specify any of the executive director’s responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.” Mr. Tyson declined to do so.
 - The Chief Clerk’s letter provided Mr. Tyson with instructions on two distinct options: 1) how to request a contested case hearing; and 2) how to request reconsideration of the Executive Director’s decision. Mr. Tyson did not request either option within 30 calendar days after the Chief Clerk mailed the letter.

Second, Mr. Tyson does not qualify as an “affected person” because he does not meet the following requirements of 30 TAC § 55.203(a) and (c) (relating to *Determination of Affected Person*):

- (i) The interest Mr. Tyson claims is common to members of the general public and does not qualify as a personal justiciable interest.
 - As previously indicated, Mr. Tyson only references recreating and enjoying the natural resources of the greater Alvin community, recreating on Mustang and Chocolate Bayous generally, and boating and fishing in Chocolate Bay generally, which does not sufficiently distinguish him from members of the general public.
- (ii) A reasonable relationship does not exist between the interest Mr. Tyson claims and the regulated activity.
 - The primary interest Mr. Tyson claims is the enjoyment of recreational boating and fishing in Chocolate Bay, a coastal surface water body located approximately 7 stream miles from Ascend’s proposed land disposal cells and approximately 3½ to 6 miles from Ascend’s proposed container storage area.
 - The regulated activity of which Mr. Tyson complains is the proposed RCRA permit amendment for the additional container storage area and the additional land disposal cells at the Ascend facility.
 - The RCRA permit amendment for the container storage area and land disposal cells does not authorize the discharge of any industrial solid waste to either surface water or groundwater (as distinguished from a point-source

wastewater discharge into waters of the United States that may be authorized under a TPDES permit).

- The relationship between Mr. Tyson's enjoyment of coastal boating/fishing and Ascend's operation of inland no-discharge RCRA units, located upwards of 7 miles away, cannot be characterized as a "reasonable" relationship.

(iii) The regulated activity is not likely to impact the health or safety of Mr. Tyson.

- Mr. Tyson resides in an apartment building located approximately 10 miles northwest (upstream) of the Ascend facility.
- The primary interest Mr. Tyson claims is the enjoyment of recreational boating and fishing in Chocolate Bay, a coastal surface water body located approximately 7 stream miles from Ascend's proposed land disposal cells (via New Bayou/Mustang Bayou) and approximately 3½ to 6 miles from Ascend's proposed container storage area (via Chocolate Bayou).
- Consistent with federal and state RCRA regulations, the container storage area and land disposal cells must meet stringent siting, design, construction and operating criteria established by the U.S. Environmental Protection Agency and TCEQ for the protection of surface water and groundwater quality (referenced above and below).
- The substantial distance between Ascend's regulated activities and Mr. Tyson's permanent residence, as well as the distance, nature and frequency of his recreational activities along the coast, make it inconceivable that the proposed container storage area and additional land disposal cells could impact his health and safety in any manner.

(iv) The regulated activity is not likely to impact the use of natural resources by Mr. Tyson.

- Again, the primary interest Mr. Tyson claims is the enjoyment of recreational boating and fishing in Chocolate Bay, a coastal surface water body located approximately 7 stream miles from Ascend's proposed land disposal cells (via New Bayou/Mustang Bayou) and approximately 3½ to 6 miles from Ascend's proposed container storage area (via Chocolate Bayou).
- The proposed land disposal cells will be located inland, adjacent to the currently active landfill, and approximately 2¼ miles northeast of Chocolate Bayou. The proposed container storage area will be located inland and approximately ½ mile northeast of Chocolate Bayou.
- Consistent with federal and state RCRA regulations, the container storage area and land disposal cells must meet stringent siting, design, construction and

operating criteria established by the U.S. Environmental Protection Agency and TCEQ for the protection of surface water and groundwater quality.

- For the container storage area, this includes a reinforced concrete pad free of gaps/cracks and sufficiently impervious to contain spills and accumulated precipitation, a low-permeability under-liner beneath the concrete pad to preclude vertical migration, adequate containment capacity (10% of container volume plus 25-year, 24-hour storm event) with sumps to remove liquids and prevent run-off, perimeter diking to control run-on and preclude physical transport during flooding (100-year, 24-hour storm event), unit inspections and recordkeeping, closure plans, and financial assurance.
- For the disposal cells, this includes double low-permeability liners, double leachate collection and removal systems, a leak detection system, a groundwater monitoring system, a roofing system over active cells, run-off and run-on controls to preclude physical transport during flooding (100-year, 24-hour storm event), waste acceptance procedures with land disposal restrictions and no free liquids, construction quality assurance programs, unit inspections and recordkeeping, closure plans, post-closure care maintenance, and financial assurance.
- It is improbable that a release of hazardous constituents from Ascend's proposed container storage area would escape containment, migrate ½ mile across the Ascend plant site, enter Chocolate Bayou unabated, be transported an additional 3 to 6 river miles downstream to Chocolate Bay, and then be present in such concentrations (following assimilation and/or dilution) that Mr. Tyson's use or enjoyment of Chocolate Bay would be demonstrably impacted.
- Additionally, it is improbable that a release of hazardous constituents from Ascend's proposed land disposal cells would escape containment and groundwater detection monitoring, enter New Bayou/Mustang Bayou unabated, be transported 7 river miles downstream to Chocolate Bay, and then be present in such concentrations that Mr. Tyson's use or enjoyment of Chocolate Bay would be demonstrably impacted.

Third, Mr. Tyson has failed to establish a concrete and particularized injury in fact, not common to the general public, that is (1) "actual or imminent," (2) "fairly traceable to the issuance of the permit as proposed," and (3) "likely to be redressed by a favorable decision on [his] complaint." *See Tex. Comm'n on Envtl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013).

