

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*

January 25, 2016

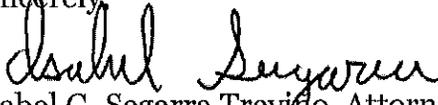
Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **8 MILE PARK, L.P.**  
**TCEQ DOCKET NO. 2015-1792-MWD**

Dear Ms. Bohac:

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

Sincerely,

  
Isabel G. Segarra Treviño, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2015-1792-MWD**

**IN THE MATTER OF THE  
APPLICATION BY 8 MILE PARK,  
L.P. FOR A MAJOR AMENDMENT  
TO TCEQ PERMIT  
NO. WQ0013796001**

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**BEFORE THE  
TEXAS COMMISSION ON  
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 (Commission or TCEQ) files this Response to Request for Hearing in the above-referenced matter.

**I. INTRODUCTION**

**A. Background of Facility**

8 Mile Park, L.P. (8 Mile or Applicant) has applied to the TCEQ for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013796001 to authorize a reduction in the frequency of monitoring for *E. coli* bacteria from five times per week to once per quarter. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,200 gallons per day. The Applicant's wastewater treatment facility (Facility) is located in the Autumn Shadows Subdivision on the south side of State Highway 35, approximately 570 feet east of the intersection of State Highway 35 and Farm-to-Market Road 1459, in Brazoria County, Texas 77480.

The effluent limitations in the draft permit, based on a 30-day average, are: 20 mg/l five-day biochemical oxygen demand (BOD5), 20 mg/l total suspended solids (TSS), 126 colony forming units (CFU) or most probable number (MPN) of *E.coli* per 100 ml and 2.0 mg/l

dissolved minimum oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The application requests a reduction of the monitoring frequency requirements for *E.coli* from five per week to once per quarter based on the appropriate frequency for a facility this size.

The treated effluent is discharged to a drainage ditch; then to an unnamed tributary; then to a pond; then to an unnamed tributary; then to the San Bernard River Tidal in Segment No. 1301 of the Brazos-Colorado Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the drainage ditch, unnamed tributaries, and limited aquatic life use for the pond. The designated uses for Segment No. 1301 are high aquatic life use and primary contact recreation. Segment No. 1301 of the Brazos-Colorado Coastal Basin is on the State's inventory of impaired and threatened waters pursuant to federal Clean Water Act § 303(d). The effluent limitations in the draft permit will maintain and protect the existing instream uses.

## **B. Procedural Background**

The TCEQ received 8 Mile's application on May 13, 2014 and the TCEQ Executive Director (ED) declared the application administratively complete on July 29, 2014. The TCEQ prepared a Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment (NORI) and 8 Mile published it in English on August 7, 2014 in *The Facts* newspaper in Brazoria County. The ED's staff completed the technical review of 8 Mile's application, prepared a draft permit, and determined that the application garnered sufficient legislative and public interest to warrant a public meeting. The TCEQ prepared a Notice of Public Meeting and Notice of Application and Preliminary Decision for Water Quality TPDES Permit Amendment (NAPD) and 8 Mile published it in English on June 29, 2015 in *The Facts*

newspaper in Brazoria County. Alternate language publication was not required for this permit application. A public meeting was held on August 4, 2015. The public comment period ended on August 4, 2015.

The Chief Clerk mailed the Executive Director's Decision and Response to Public Comment on November 6, 2015 and the deadline to file requests for a contested case hearing was December 17, 2015.

The TCEQ Chief Clerk's office received one timely request for a contested case hearing from Jan and Roy Edwards. As discussed below, OPIC recommends denying the hearing request because Jan and Roy Edwards are not affected persons.

## **II. APPLICABLE LAW**

A person may request the TCEQ hold a contested case hearing on an application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TWC § 5.556). The requirements of House Bill 801 only apply to applications declared administratively complete on or after September 1, 1999. The TCEQ declared 8 Mile's application administratively complete on July 29, 2014; therefore, 8 Mile's application is subject to the procedural requirements of House Bill 801.

The rules of the TCEQ require that a person seeking a hearing must substantially comply with the following: (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who filed the request, (2) identify the requestor's personal justiciable interest affected by the application, including a written statement describing the requestor's location or distance in relation to the proposed facility or activity, and, how or why the requestor believes he or she will be 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 comment period and that are the basis of the hearing request, and (5) provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

Only affected persons are granted contested case hearings. TWC § 5.556(c). 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.* 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).

