

Bryan W. Shaw, Ph.D., P.E., *Chairman*
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Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 11, 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: NANTUCKET HOUSING, LLC
TCEQ DOCKET NO. 2016-0787-MWD

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Isabel Segarra Treviño".

Isabel G. Segarra Treviño, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2016-0787-MWD

**IN THE MATTER OF THE
APPLICATION BY NANTUCKET
HOUSING, LLC FOR A NEW
TPDES PERMIT
NO. WQ0015381001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

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 Requests for Hearing and Requests for Reconsideration in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Background of Facility

Nantucket Housing, LLC (Nantucket or Applicant) has applied to the TCEQ for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015381001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0275 million gallons per day (MGD) in the Interim phase and a daily average flow not to exceed 0.055 MGD in the Final phase. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The Meadows at Cypress Creek Wastewater Treatment Facility (Facility) will serve a multifamily housing unit and senior living development.

The Facility will be located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429. The treated effluent will be discharged to an enclosed stormwater pipe; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The designated uses for Segment No. 1009 are high aquatic life use, public water supply, and primary contact recreation. Pursuant to

30 Texas Administrative Code (TAC) § 307.5 and TCEQ policy implementing the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review performed by the Executive Director's (ED) staff has preliminarily determined that existing water quality uses will not be impaired by this permit action. A Tier 2 review conducted by the ED's staff has preliminarily determined that no significant degradation of water quality is expected for Cypress Creek. The preliminary determinations made by the ED can be reexamined and may be modified if new information is received.

The Facility will be an activated sludge process plant operated in the conventional activated sludge mode. Treatment units in the Interim phase will include a lift station, bar screen, two aeration basins, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. Treatment units in the Final phase will include a lift station, bar screen, four aeration basins, a final clarifier, four aerobic sludge digesters, and a chlorine contact chamber. The Facility has not been constructed.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 63 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 6.0 ml/l minimum dissolved 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.

B. Procedural Background

The TCEQ received the application on May 7, 2015, and declared it administratively complete on May 29, 2015. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on June 13, 2015, in Harris County in the *Houston Chronicle* newspaper

and in Spanish on June 14, 2015, in Harris County in the *La Voz* newspaper. The ED's staff completed the technical review of the application on August 31, 2015 and prepared a draft permit. The Notice of Public Meeting and Notice of Application and Preliminary Decision for a Water Quality Permit was published in English on October 10, 2015, in Harris County in the *Houston Chronicle* newspaper and in Spanish on October 11, 2015, in Harris County in the *La Voz* newspaper. Alternate language publication in Spanish was required for this application. A public meeting was held on November 12, 2015 in Cypress, Texas. The public meeting marked the end of the public comment period. The Chief Clerk mailed the ED's Decision and Response to Public Comment on April 14, 2016 and the deadline for filing requests for a contested case hearing was May 16, 2016.

The TCEQ Chief Clerk's office received timely requests for reconsideration from Janie Laird and Cathy Levin and timely hearing requests from:

William F. Ahlersmeyer	Ofilia Garcia	Mike Nelub
Brenda and Kenneth Ahlhorn	Sara Garcia	Brandon W. Newton
Forres C. Ahlhorn, Jr.	Patricia Guarino	John Parker
Craig Alford	Betty and Edward Guthrie	Poppy Parker
Betty J. Allen	Michael D. Hado	Michael Patton
Doug Allen	Kim Hamilton	Lawrence Petru
Elayne Arnold	Mary Hamilton	Amber Pool
Cathy and Chuck Atwood	Jerod Hammerstein	Jeff Pool
Andrew J. Baird	Renate Hardaway	Louise Purvis
Nick Benefiel	Allen L. Hartman	Teri Quance
Charles Bertani	Elaine Hartman	C. Radick
Jim Black	Francis Hassis	David L. Rathkamp
Georgette Blanchard	Forrest B. Heap	Donna Rathkamp
Tate Blanchard	Jena Heap	Brenda Reinhardt
Lynne Boehm	Lauren Heap	Don Royall
Richard W. Boehm	Greg S. Hood	Christine Royer
Stephanie Bounds	Kathryn Hood	Gail Rudloff
Jeff and Melody Braun	Mary Ihfe	Melba Salcio
Susan Brennan	Kevin Jensen	Gina Salway
Diana Browning	Donald Jett	Lois Saucier
David Bruce	Marianne Johnson	Jill Schubert