- (i) Container storage areas and land disposal cells have operated at the Chocolate Bayou Plant for more than 50 years without negatively impacting the ability of Brazoria County residents such as Mr. Tyson to enjoy boating, fishing and other activities in and around Chocolate Bay. The federal and state regulations governing the permitting, construction and operation of WMUs have become increasingly more stringent over the past several decades and are fully applicable to Ascend's facilities. The additional container storage area and additional land disposal cells proposed in Ascend's pending application are similar to other currently active WMUs at the Chocolate Bayou Plant.
 - For example, the newly proposed land disposal cells will be located adjacent and upgradient of the currently active RCRA landfill. The active landfill has never experienced a statistically significant increase in concentrations of indicator parameters in groundwater samples collected from downgradient, point-of-compliance monitoring wells as compared to the background concentrations measured in upgradient wells.
- (ii) In his hearing request, Mr. Tyson initially states, “[a]ny industrial activity that threatens to impact the bayou system that feeds into Chocolate Bay also threatens Chocolate Bay.” He then states that he is “concerned about leakage and runoff getting into the bayous aforementioned, and thus into Chocolate Bay, impacting [his] enjoyment of boating and fishing and other activities.” By expressing only a speculative concern about an occurrence that only threatens to impact his enjoyment, Mr. Tyson has not established a “concrete and particularized injury in fact” as required. He also failed to describe any injury to himself that is not common to the general public residing in Brazoria County.
- (iii) Even if Mr. Tyson had described a concrete and particularized injury not common to the general public, he failed to establish how his injury would be “actual or imminent.” Also, he has not established how any impact to his enjoyment of boating and fishing would be “fairly traceable to the issuance of the permit as proposed” and “likely to be redressed by a favorable decision on his complaint,” insofar as his concerns about Ascend's proposed facilities are speculative and improbable, and he indicates that any other industrial activity that threatens to impact the area's bayou system also threatens Chocolate Bay.

REQUEST FOR RELIEF

Based on the foregoing, Ascend respectfully requests the Commissioners deny Mr. Tyson's hearing request and approve the pending RCRA application and permit based on: (i) Mr. Tyson's failure to comply with the agency's regulations at 30 TAC § 55.201 (relating to *Requests for Reconsideration or Contested Case Hearing*); (ii) his failure to demonstrate he is a “person affected” as defined by the TCEQ's enabling statutes and rules including Tex. Water

Code § 5.115(a) (relating to *Persons Affected in Commission Hearings*), Tex. Health and Safety Code § 361.003(24) (relating to *Definitions; Person Affected*) and 30 TAC § 55.203(c) (relating to *Determination of Affected Person*); and (iii) his failure to establish a concrete and particularized injury in fact that is actual or imminent, fairly traceable to the issuance of the permit as proposed, and likely to be redressed by a favorable decision on his complaint. *Tex. Comm'n on Env'tl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013).

ALTERNATIVE PLEADING – HEARING LOCATION, DURATION, SCOPE AND ISSUES

Notwithstanding the foregoing, should the Commissioners decide that Mr. Tyson is an “affected person” who has complied with the agency’s requirements for requesting a contested case hearing and raised disputed issues of fact that are relevant and material to the pending application and permit, Ascend alternatively recommends the Commissioners require in its *Interim Order* that the contested case hearing:

1. be held in Austin, Texas;
2. last no longer than six (6) months from the preliminary hearing;
3. be limited in scope to the major amendment portion of the pending application for renewal and amendment of RCRA Permit No. 50189; and
4. be limited to the following two issues:
 - a. Whether the application and draft permit meet the applicable TCEQ rules for protecting surface water (and any groundwater that discharges to surface water) from leakage and runoff of hazardous waste from the proposed new container storage area; and
 - b. Whether the application and draft permit meet the applicable TCEQ rules for protecting surface water (and any groundwater that discharges to surface water) from leakage and runoff of hazardous waste from the proposed new land disposal cells.

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Respectfully submitted,

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**ATTORNEYS FOR THE APPLICANT
ASCEND PERFORMANCE MATERIALS**

CERTIFICATE OF SERVICE

I hereby certify that the original and seven (7) copies of the *Applicant's Response to Hearing Request* was filed with the TCEQ's Office of Chief Clerk and a true and correct copy was served on Mr. Dick Tyson, 3075 Mustang Road, Suite 2210, Alvin, Texas 77511, and on all other persons listed on the mailing list, by first class mail on the 29th day of December, 2014.



John J. Vay

MAILING LIST
ASCEND PERFORMANCE MATERIALS, LLC
DOCKET NO. 2014-1189-IHW; PERMIT NO. 50189

FOR THE APPLICANT:

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Fax: (281) 228-4869

John Nieto
Ascend Performance Materials
P.O. Box 711
Alvin, Texas 77512-0711
Tel: (281) 228-4313
Fax: (281) 228-4869

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Diane Goss, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Sarah Anne Schreier, Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division, MC-130
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-5454
Fax: (512) 239-2007

Brian Christian, Director
Texas Commission on Environmental
Quality
Environmental Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Vic Mcwherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR ALTERNATIVE DISPUTE

RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Bridget C. Bohac
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER:

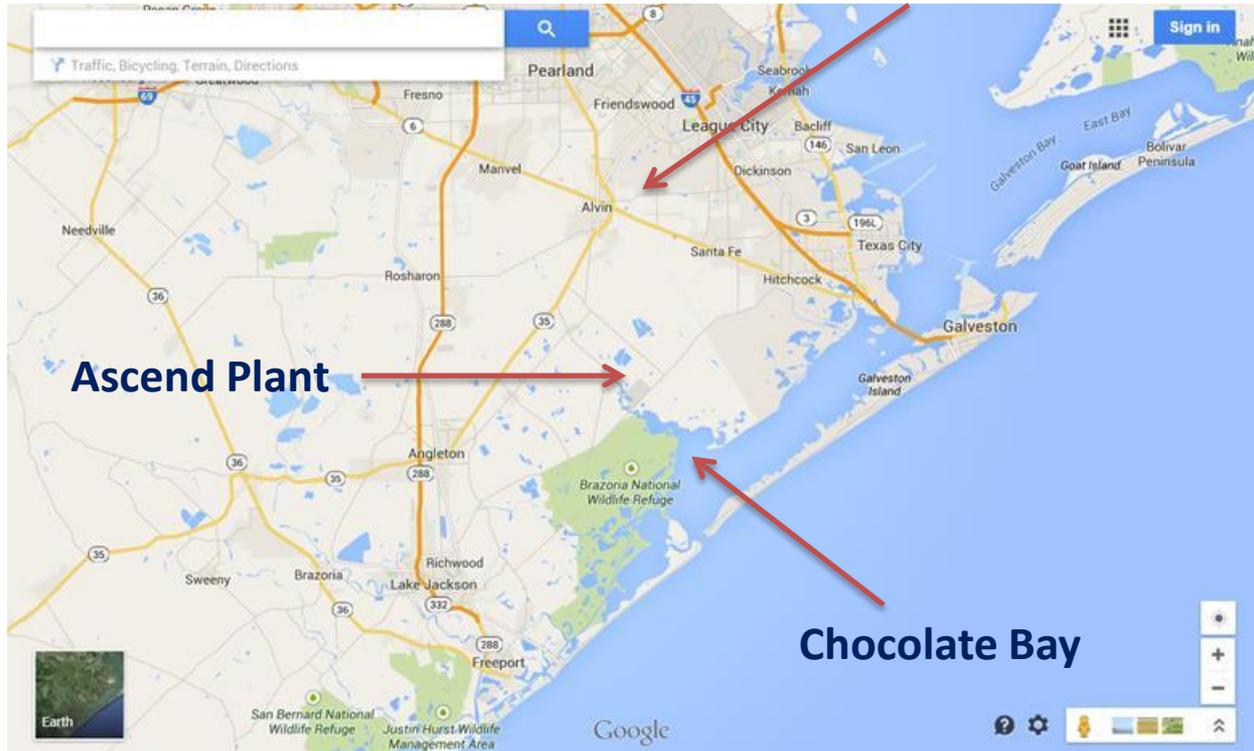
Dick Tyson
3075 Mustang Road, Suite 2210
Alvin, Texas 77511-4855

