

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 8, 2015

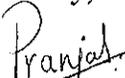
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **JPHD, INC.**
TCEQ DOCKET NO. 2015-0664-MWD

Dear Ms. Bohac:

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

Sincerely,


Pranjali M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-0664-MWD

APPLICATION BY	§	BEFORE THE
JPHD, INC. FOR TLAP	§	TEXAS COMMISSION ON
PERMIT NO. WQ0015201001	§	ENVIRONMENTAL QUALITY

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

TO THE HONORABLE 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 Request for Hearing in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Background of Facility

On November 25, 2013, JPHD, Inc. (Applicant) applied to the TCEQ for a new permit that would authorize the disposal of treated domestic wastewater via subsurface drip irrigation on six areas with a minimum total surface area of 104.79 acres, divided into 36 zones. The permit would authorize the disposal of treated domestic wastewater effluent at an average flow not to exceed 150,000 gallons per day in the Interim I phase, 300,000 gallons per day in the Interim II phase and 450,000 gallons per day in the Final Phase. The application rate shall not exceed 0.1 gallon per square foot per day.

The effluent limitations in the draft permit are: 10 mg/l five day biochemical oxygen demand (BOD5) and 15 mg/l total suspended solids (TSS) based on the daily average flow; and 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* based on a single

grab sample. Additionally, the pH would be between 6.0 and 9.0 standard units, and the effluent shall contain a chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes.

The wastewater treatment facility and the disposal site would be located 3.2 miles west of the intersection of State Highway 71 and Hamilton Pool Road, on Hamilton Pool Road, in Travis County, Texas 78738. The wastewater treatment facility and disposal site would be located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin.

B. Procedural Background

TCEQ received Applicant's application on November 25, 2013. On February 3, 2014, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on February 25, 2014 in the *Austin American-Statesman*. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published in English on November 6, 2014 in the *Westlake Picayune* and the *Lake Travis View*. The Notice of a Public Meeting was published in the *Lake Travis View* on November 6, 2014. A public meeting regarding this permit application was held on December 15, 2014 at Star Hill Ranch. The public comment period ended on December 15, 2014. The Chief Clerk mailed the Response to Comments and ED's Decision on March 30, 2015. The deadline to request a contested case hearing was April 29, 2015.

The Commission received timely requests for a contested case hearing from Hamilton Pool Road Matters, Inc. (by letters dated May 30, 2014; August 29, 2014; and April 29, 2015), Mr. Robert A. Ayres as representative of the Ayres Family and Shield Ranch (by letters dated August 27, 2014 and December 15, 2014) and Mr. Daniel H. Jones (by email dated March 25,

2014). For the reasons stated herein, OPIC recommends that the Commission grant the hearing requests from Hamilton Pool Road Matters, Inc., Mr. Ayres and Mr. Jones.

II. APPLICABLE LAW

This application was declared administratively complete on July 1, 2013. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEXAS WATER CODE (TWC) § 5.556).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

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." 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. Id. Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.203(b). Relevant factors considered in determining whether a person is affected 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 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).

Further, a group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses 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.

30 TAC § 55.209(e).

III. DISCUSSION

A. Determination of affected person status

Hamilton Pool Road Matters, Inc. (HPR Matters)

To gain standing as a group, HPR Matters must present at least one member who would individually qualify as an affected person. 30 TAC § 55.205(a)(1). HPR Matters named members (Judy Hendricks, Mehrad Morabbi, Jessica Tennant, Dick and Kathie Hanson, and Robert Ayres (Shield Ranch) as individuals who would have standing to request a hearing in their own right. According to HPR Matters, Ms. Judy Hendricks' property is adjacent to Little Barton Creek approximately 610 feet downstream of the JPHD property and within approximately 1200 feet of the proposed wastewater treatment plant. Her property is downstream of proposed Drip Fields 1, 2, 3, 4 and 5. HPR Matters states that Ms. Hendricks resides on this property and has a guest house on the property that is approximately 150 feet from Little Barton Creek. HPR Matters states that Ms. Hendricks enjoys the aesthetic beauty of Little Baron Creek, enjoys wildlife associated with the Creek, and takes walk along the Creek. Further, HPR Matters states she also engages in recreational activities outside of her home on this property. According to HPR Matters, contaminants in Little Barton Creek from the upstream drip fields could adversely impact her use and enjoyment of Little Barton Creek. HPR Matters also claims that odors from the wastewater treatment plant could adversely impact her ability to engage in outdoor recreational activities on her property.

