

TCEQ DOCKET NO. 2015-0664-MWD

APPLICATION BY JPHD, Inc.	§	BEFORE THE TEXAS
	§	
FOR LAND APPLICATION PERMIT	§	COMMISSION ON
	§	
No. WQ0015201001	§	ENVIRONMENTAL QUALITY

SHIELD RANCH AND THE AYRES FAMILY’S COMBINED RESPONSE TO THE APPLICANT’S, THE EXECUTIVE DIRECTOR’S & THE OFFICE OF PUBLIC INTEREST COUNCIL’S RESPONSES TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, SHIELD RANCH AND THE AYRES FAMILY, and files this combined response to the respective responses filed by the Applicant, the Executive Director (the “ED”), and the Office of Public Interest Counsel (“OPIC”) to their hearing requests:

I.
Applicant’s Response

The Shield Ranch and Ayres Family (“Shield Ranch”) timely filed comments to the applicant and requested a hearing based upon their clearly articulated claims and concerns. Those claims and concerns raised fact issues which are germane to the application and the criteria required to be addressed in the permitting process pursuant to the applicable statutory and regulatory requirements for processing land application disposal permits for treated effluent. The crux of Applicant’s lengthy arguments appears to be that there was a failure by the requesting parties to raise “fact issues” because the ED had responded to their respective comments and issues.

Contrary to the Applicant’s position, the fact that the ED filed a response does not automatically negate the validity of the comment or issue raised by the requesting party. To the contrary, to the extent that the ED’s response disagrees with the requester’s comment or issue on

its face creates the existence of a question of fact, because the ED is not the arbiter of fact. That is a role reposed in the Commission by the Legislature. To the extent that the question of fact has been created by the ED's joinder through a response, the question, then becomes whether the question of fact raised is properly cognizable in the context of the subject matter jurisdiction for the hearing be requested.

Again, contrary to the Applicant's position, the fact that the comment or issue raised includes questions of fact related to groundwater pollution and/or surface water quality cannot automatically be dismissed by the fact that the applicant has applied for a zero discharge land application permit ("TLAP"). For example, a legitimate concern exists and question of fact is raised by the application in this case because of the Applicant's choice of application is drip irrigation into a thin soil layer that likely lacks the capacity for sufficient uptake to insure that the effluent is confined to the designated drip fields. If true, it gives rise to the water quality concerns that Shield Ranch raised with respect to both surface water and groundwater are legitimate and cognizable in this proceeding.

Similarly, Shield Ranch raised legitimate concerns and facts related to the question of regionalization of the proposed facilities, as well as nuisance issues related to odor. As noted in its previous filings, Shield Ranch is the home to a children's summer camp with significant outdoor activities, including water related activities involving the use and enjoyment of Rocky Creek. The exposure of the children during camp activities to potential nuisance odors should be considered.

II. **ED's & OPIC's Response**

Shield Ranch generally concurs with and supports the responses filed by the ED and OPIC and the recommendations to grant Shield Ranch party status, and to refer the multiple

issues identified in their respective responses to SOAH for determination in a contested case proceeding.

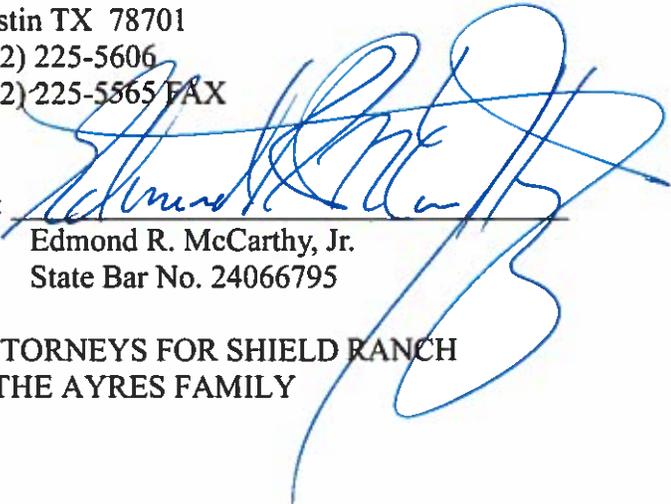
III.
Conclusion & Prayer

Wherefore, premises considered, Shield Ranch prays that Commission grant Shield Ranch party status, and refer the matter of this application to SOAH for a contested case hearing.

Respectfully submitted,

JACKSON, SJOBERG, MCCARTHY & TOWNSEND, L.L.P.

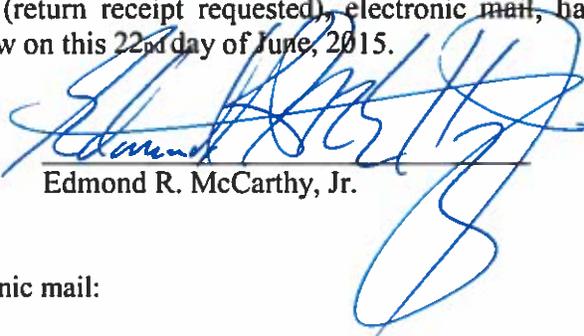
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Shield Ranch's Reply to the Applicant's, Executive Director's and the office of Public Interest Council's Responses to Hearing Requests was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery, and/or facsimile at the address listed below on this 22nd day of June, 2015.



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