Linda Camacho	Karolyn Jones	Kirdes Schubert
Julia Canney	Henrietta J. Kaiser	Tommy Shelton
Jamie Caraway	Nipa Kamdar	Carl Shook
Peter Carpenter	Karen J. Kimbro	Terri Shook
Sheri Carpenter	Darlene King	Barbara Smith
Terri Cesnik	James King	Sherry Spears
Carolynn Christian	Pat King	Leah Stephanow
Eva Cisneros	Mark Kite	John M. Sturgill
Regino Cisneros	Brandy Klafka	A. C. Tally
Keven Coates	Doris Kohut	Molly W. Tally
Betty Collette	Catherine Kralowetz	Bill Taylor
Brian Collette	Becky Kriegal	Brett Taylor
Elizabeth R. Collins	Nettie J. Kuykendall	Jeff Taylor
Ray G. Collins	O. W. Kuykendall	Maureen Taylor
Jarrold L. Compton	Jean LaBelle	Clayton Terry
Sandra Compton	Janie and John Laird	Bridget A. Todaro
Ann Cummins	Anna Laughlin	Laura Turcotte
Renee Davis	Adrienne Leigh	Sara Salter Ward
Arlis D. Dean	Deborah A. Leppelt	A. J. Warren, III
Grant and Mary Dempster	Cathy Levin	T. Weeks
Terry Deville	Matthew Lund	Roseanna West
Jill Dimiceli	Nancy McCreary	Heidi Wheeler
Michael Dimiceli	Robert McCreary	LeTricia Wilbanks
Jason Doolen	Lauri Jo McDonald	Scotti Wilkinson
Diana Dougherty	Linda McQuinn	William C. Wilson
Gwen Durrenberger	Jennie Mackel	Ann Wohn
David W. Edinger	John Mackel	Gary Wohn
Dixie Edinger	Robert L. Mahan	Norman J. Woodward
Chris Edwards	Angela Nina Martin	Janet and Robert Worden
Ethan Edwards	Jody Martinez	Joyce Young
Pat and Susan Edwards	Marcus Martinez	Karen Zalar
Samuel A. Edwards	Cathy Mattiza	Kathleen Zofsak
James Ellis	Haley Mattiza	Diana Zylicz
T.C. Fleming	Marjean Maxwell	Larry Zylicz
Lisa C. Foley	Stephen Moore	
Kathy and Larry Gaithe	Philip Neisel	

As discussed below, OPIC recommends granting the hearing requests of: Charles Bertani, Julia Canney, Jamie Caraway, Jarrod L. Compton, Sandra Compton, David W. Edinger, Dixie Edinger, Samuel A. Edwards, Janie and John Laird, Deborah A. Leppelt, Philip Neisel, John Parker, Poppy Parker, Amber Pool, Jeff Pool, C. Radick, David L. Rathkamp, Donna Rathkamp, Don Royall,

Gail Rudloff, Clayton Terry, T. Weeks, Norman J. Woodward, and Kathleen Zofsak. OPIC recommends denying the remaining hearing requests and requests for reconsideration.

II. APPLICABLE LAW

A person may request the TCEQ reconsider the ED's decision on an application or 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 TEX. WATER CODE (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 the Nantucket's application administratively complete on May 29, 2015. Therefore, Nantucket's application is subject to the procedural requirements of House Bill 801.

TCEQ rules 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 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 the request for reconsideration and 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

Doug Allen, Linda Camacho, Brandy Klafka, Linda McQuinn, and Brandon W. Newton did not identify a personal justiciable interest in their hearing requests; therefore, their hearing requests do not comply with the procedural requirements set forth in 30 TAC § 55.201(d). All of the remaining individuals listed in § I.B. above submitted timely hearing requests, that were not withdrawn, that substantially comply with the procedural requirements of 30 TAC § 55.201(d).