As indicated by the map prepared by the ED, Ms. Hendricks' property is within one mile of the proposed facility, and it appears that her property is also within one mile of some of the

proposed subsurface drip irrigation fields. Ms. Hendricks' interest is protecting water quality and preventing nuisance odors from the wastewater treatment plant. Water quality is protected by the Texas Water Code. Because of her proximity to the proposed plant and disposal areas, Ms. Hendricks' water quality interest is an interest which is not common to members of the general public. The TCEQ regulates subsurface drip irrigation under 30 TAC Chapter 222. One of the purposes of Chapter 222 is to prevent underground injection that may pollute fresh water. 30 TAC § 222.1. Therefore, a reasonable relationship exists between Ms. Hendricks' water quality interest and the TCEQ's regulation of subsurface drip irrigation. OPIC finds that Judy Hendricks would individually qualify as an affected person. Likewise, OPIC concludes that because of their location, relative to the proposed facility and the interests identified, the other members named by HPR are also affected persons. However, because the standing of Ms. Hendricks alone is sufficient to satisfy 30 TAC §55.205(a)(1), OPIC provides no additional analysis of the remaining members for the sake of efficiency.

The second requirement for group standing is the interests the group seeks to protect must be germane to the organization's purpose. 30 TAC § 55.205(a)(2). HPR Matters states that the organization is a non-profit corporation committed to protecting the natural environment along and near Hamilton Pool Road. HPR Matters particularly seeks to protect surface water and groundwater sustainability, as well as minimize the adverse impact of the contamination or use of such waters on residents in southwest Travis County. OPIC finds that the interests raised by HPR Matters are germane to the group's purpose, and HPR Matters has satisfied the second requirement for group standing.

Finally, as required by 30 TAC § 55.205(a)(3), neither the claim asserted by HPR Matters nor the relief requested by HPR Matters requires the participation of individual HPR Matters

members. HPR Matters has satisfied the § 55.205 requirements for group standing, and therefore, OPIC recommends that the Commission find that HPR Matters is an affected person in this matter.

Robert A. Ayres (as representative of the Ayres Family and Shield Ranch)

Shield Ranch (Ranch) is located approximately 4,500 feet from the proposed wastewater treatment plant facility, downstream of the location of the proposed wastewater treatment plant and its point of disposal proximate to Rocky Creek. The Ranch states that it has approximately 1 mile of a tributary to, and the main stem of Rocky Creek running through the property.

Due to the Ranch's proximity to the proposed facilities and discharge, the Ranch is concerned about nuisance odors from the treatment plant adversely affecting the use and enjoyment of the property, as well as the disruption of operations on the Ranch, including operation of the El Ranchito camp. The camp is operated as a summer camp for young people. In addition to nuisance odors, the Ranch is concerned about the potential negative and adverse impacts to water quality in Rocky Creek and the waters that would traverse the Ranch. The Ranch and campers at El Ranchito enjoy recreational uses of Rocky Creek. The Ranch is concerned that their interest will be impaired or harmed by a decrease in water quality, including the potential for exposure to bacteria and other contaminant constituents, resulting from the upstream discharge at the proposed wastewater treatment plant.

According to the hearing request, Rocky Creek is a source of water, as well as food source, for livestock, both domestic and wildlife, that inhabit the Ranch. Accordingly, impairment of water quality and the potential negative impacts to both domestic and wildlife livestock at the Ranch are a concern for the Ranch. As mentioned in the hearing request, the Ranch is home to El Ranchito Camp, a nonprofit camp sponsored by the owners of the Ranch.

Ranch is concerned about the exposure of El Ranchito's young campers to water borne pollutants, bacteria and other potential health risks from the proposed discharge by the Applicant's facility. The Ranch is also concerned about the potential adverse impacts of the wastewater disposed of by irrigation to the underlying groundwater formations which are shared by the Ranch and can be produced through wells used for livestock and other beneficial purposes on the Ranch. The Ranch also questions whether the facility complies with the TCEQ's regionalization policy.