The Commission shall grant an affected person’s timely filed contested case hearing request if the request: (1) 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, (2) is timely filed with the Chief Clerk, (3) is made pursuant to a right to hearing authorized by law, and (4) complies with contested case hearing requirements. 30 TAC § 55.211(c). 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

Jan and Roy Edwards filed a timely request for a contested case hearing that substantially complies with the procedural requirements of 30 TAC § 55.201(d).

#### A. Determination of Affected Person Status

Jan and Roy Edwards are concerned (1) about the Applicant's compliance history, (2) that the discharge flows into an impaired segment of the San Bernard River, and (3) that the TCEQ should maintain the more stringent testing standards because there may be future development in the area. The hearing request lists Jan and Roy Edwards' address as 162 Fishermans Isle, Brazoria, Texas 77422. Jan and Roy Edwards reside over twenty miles from the Facility. *See* Executive Director's Map, Exhibit 1.

While the Applicant's compliance history raises issues regarding its ability to comply with the terms of its permit, Jan and Roy Edwards fail to state how they will be personally affected by compliance issues at the Facility. Similarly, Jan and Roy Edwards do not state how impaired water in the San Bernard River affects them uniquely. The issue relating to future development in the area is beyond the TCEQ's jurisdiction to review this water quality application. OPIC finds that Jan and Roy Edwards are not affected persons because the issues they raise are common to the general public and their distance relative to the Facility. However,

if the Commission concludes that Jan and Roy Edwards are affected persons, OPIC provides the following further analysis.

**B. Issues Raised in the Hearing Request**

Jan and Roy Edwards' hearing request raises the following issues:

1. Whether the Applicant's compliance history precludes its ability to obtain a major amendment to its permit.
2. Whether the Facility's discharge will negatively impact existing impaired waters of the State.
3. Whether the permit's current more stringent monitoring requirements should be maintained because of possible future development in the area.

**C. Issues Raised in the Comment Period**

The issues raised by Jan and Roy Edwards were raised in the comment period and have not been withdrawn. 30 TAC §§ 55.201(c) & (d)(4), 55.211(c)(2)(A).

**D. Disputed Issues**

There is no agreement between Jan and Roy Edwards and the ED on the issues raised in the hearing request.

**E. Issues of Fact**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). Issue No. 1 is a mixed issue of law and fact and Issue No. 2 is an issue of fact; both issues could be addressed by an evidentiary hearing. Issue No. 3 is an issue of policy that would be inappropriate for referral to a hearing.

**F. Relevant and Material Issues**

The issues listed in § III.B.1–2, relating to compliance history and water quality, are relevant and material. Pursuant to 30 TAC § 319, the Applicant is required to monitor and report

on the discharged effluent. Further, 30 TAC § 307.5 guides the TCEQ to conduct an antidegradation review as part of the application review process. The remaining issue relating to future development is beyond the TCEQ's jurisdiction to review this water quality application.

**G. Issues Recommended for Referral**

If the Commission finds that Jan and Roy Edwards are affected persons, OPIC recommends that the issues listed in § III.B.1--2 be referred to the SOAH for a contested case hearing.

**H. Maximum Expected Duration of Hearing**

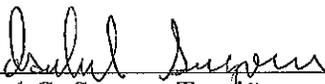
Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be six months from the first date of the preliminary hearing until the proposal for decision is issued.

**IV. CONCLUSION**

OPIC recommends denying Jan and Roy Edwards' hearing request. If the Commission finds that Jan and Roy Edwards are affected persons, OPIC recommends referring the issues listed in § III.B.1--2 to SOAH for a contested case hearing.

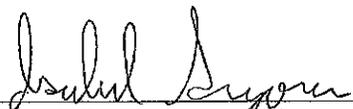
Respectfully submitted,

Vic McWherter  
Public Interest Counsel

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2016 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.

  
Isabel G. Segarra Treviño

# Exhibit 1



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 12/3/2015

8 Mile Park, L.P.  
TPDES Permit No. WQ0013796001  
Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



The facility is located in Brazoria County, Texas (red circle (green) in the legend). The legend also indicates that the facility location is represented by a black dot in the legend. The map shows the location of Brazoria County within the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requester information from the requester. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resources Division at (512) 253-0800.

**MAILING LIST  
8 MILE PARK, L.P.  
TCEQ DOCKET NO. 2015-1792-MWD**

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FOR ALTERNATIVE DISPUTE

RESOLUTION

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REQUESTERS:

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