A. Determination of Affected Person Status

For a hearing requester to be an affected person, the request must be based on an interest that is protected under the law governing the permit application. 30 TAC § 55.203(a). The TCEQ administers wastewater discharge permit applications pursuant to its authority under TWC § 26.027(a). As further explained below, OPIC finds that the following individuals are affected persons: Charles Bertani, Julia Canney, Jamie Caraway, Jarrod L. Compton, Sandra Compton, David W. Edinger, Dixie Edinger, Samuel A. Edwards, Janie and John Laird, Deborah A. Leppelt, Philip Neisel, John Parker, Poppy Parker, Amber Pool, Jeff Pool, C. Radick, David L. Rathkamp, Donna Rathkamp, Don Royall, Gail Rudloff, Clayton Terry, T. Weeks, Norman J. Woodward, and Kathleen Zofsak.

1. Requesters who submitted a form letter

The following hearing requesters submitted a form letter:

William F. Ahlersmeyer	Michael D. Hado	Poppy Parker
Brenda and Kenneth Ahlhorn	Kim Hamilton	Lawrence Petru
Forres C. Ahlhorn, Jr.	Mary Hamilton	Amber Pool
Betty J. Allen	Jerod Hammerstein	Jeff Pool
Craig Alford	Renate Hardaway	Louise Purvis
Elayne Arnold	Allen L. Hartman	Teri Quance
Cathy and Chuck Atwood	Elaine Hartman	C. Radick
Nick Benefiel	Francis Hassis	David L. Rathkamp
Charles Bertani	Forrest B. Heap	Donna Rathkamp
Georgette Blanchard	Jena Heap	Brenda Reinhardt

Tate Blanchard	Lauren Heap	Don Royall
Lynne Boehm	Greg S. Hood	Christine Royer
Richard W. Boehm	Kathryn Hood	Gail Rudloff
Stephanie Bounds	Mary Ihfe	Melba Salcio
Susan Brennan	Donald Jett	Gina Salway
Diana Browning	Marianne Johnson	Lois Saucier
Julia Canney	Karolyn Jones	Jill Schubert
Jamie Caraway	Henrietta J. Kaiser	Kirdes Schubert
Peter Carpenter	Nipa Kamdar	Tommy Shelton
Sheri Carpenter	Karen J. Kimbro	Carl Shook
Terri Cesnik	Darlene King	Terri Shook
Carolynn Christian	James King	Sherry Spears
Eva Cisneros	Pat King	John M. Sturgill
Regino Cisneros	Mark Kite	A. C. Tally
Betty Collette	Doris Kohut	Molly W. Tally
Brian Collette	Catherine Kralowetz	Bill Taylor
Elizabeth R. Collins	Becky Kriegal	Brett Taylor
Ray G. Collins	Nettie J. Kuykendall	Jeff Taylor
Jarrold L. Compton	O. W. Kuykendall	Maureen Taylor
Sandra Compton	Jean LaBelle	Bridget A. Todaro
Ann Cummins	Janie and John Laird	Laura Turcotte
Renee Davis	Anna Laughlin	Sara Salter Ward
Grant and Mary Dempster	Deborah A. Leppelt	A. J. Warren, III
Jill Dimiceli	Cathy Levin	T. Weeks
Michael Dimiceli	Matthew Lund	Roseanna West
Jason Doolen	Nancy McCreary	Heidi Wheeler
Diana Dougherty	Robert McCreary	LeTricia Wilbanks
Gwen Durrenberger	Lauri Jo McDonald	Scotti Wilkinson
David W. Edinger	Jennie Mackel	Ann Wohn
Dixie Edinger	John Mackel	Gary Wohn
Chris Edwards	Robert L. Mahan	Norman J. Woodward
Pat and Susan Edwards	Jody Martinez	Janet and Robert Worden
Samuel A. Edwards	Marcus Martinez	Joyce Young
T.C. Fleming	Cathy Mattiza	Karen Zalar
Lisa C. Foley	Haley Mattiza	Kathleen Zofsak
Kathy and Larry Gaithe	Marjean Maxwell	Diana Zylicz
Sara Garcia	Stephen Moore	Larry Zylicz
Betty and Edward Guthrie	John Parker	