The Ranch's interests are protection of water quality and prevention of ground water contamination and nuisance odors. As discussed above, water quality is protected by the Texas Water Code. Because of the Ranch's proximity to the proposed plant and disposal areas, the Ranch's water quality interest becomes an interest which is not common to members of the general public. Also, a reasonable relationship exists between the Ranch's water quality interest and the TCEQ's regulation of subsurface drip irrigation. OPIC finds that the Ranch is an affected person.

Daniel H Jones

According to the hearing request, Mr. Jones is a resident of the Destiny Hills subdivision. He is concerned that the effluent from the proposed waste water treatment plant will negatively impact the Little Barton Creek. He is also concerned that the subsurface irrigation of an estimated 13 million gallons of effluent may result in potential ground water contamination and affect his water well. He is also concerned that the size of the proposed waste water facility may result in odor or pollution problems that may negatively impact his quality of life.

As indicated by the map prepared by the ED, Mr. Jones' property is within one mile of the proposed facility, and it appears that his property is also within one mile of some of the

proposed subsurface drip irrigation fields. Mr. Jones' interests are protection of water quality, prevention of ground water contamination, odor and other discharge pollution problems. Water quality is protected by the Texas Water Code and the Chapter 222 rules governing this application. Because of his proximity to the proposed plant and disposal areas, Mr. Jones' water quality interest is an interest which is not common to members of the general public. Also, a reasonable relationship exists between Mr. Jones' water quality interest and the TCEQ's regulation of subsurface drip irrigation. OPIC finds that Daniel Jones is an affected person.

B. Issues raised in the hearing request

1. Whether the physical characteristics of the site render it unsuitable for subsurface drip irrigation of wastewater effluent.
2. Whether the designs of the wastewater treatment system and dispersal system are adequately protective and include appropriate engineering reports and soil testing reports.
3. Whether the proposed operations, buffer zones and maintenance measures are adequately protective.
4. Whether the proposed activities are adequately protective of impacted fauna and flora.
5. Whether under the State's regionalization policy, there is a need for the proposed facility or whether any other feasible alternatives exist.
6. Whether the draft permit contains appropriately protective effluent limitations for nutrients and 5-day biochemical oxygen demand.
7. Whether the disposal and seepage of effluent from the proposed wastewater treatment plant will negatively impact the water quality of the Little Barton Creek, Rocky Creek and the waters on the property of Shield Ranch.

8. Whether the effluent discharge may result into any potential adverse impacts to the underlying groundwater formations including those shared by Shield Ranch and used by the Ranch for livestock and other beneficial purposes on the Ranch.
9. Whether the size of the proposed wastewater facility and the large amount of effluent it will generate may impair surface water and groundwater quality.
10. Whether the operations and potential pollution and odors from the wastewater treatment plant could adversely impact the use and enjoyment of requesters' property, including the operation of El Ranchito campsite on the Shield Ranch and the recreational activities of the young campers at El Ranchito.
11. Whether the facility operations and disposal activities may harm livestock, both domestic and wildlife, at Shield Ranch.
12. Whether the operations of the facility will be adequately protective of human health, including the health of the young campers at the El Ranchito Camp.
13. Whether the application is submitted with proper certification and whether the third party review of the application is required.
14. Whether the Applicant failed to provide its compliance history in the application.
15. Whether the NORI and NAPD were properly mailed to the individuals identified as adjacent landowners on the maps provided by the applicant.
16. Whether the term limit of the application is excessive in duration.
17. Whether the applicant has provided a sufficient recharge feature plan.
18. Whether the applicant has provided an adequate soil evaluation including soil testing and measurements.

19. Whether mowing and manicuring of the proposed irrigation areas will adversely affect the proposed vegetation's already limited ability to uptake nitrogen.
20. Whether there is any potential risk or pollution problem about storage of hazardous chemicals at the proposed facility.
21. Whether the proposed wastewater treatment plant will adversely affect the Requesters' property values.
22. Whether the proposed wastewater treatment plant will create noise and other related problems.

C. Which issues raised in the hearing request are disputed

All of the issues raised in the hearing request are disputed.

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

The disputed issues involve questions of fact.

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

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

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

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

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

In order to refer an issue to the State Office of Administrative Hearings ("SOAH"), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. See 30 TAC §§ 55.201(d)(4), 55.209(e)(6) and 55.211(c)(2)(A).