INTERESTED PERSONS:

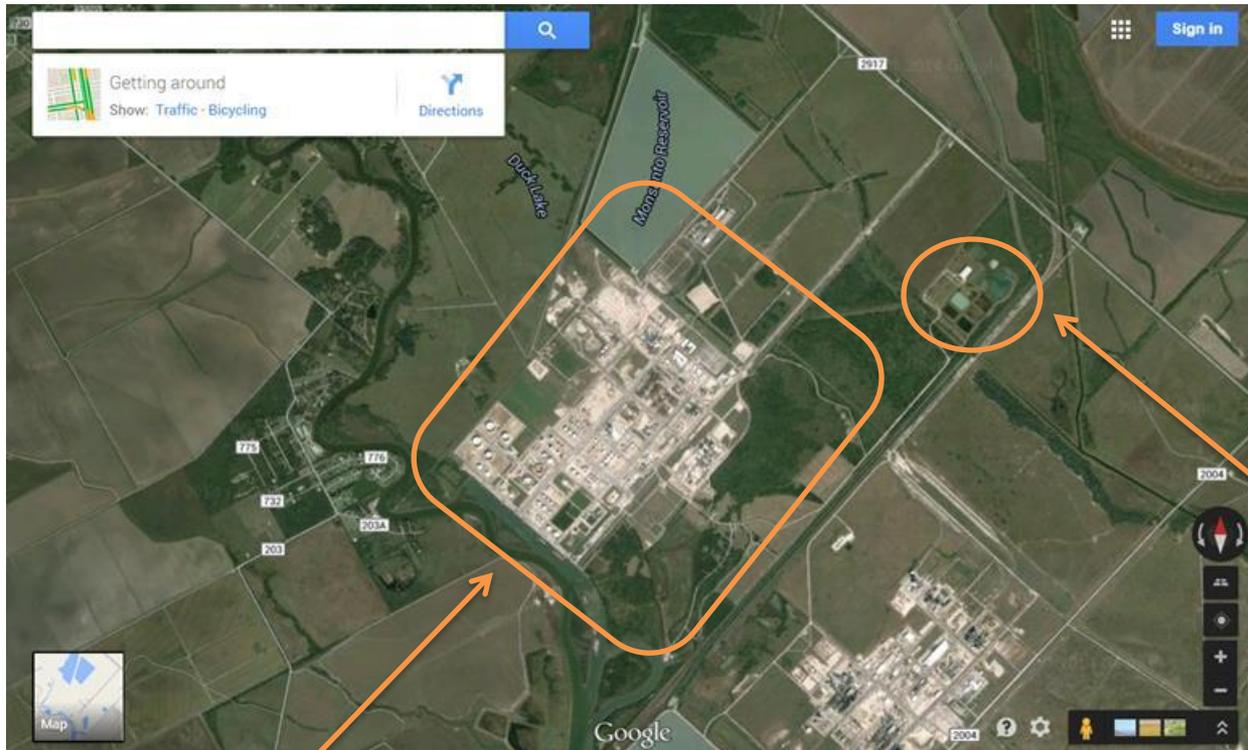
Rex Goodman
Insurepointe of Texas, Inc.
3107 Millbrook Lane
Missouri City, Texas 77459-4121

Regional Proximity Map Brazoria County, TX

Alvin, Texas



Applicant's Plant Site and RCRA Landfill Brazoria County, TX



**RCRA
Landfill**

Ascend Chocolate Bayou Plant

April 18, 2014

*Via Facsimile: (512) 239-3311
and U.S. Mail*
Bridget C. Bohac
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Re: Applicant, Ascend Performance Materials Texas Inc.
Permit/Compliance Plan No. 50189

Dear Ms. Bohac:

This letter is being submitted on behalf of Mr. Dick Tyson in response to the Public Notice of "Application and Preliminary Decision for Hazardous Industrial Waste Permit/Compliance Plan Renewal/Major Amendment." I am opposed to this proposed permit amendment, and we hereby request a contested case hearing on this application.

Person Requesting the contested Case

Mr. Dick Tyson
3075 Mustang Road
Alvin Texas 77511
281-865-8196

Interest Affected by the Proposed Permit Amendment

I live in Alvin, Texas. I recreate and enjoy the natural resources of the greater Alvin community. Specifically, I frequently recreate on Mustang and Chocolate Bayous, which lead into Chocolate Bay, which I enjoy for boating and fishing. The bayou system of the area includes not only Mustang and Chocolate Bayous but also Halls Bayou and New Bayou, and others, which feeds into Chocolate Bay. Any industrial activity that threatens to impact the bayou system that feeds into Chocolate Bay also threatens Chocolate Bay.

The facility at which the proposed activities will occur is adjacent to Mustang and Chocolate Bayous.

I am concerned about leakage and runoff for the hazardous waste management unit and the container storage area getting into the bayous aforementioned, and thus into Chocolate Bay, impacting my enjoyment of boating and fishing and other activities. Leakage and runoff can also contaminate groundwater, which also feeds the bayou and bay systems.

I request a public meeting, in order to ask questions from the staff and company.