The form letter details five areas of concern: nuisance odors, pollutant loading in Cypress Creek, regionalization, characterization of the discharge route, and siting requirements. These requesters are concerned that the Facility will cause nuisance odors and this will impair their ability to use

outdoor areas for recreational activities. Further, requesters express concern that increased pollutant loading at Cypress Creek will impair contact recreation at Cypress Creek. The requesters are concerned that construction of this Facility will violate the TCEQ's regionalization policy. Also, requesters question whether the discharge route accounts for all of Cypress Creek's uses. Lastly, the requesters are concerned about groundwater wells, though none state whether they individually utilize groundwater.

Given certain requesters' proximity to the Facility and the discharge route, OPIC finds that a reasonable relationship exists between the interests claimed and the activities to be regulated. OPIC finds that the following landowners, identified by the Applicant as being adjacent to the Facility or adjacent to the discharge route within one mile downstream, are affected persons: Charles Bertani (Mr. Bertani has an additional hearing request analyzed below), Janie Laird, John Laird, John Parker, Poppy Parker, Don Royall, and Kathleen Zofsak. Further, OPIC finds that the following requesters are affected persons given their stated concerns and their proximity to the Facility or the discharge route: Julia Canney, Jamie Caraway, Jarrod L. Compton, Sandra Compton, David W. Edinger, Dixie Edinger, Samuel A. Edwards, Deborah A. Leppelt, Amber Pool, Jeff Pool, C. Radick, David L. Rathkamp, Donna Rathkamp, Gail Rudloff, T. Weeks, and Norman J. Woodward. OPIC cannot find that any of the remaining requesters who used the form letter are affected persons.

2. Individual requesters

Andrew J. Baird, David Bruce, Terry Deville, Ofilia Garcia, Mike Nelub, and Barbara Smith

Andrew J. Baird, David Bruce, Terry Deville, Ofilia Garcia, Mike Nelub, and Barbara Smith submitted substantially similar hearing requests. This group of requesters is concerned about the discharged effluent's potential to exacerbate flooding in the area. The requesters are

also concerned about waterborne pathogens and chemicals used to treat the effluent. Specifically, they are concerned that added chemicals will cause eutrophication in Cypress Creek. Although these requesters appear to be located within two miles of the Facility or discharge route, none of these requesters appear to reside or own property adjacent to the Facility or along the discharge route. While this group of requesters raises issues that relate to water quality, because of their distance from the Facility and the discharge route, their concerns are common to the general public. Therefore, OPIC finds that Andrew J. Baird, David Bruce, Terry Deville, Ofilia Garcia, Mike Nelub, and Barbara Smith are not affected persons.

Charles Bertani, Philip Neisel, and Clayton Terry

Charles Bertani, Philip Neisel, and Clayton Terry submitted a joint hearing request. Mr. Terry and Mr. Bertani are adjacent landowners to the Facility site. Mr. Neisel resides less than .25 mile from the Facility. The requesters are concerned about surface water quality, nuisance conditions and odors, use and enjoyment of their property, aesthetic changes to Cypress Creek, personal health, recreational use of Cypress Creek, whether the application is consistent with the TCEQ's regionalization policy, contamination of their water wells, and the characterization of the discharge route. In an individual hearing request, Mr. Neisel also expressed concerns about Nantucket's ability to fund the construction and operation of the Facility and flooding. Given the requesters' proximity to the Facility, OPIC finds that the issues these requesters raise have the potential to affect these landowners in a manner not common to the general public. Therefore, OPIC finds that Charles Bertani, Philip Neisel, and Clayton Terry are affected persons.

Jim Black

Mr. Black is concerned about the discharged effluent's potential to exacerbate flooding in the area. Mr. Black is also concerned about Cypress Creek's ecosystem. Mr. Black resides less

than .5 mile from the discharge route. The issues raised by Mr. Black are common to the general public; therefore, OPIC finds that Jim Black is not an affected person.