Relevant and material issues are those governed by the substantive law under which this

permit is to be issued. See *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs.”)

The Commission may not issue a permit for a new domestic wastewater treatment facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater. 30 TAC § 309.12. Pursuant to the siting requirements and effluent limitations under 30 TAC Chapter 222, Subchapter C, the site selection of a proposed subsurface area drip dispersal system is subject to the requirements in 30 TAC § 309.12. Therefore, issue No. 1 related to the physical characteristics of the site and its suitability for the subsurface drip irrigation of wastewater effluent is relevant and material under 30 TAC §§ 309.12 and 222.71.

The design criteria for domestic wastewater systems are regulated under 30 TAC Chapter 217. The design criteria for subsurface area drip dispersal systems are governed under 30 TAC Chapter 222, Subchapter D. The requirements for providing a sufficient engineering report are regulated under 30 TAC § 222.113. Also, the requirements for soil evaluation are provided under 30 TAC § 222.73. Therefore, issue No. 2 concerning the designs of the wastewater treatment system and dispersal system and inclusion of appropriate engineering reports and soil testing reports are relevant and material.

The Commission regulates operations and maintenance of the subsurface area drip dispersal systems under 30 TAC Chapter 222, Subchapter E. The TCEQ rules require domestic

wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors under 30 TAC § 309.13. Additionally, there are buffer zone requirements under 30 TAC § 222.81 to protect surface and ground water resources. Therefore, issue No. 3 related to the proposed operations, buffer zones and maintenance measures is relevant and material.

As discussed above, the Commission regulates siting requirements and effluent limitation of subsurface area drip dispersal systems under 30 TAC Chapter 222, Subchapter C. The hydraulic application rate requirements are regulated under 30 TAC § 222.83(a). Therefore, issue No. 4 concerning whether the proposed activities are adequately protective of impacted fauna and flora is relevant and material.

TCEQ adheres to a regionalization policy, as expressed in TWC §§ 26.003, 26.0282, 26.081 and 30 TAC § 307.1. Pursuant to the TWC § 26.0282, in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need and regional treatment options available. Therefore, the issue No. 5 related to the regionalization and need for the proposed facility is relevant and material.

The Commission regulates effluent limitations for subsurface area drip dispersal systems under 30 TAC § 222.87. Also, the Commission rules under 30 TAC § 222.85 require that the applicant must demonstrate that both surface and subsurface fresh water will not be polluted by the application of wastewater by the subsurface area drip dispersal system, which includes maintaining a pH level of the effluent within the limits of 6.0 and 9.0 standard units immediately prior to dispersal, disinfection of the effluent prior to dispersal, disinfection of the effluent prior to it entering the subsurface area drip dispersal system and a daily five-day biochemical oxygen demand concentration. The effluent limitations for domestic wastewater discharge permits are

regulated under 30 TAC Chapter 309 Subchapter A. Therefore, issue No. 6 concerning effluent limitations for nutrients and five-day biochemical oxygen demand are relevant and material.

The Commission is responsible for the protection of water quality under the TWC Chapter 26 and 30 TAC Chapters 305, 307, and 309, as well as under specific rules related to wastewater systems found at 30 TAC Chapter 217. The Texas Surface Water Quality Standards in 30 TAC Chapter 307 require the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment.” 30 TAC § 307.1. The rules in 30 TAC § 309.13 (a) through (d) regarding unsuitable site characteristics for domestic wastewater effluent and plant siting were developed to protect surface and ground water. As discussed above, the Commission rules about the effluent limits in the proposed permit under 30 TAC § 222.85 require that the applicant must demonstrate that both surface and subsurface fresh water will not be polluted by the application of wastewater by the subsurface area drip dispersal system. As discussed above, the Commission rules under 30 TAC § 222.81(a) require applicant to maintain a minimum buffer zone of 100 feet from all surface water features to prevent the movement of the effluent out of the root zone, and for maintenance of buffers between surface water and the subsurface irrigation areas. Therefore, issue No. 7 related to the water quality, particularly surface water quality, and issue No. 8 concerning the groundwater contamination are relevant and material. Also, issue No. 9 related to the potential effect on the water quality because of the size of the proposed wastewater facility and the large amount of effluent it might generate is relevant and material.