Also, I request a contested case hearing on behalf of myself.

Sincerely,

Mr. Dick Tyson

Attachment 3

APPLICATION BY ASCEND	§	BEFORE THE
PERFORMANCE MATERIALS TEXAS	§	
INC. FOR A TEN-YEAR RENEWAL	§	TEXAS COMMISSION ON
AND MAJOR AMENDMENT OF	§	
IHW PERMIT & COMPLIANCE PLAN	§	ENVIRONMENTAL QUALITY
NO. 50189		

Executive Director’s Response to Public Comment

The executive director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Ascend Performance Materials Texas Inc. (Applicant), for a 10-year renewal and major amendment of Industrial Hazardous Waste (IHW) Permit No. 50189 (Application). As required by Title 30, Texas Administrative Code (30 TAC) Section (§) 55.156, before an application is approved the executive director prepares a response to all timely, relevant and material, or significant comments.

This response addresses all public comments received during the public comment period, whether or not withdrawn. If you need more information about this permit application or the industrial hazardous waste permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Dick Tyson submitted public comments to the Office of the Chief Clerk before the close of the public comment period.

I. Background

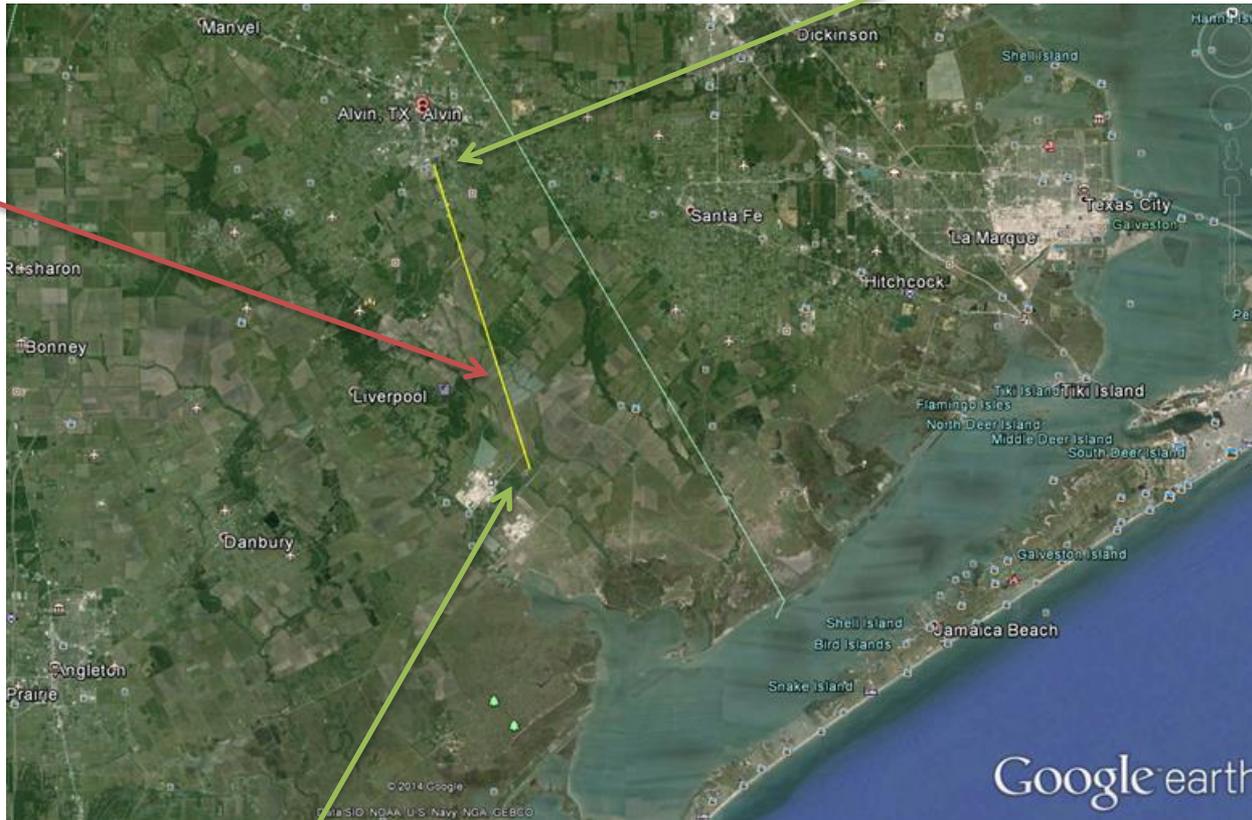
A. Description of Facility

Ascend Performance Materials Texas Inc. operates a chemical manufacturing facility, which is authorized to manage on-site generated hazardous and non-hazardous Class 1 and Class 2 industrial solid waste on a non-commercial basis. The facility is located on approximately 2,514 acres of land near Alvin, in Brazoria County, Texas 77512. The facility is in the drainage area of Segment 1107 of the San Jacinto-Brazos Coastal Basin, North Latitude 29°15'21", West Longitude 95°12'37".

Distance from Protestant's Residence to Ascend Plant and RCRA Landfill (Straight Line)