As mentioned above, the Commission rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors pursuant to 30 TAC § 309.13(e). Therefore, issue No. 10 concerning nuisance odors is relevant and material.

TCEQ rules require the effluent quality of a subsurface area drip dispersal system to be protective of both surface and subsurface fresh water. 30 TAC § 222.85(a). TCEQ's siting requirements under 30 TAC § 309.13(a)-(d) were developed to protect surface and groundwater. Also, the Texas Surface Water Quality Standards in 30 TAC Chapter 307 require the proposed permit "maintain the quality of water in the state consistent with public health and enjoyment." 30 TAC § 307.1. For these reasons, OPIC finds that issue No. 11 concerning any potential harmful effects on requesters' interest in livestock is relevant and material. Also, issue No. 12 concerning the operations of the facility will be adequately protective of human health, including the health of the young campers at the El Ranchito Camp is relevant and material.

Issue No. 13 appears to pose the question of whether TCEQ approval and certification was required prior to the filing of the application. Applicable procedures require the applicant to certify and submit the application, followed by administrative and technical review by TCEQ. The rules do not require TCEQ review prior to the filing of the application. Therefore, issue No. 13 relating to proper certification and third party review of this application is not relevant and material.

Pursuant to 30 TAC Chapter 60, the Commission is required to rate the compliance history of every owner and operator of a facility that is regulated under any of the state's applicable environmental laws and create a compliance history report. The Applicant's compliance history report was prepared and reviewed for this permit application. The Applicant itself is not required to include compliance history information in its application. Therefore, issue No. 14 concerning the failure to submit the compliance history in the application is not relevant and material.

The Commission rules about publishing and mailing notice of the domestic wastewater permits are covered under 30 TAC § 39.551 and 30 TAC Chapter 39, Subchapter H. As per the Commission Rules, the chief clerk must mail both the NORI and NAPD to the individuals identified as adjacent landowners on maps that are provided by the Applicant. Therefore, issue No. 15 concerning whether the NORI and NAPD were properly mailed to adjacent landowners is relevant and material.

From the records it appears that the permit term for the proposed permit is five years and the draft permit will expire on September 1, 2019. In accordance with the TCEQ rules, a permit term shall not exceed ten years. 30 TAC § 222.39. Therefore, issue No. 16 that the term limit of the application is excessive in duration is not relevant and material.

The Commission rules regarding the recharge feature plan for subsurface area drip dispersal systems are covered under 30 TAC § 222.79. Therefore, issue No. 17 concerning providing a sufficient recharge feature plan is relevant and material under 30 TAC § 222.79.

As discussed above, the requirements for soil evaluation are regulated under 30 TAC § 222.73. Therefore, issue No. 18 regarding providing an adequate soil evaluation including soil testing and measurements is relevant and material.

The Applicant is required to use practices such as mowing to promote and maintain the health and propagation of vegetation used on the irrigation field. Requesters question whether these practices will cause an adverse effect on the proposed vegetation's limited ability to uptake nitrogen. OPIC finds that this question is already included in other issues such as issue No. 3. Therefore OPIC does not recommend this issue to be referred.

If the proposed permit is approved, it will require the Applicant to obtain final engineering design approval from the TCEQ before constructing the facility. The Applicant's

engineer must certify that the final design meets the TCEQ's design requirements, including requirements for safety, chemical handling and storage, and bleach storage. As discussed above, the design criteria for domestic wastewater systems are regulated under 30 TAC Chapter 217 and the design criteria for subsurface area drip dispersal systems are governed under 30 TAC Chapter 222, Subchapter D. Therefore, issue No. 20 concerning potential risk or pollution problem about storage of hazardous chemicals at the proposed facility is relevant and material.

The Commission does not have jurisdiction to review the effect, if any, the location of the wastewater treatment facility might have on the property values and tax assessments of surrounding landowners when reviewing a permit for a domestic wastewater treatment plant. Therefore, issue No. 21 concerning the adverse effect on the Requesters' property values is not relevant and material.

The Commission also does not have jurisdiction to address issues concerning noise and other related problems as a part of the wastewater permitting process. The Commission's jurisdiction over the permitting process is limited to controlling the discharge of pollutants into, and protecting the quality of, water in the state. Therefore, issue No. 22 related to noise or other related problems is not relevant and material.