Tyson Apartment

10 Miles

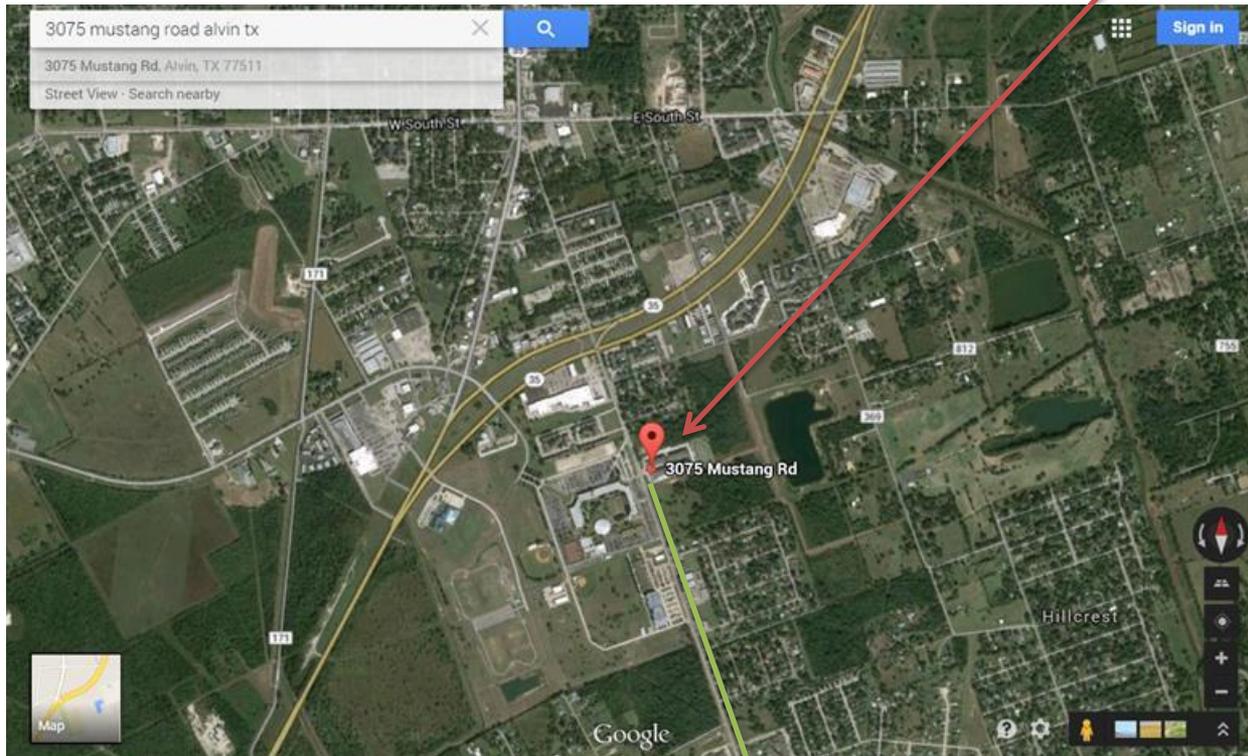


Ascend Plant

Attachment 5

Protestant's Residence Alvin, Texas

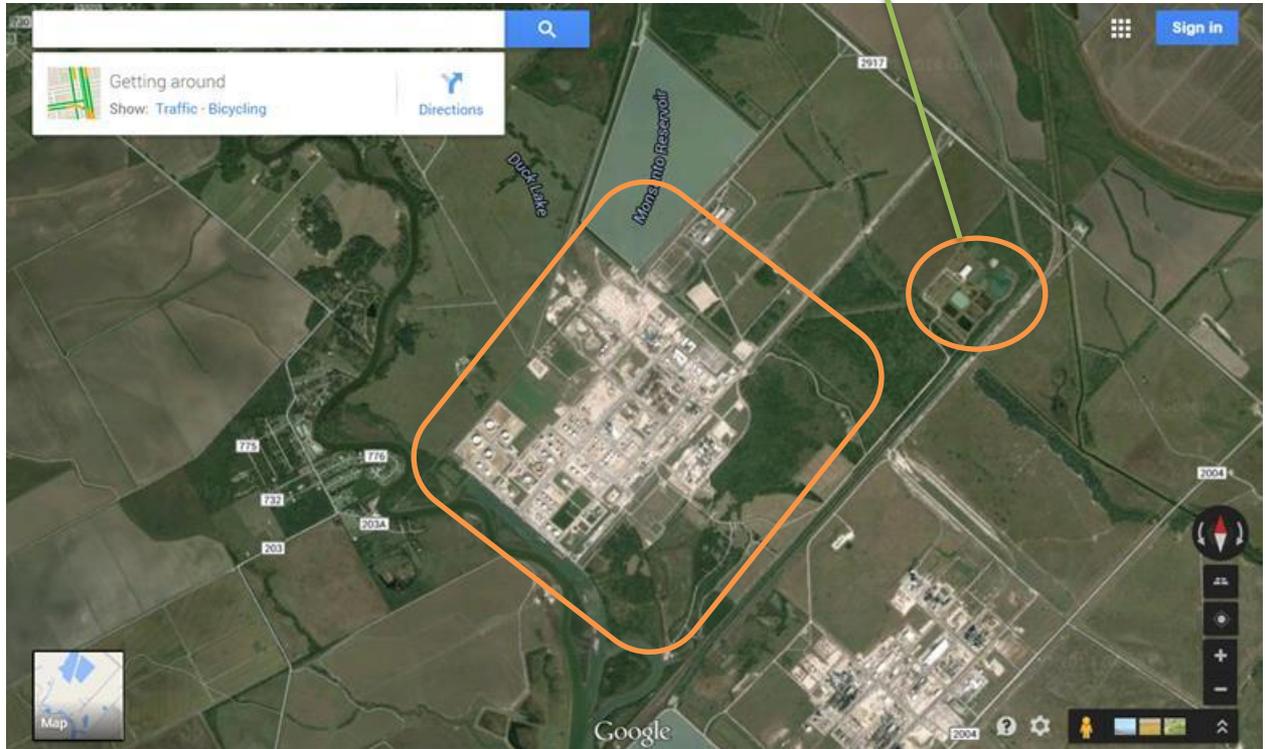
Tyson Apartment



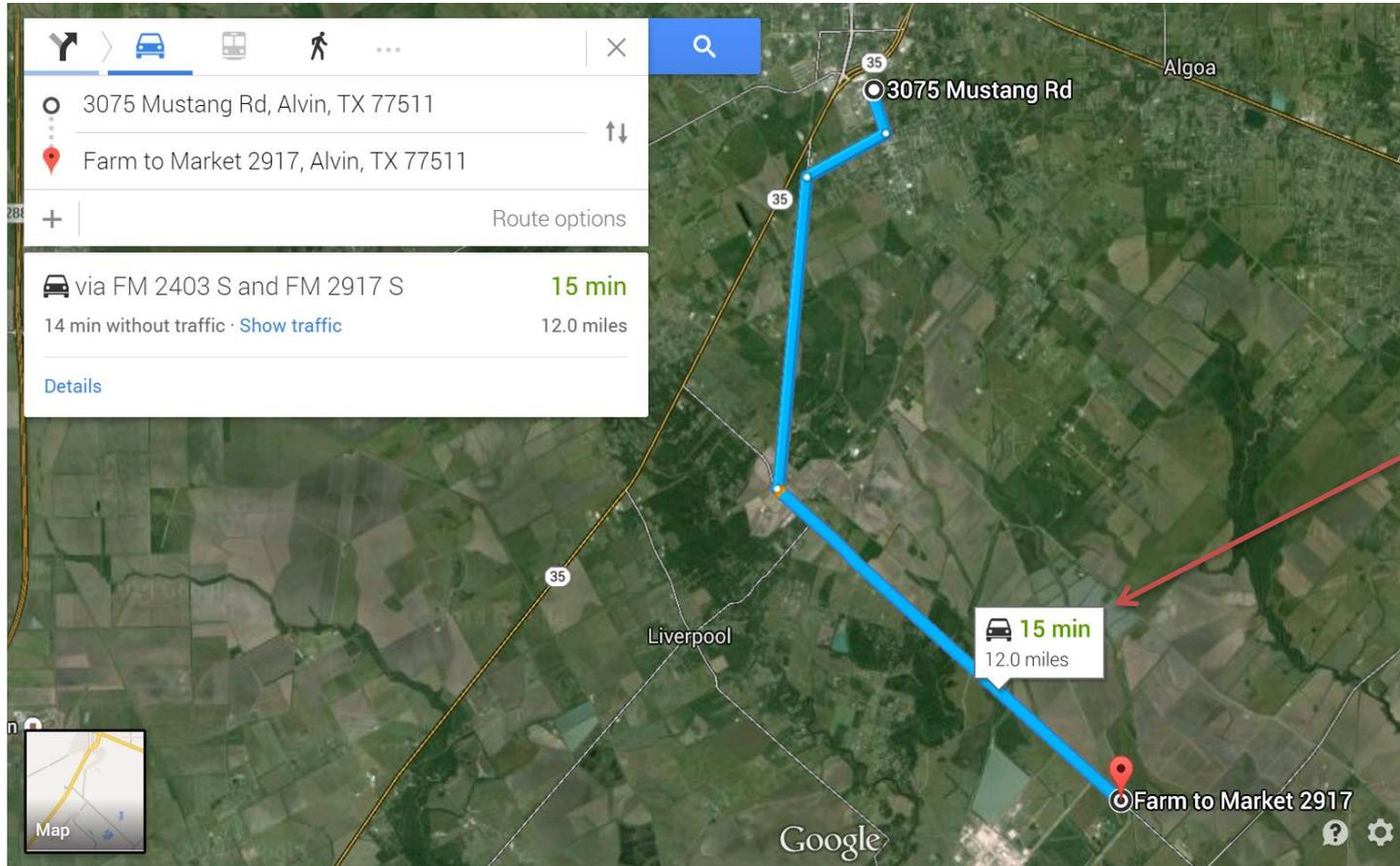
To Ascend . . .
10 Miles

Applicant's Plant and RCRA Landfill

To Tyson . . .
10 Miles



Distance from Protestant's Residence to Ascend Plant and RCRA Landfill (Via Automobile)



MUSTANG BAYOU

 Like One person likes this. [Sign Up](#) to see what your friends like.

MUSTANG BAYOU. Mustang Bayou rises south of Missouri City in northeastern Fort Bend County (at 29°35' N, 95°32' W) and runs southeast for forty-five miles, passing four miles southwest of Pearland and north of Alvin, where it turns south. At its juncture with Persimmon Bayou, the creek is channeled until it reaches its mouth on New Bayou in southeastern Brazoria County (at 29°15' N, 95°11' W). The creek is intermittent in its upper reaches. It originally flowed into West Bay and its course was subsequently altered to its present route. It traverses low-rolling to flat terrain, surfaced by sandy and clay loams that support mixed hardwoods; the soils change toward its mouth to dark, commonly calcareous clays that support prairie grasses and palmettos.

Citation

The following, adapted from the *Chicago Manual of Style*, 15th edition, is the preferred citation for this article.

"MUSTANG BAYOU," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/rhm05>), accessed December 28, 2014. Uploaded on June 15, 2010. Published by the Texas State Historical Association.

CHOCOLATE BAYOU (BRAZORIA COUNTY)

 Like Sign Up to see what your friends like.

CHOCOLATE BAYOU (Brazoria County). Chocolate Bayou rises a mile north of Manvel in northeast Brazoria County (at 30°00' N, 95°23' W) and runs southeast for thirty miles to its mouth on Chocolate Bay, thirteen miles east of Angleton (at 29°12' N, 95°12' W). Many members of the [Old Three Hundred](#) settled on Chocolate Bayou, and for a time the stream was considered the eastern boundary of [Stephen F. Austin's](#) first colony. The stream is intermittent in its upper reaches. It traverses flat terrain with local shallow depressions and rolling prairie, surfaced by clay and sandy loam and dark clays that support water-tolerant hardwoods, conifers, mesquite, grasses, cacti, and hardwoods mixed with pines.

Citation

The following, adapted from the *Chicago Manual of Style*, 15th edition, is the preferred citation for this article.

"CHOCOLATE BAYOU (BRAZORIA COUNTY)," *Handbook of Texas Online*

(<http://www.tshaonline.org/handbook/online/articles/rhc11>), accessed December 28, 2014. Uploaded on June 12, 2010.

Published by the Texas State Historical Association.

Mustang Bayou Recreational Areas



**Ascend Plant
11+ Miles
(Downstream)**

**City Parks
(Upstream)**

Attachment 11

Chocolate Bayou Recreational Areas

County Parks
(Upstream)