H. Issues for Referral

OPIC recommends that the Commission refer the following disputed issues of fact to SOAH for a contested case hearing:

1. Whether the physical characteristics of the site render it unsuitable for subsurface drip irrigation of wastewater effluent.

2. Whether the designs of the wastewater treatment system and dispersal system are adequately protective and include appropriate engineering reports and soil testing reports.
3. Whether the proposed operations, buffer zones and maintenance measures are adequately protective.
4. Whether the proposed activities are adequately protective of impacted fauna and flora.
5. Whether under the State's regionalization policy, there is a need for the proposed facility or whether any other feasible alternatives exist.
6. Whether the draft permit contains appropriately protective effluent limitations for nutrients and 5-day biochemical oxygen demand.
7. Whether the disposal and seepage of effluent from the proposed wastewater treatment plant will negatively impact the water quality of the Little Barton Creek, Rocky Creek and the waters on the property of Shield Ranch.
8. Whether the effluent discharge may result into any potential adverse impacts to the underlying groundwater formations including those shared by Shield Ranch and used by the Ranch for livestock and other beneficial purposes on the Ranch.
9. Whether the size of the proposed wastewater facility and the large amount of effluent it will generate may impair surface water and groundwater quality.
10. Whether the operations and potential pollution and odors from the wastewater treatment plant could adversely impact the use and enjoyment of requesters' property, including the operation of El Ranchito campsite on the Shield Ranch and the recreational activities of the young campers at El Ranchito.
11. Whether the facility operations and disposal activities may harm livestock, both domestic and wildlife, at Shield Ranch.

12. Whether the operations of the facility will be adequately protective of human health, including the health of the young campers at the El Ranchito Camp.
13. Whether the NORI and NAPD were properly mailed to the individuals identified as adjacent landowners on the maps provided by the applicant.
14. Whether the applicant has provided a sufficient recharge feature plan.
15. Whether the applicant has provided an adequate soil evaluation including soil testing and measurements.
16. Whether there is any potential risk or pollution problem about storage of hazardous chemicals at the proposed facility.

IV. MAXIMUM EXPECTED DURATION OF HEARING

Commission Rule 30 TAC § 55.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

V. CONCLUSION

For the reasons stated above, OPIC recommends granting the hearing requests from

Hamilton Pool Road Matters Inc., Mr. Ayres and Mr. Jones, on the issues listed in Section III. H above. OPIC further recommends a hearing duration of nine months.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: Pranjal
Pranjal M. Mehta
Assistant Public Interest Counsel
State Bar No. 24080488
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-0574 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Pranjal

Pranjal M. Mehta

MAILING LIST
JPHD, INC.
TCEQ DOCKET NO. 2015-0664-MWD

FOR THE APPLICANT:

John Hatchett, President
JPHD, Inc.
17024 Hamilton Pool Road
Austin, Texas 78738-7203
Tel: 347/829-5646

Daniel Ryan, P.E.
LJA Engineering, Inc.
5316 West Highway 290, Suite 150
Austin, Texas 78735-8925
Tel: 512/439-4700 Fax: 512/439-4716

John Clark, P.E.
LJA Engineering, Inc.
5316 West Highway 290, Suite 150
Austin, Texas 78735-8925
Tel: 512/439-4700 Fax: 512/439-4716

FOR THE EXECUTIVE DIRECTOR

Ashley McDonald, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

Phillip Urbany, Technical Staff
TCEQ Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4542 Fax: 512/239-4430

Brian Christian, Director
TCEQ Environmental Assistance
Division, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678

FOR ALTERNATIVE DISPUTE
RESOLUTION

Kyle Lucas
TCEQ 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 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

REQUESTERS:

Eric Allmon
Frederick Perales Allmon & Rockwell PC
707 Rio Grande St., Ste. 200
Austin, Texas 78701-2733

Robert A. Ayres
Shield Ranch
3101 Bee Caves Rd., Ste. 260
Austin, Texas 78746-5574

Daniel H. Jones
7107 Destiny Hills Dr.
Austin, Texas 78738-7419

Edmond R. Mccarthy, Jr.
Jackson Sjoberg Mccarthy & Townsend
711 W. 7th St.
Austin, Texas 78701-2711