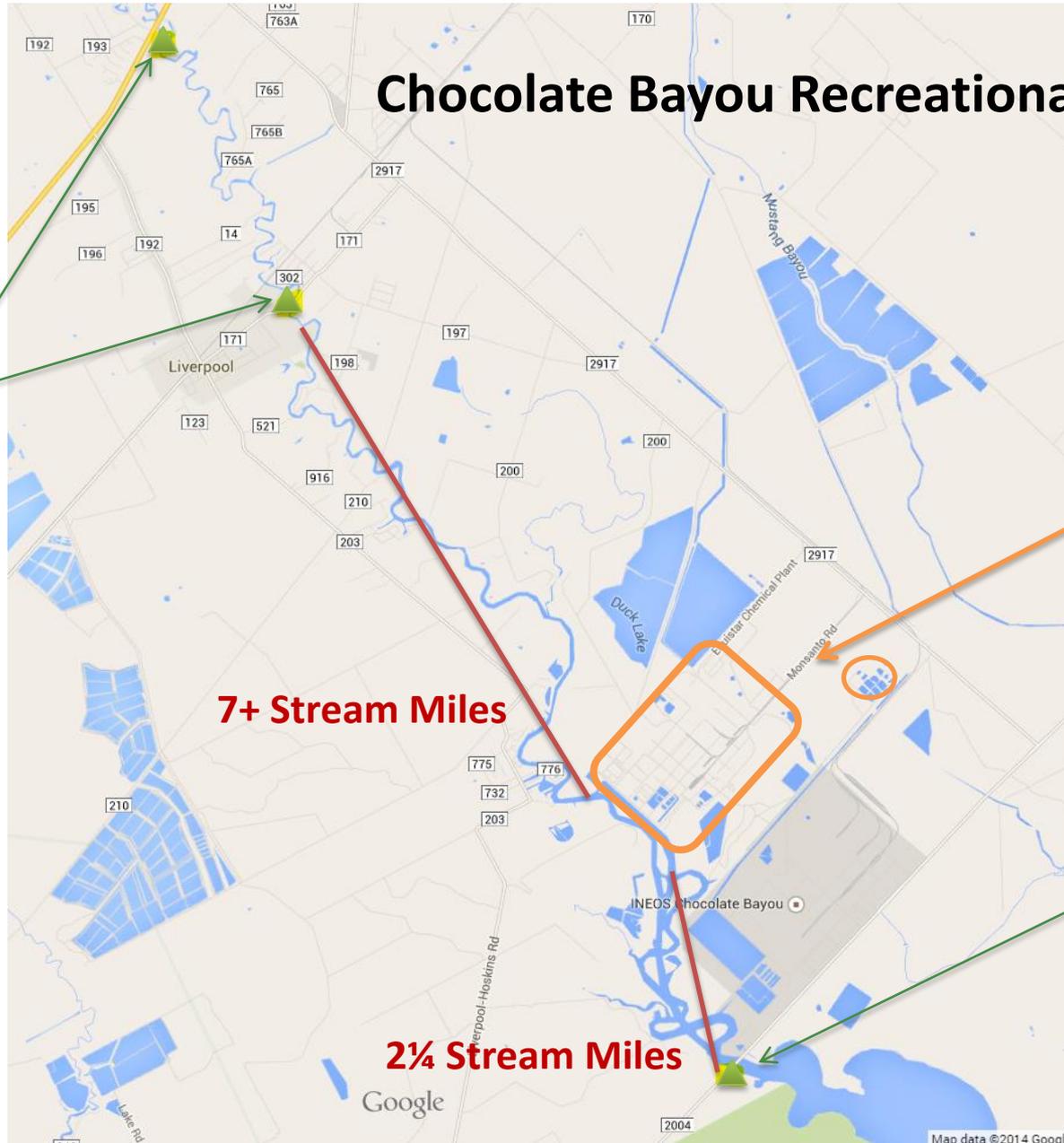
Ascend
Plant

7+ Stream Miles

Boat Ramp
(Downstream)

2¼ Stream Miles

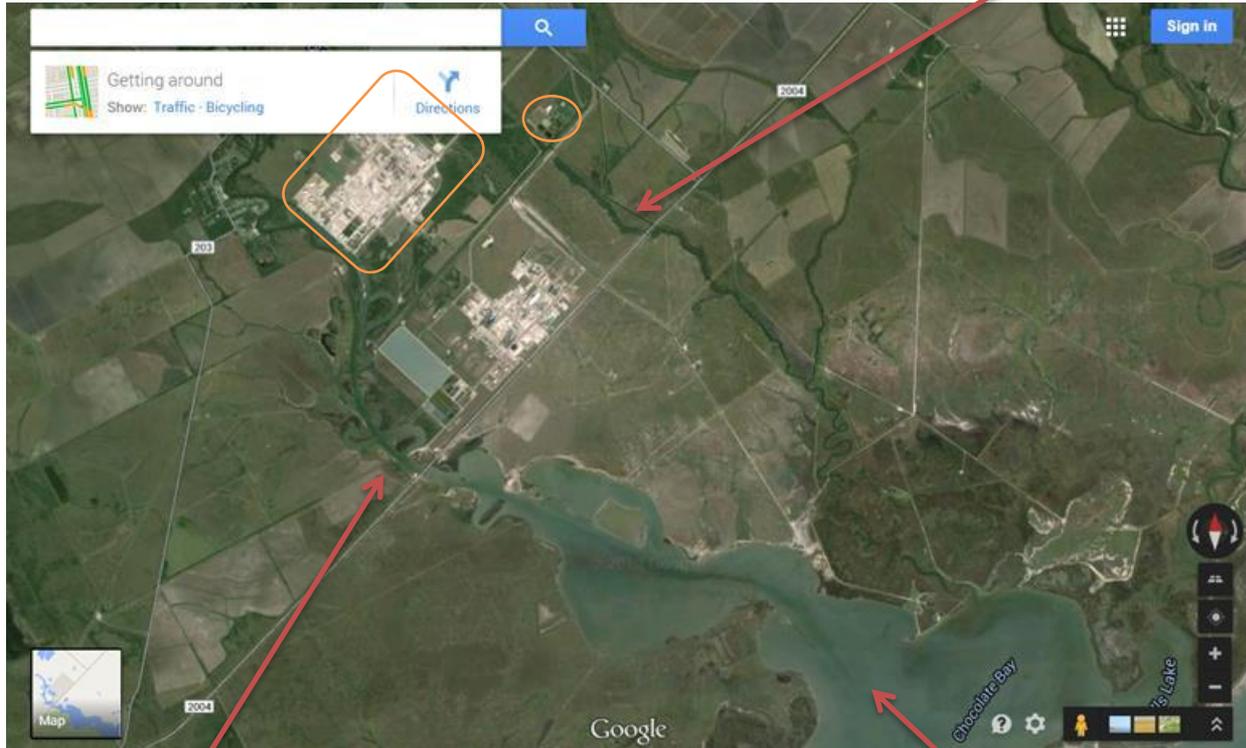
Attachment 12



Map data ©2014 Google

Area Bayous and Chocolate Bay in Relation to Ascend Plant Site

New / Mustang Bayous
(Lower Segments)

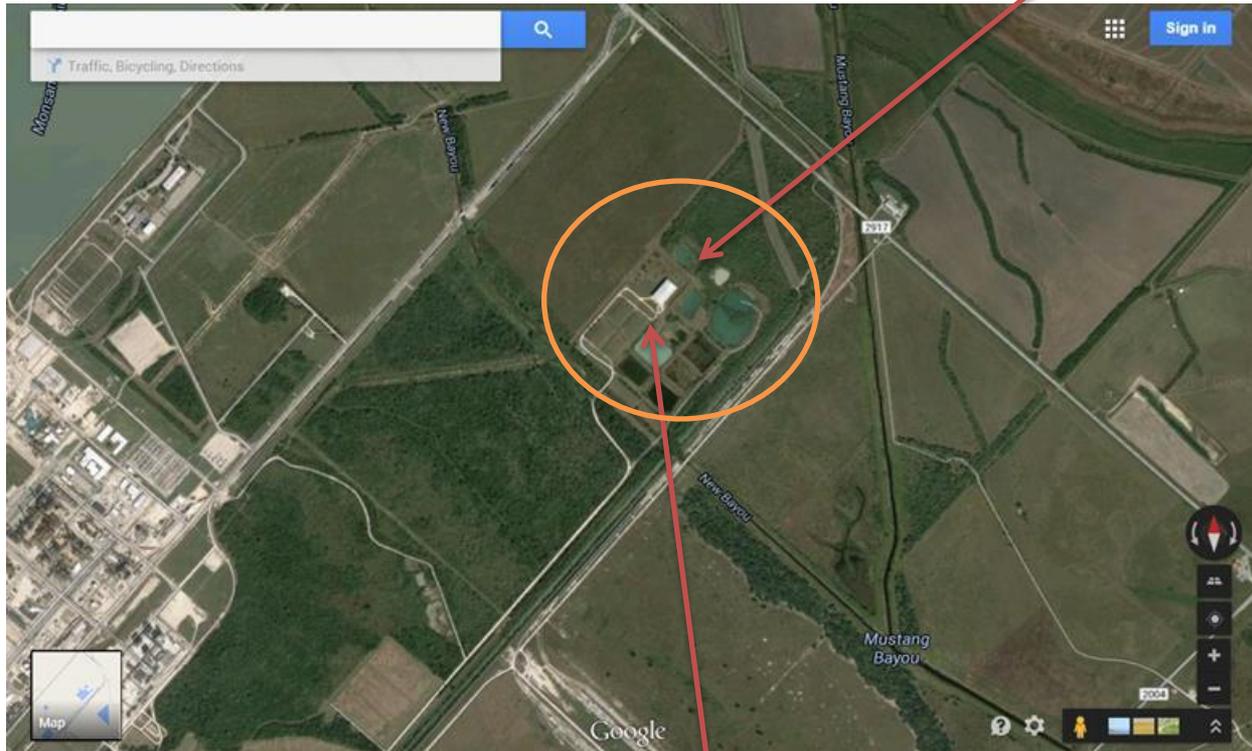


Chocolate Bayou
(Lower Segment)

Chocolate Bay
(Upper Segment)

Location – RCRA Landfill Facility

Proposed Expansion Area



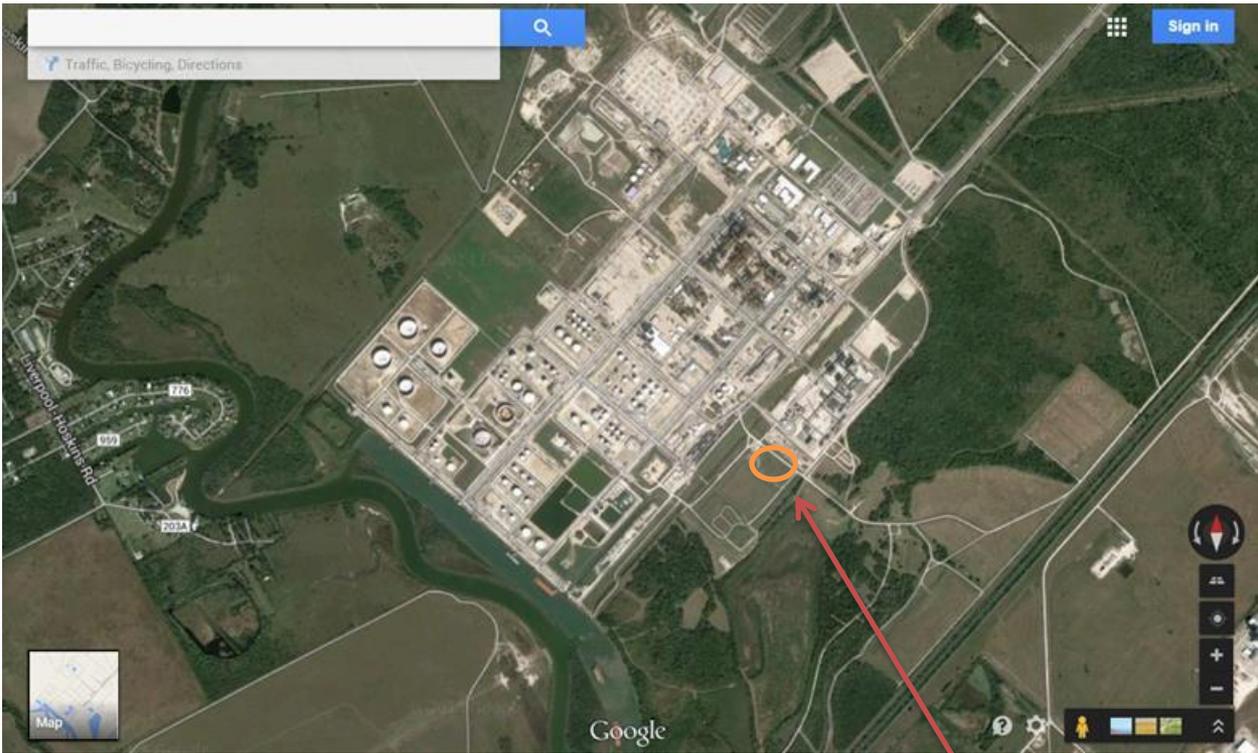
Existing Landfill Facility

Distance – RCRA Landfill to Chocolate Bay via Mustang Bayou



7+ Stream Miles Away

Applicant's RCRA Container Storage Area Brazoria County, TX



Proposed Container Storage Area

Distance – Container Storage Area to Chocolate Bay via Chocolate Bayou

3+ Stream Miles Away

6+ Stream Miles Away

Attachment 17