Jeff and Melody Braun

The Brauns are concerned about the discharged effluent's potential to impair their recreational use of Cypress Creek. Specifically, the Brauns are concerned about pollutant loading, pharmaceuticals, and nuisance odors. The Brauns also concerned about regionalization of wastewater treatment facilities in their area. The Brauns reside over two miles from the discharge route. Given the Brauns' distance relative to the Facility and discharge route, OPIC finds that the issues raised by the Brauns are common to the general public; therefore, OPIC finds that Jeff and Melody Braun are not affected persons.

Keven Coates

Mr. Coates is generally concerned about flooding, discharging effluent into Cypress Creek, and public health. Mr. Coates resides over .3 mile from the Facility. The issues raised by Mr. Coates are common to the general public; therefore, OPIC finds that Keven Coates is not an affected person.

Arlis D. Dean

~~Arlis Dean would like for the treated effluent to be tested before it is discharged into~~
Cypress Creek. Arlis Dean resides over .75 mile from the discharge route. The issue raised by Arlis Dean does not relate to a personal justiciable interest; therefore, OPIC finds that Arlis D. Dean is not an affected person.

Ethan Edwards

Mr. Edwards is concerned about the discharged effluent's potential to exacerbate flooding in the area, which could pollute Cypress Creek. Mr. Edwards is also generally concerned about

recreational activities in the area. Mr. Edwards resides over two miles from the Facility and the discharge route. Given the interests stated and his distance relative to the Facility and discharge route, OPIC finds that Ethan Edwards is not an affected person.

James Ellis

Mr. Ellis is concerned about the discharged effluent's potential to exacerbate flooding in the area. Mr. Ellis resides over .5 mile from the discharge route. The issue raised by Mr. Ellis does not relate to a personal justiciable interest; therefore, OPIC finds that James Ellis is not an affected person.

Patricia Guarino

Mrs. Guarino is generally concerned about the environmental conditions in the area. Mrs. Guarino resides less than .3 mile from the discharge route. OPIC finds that the issue raised by Mrs. Guarino is common to the general public; therefore, OPIC finds that Patricia Guarino is not an affected person.

Kevin Jensen

Mr. Jensen is concerned about the discharged effluent's potential to exacerbate flooding in the area. Mr. Jensen is also concerned about waterborne pathogens that may be found in the effluent. Mr. Jensen resides less than 1 mile from the discharge route. While Mr. Jensen raises issues that relate to water quality, OPIC finds that the issues raised by Mr. Jensen are common to the general public. Therefore, OPIC finds that Kevin Jensen is not an affected person.

Adrienne Leigh

Ms. Leigh is concerned about the discharged effluent's potential to exacerbate flooding in the area. Ms. Leigh is also concerned about waterborne pathogens and chemicals used to treat the effluent. Specifically, Ms. Leigh is concerned that added chemicals will cause eutrophication in

Cypress Creek. Further, Ms. Leigh is concerned that the Facility will devalue her business on Huffmeister Road, however, Ms. Leigh does not provide her business' address. Ms. Leigh is generally concerned about overburdening transportation services, schools, and other public services. Available information indicates Ms. Leigh resides over 4 miles from discharge route and the Facility. While Ms. Leigh raises issues that relate to water quality, because of her distance from the Facility and discharge route, her interest are common to the general public. The remainder of Ms. Leigh's concerns do not relate to this water quality permit application. Therefore, OPIC finds that Adrienne Leigh is not an affected person.

Angela Nina Martin

Ms. Martin is concerned about growth in her area and existing flooding issues. Ms. Martin resides over two miles from the Facility and the discharge route. The issues raised by Ms. Martin are common to the general public; therefore, OPIC finds that Angela Nina Martin is not an affected person.

Michael Patton

Mr. Patton is concerned about the discharged effluent's potential to exacerbate flooding in the area. Mr. Patton resides over a mile from the discharge route and approximately two miles from the Facility. The issue raised by Mr. Patton is common to the general public; therefore, OPIC finds that Michael Patton is not an affected person.

Leah Stephanow

Ms. Stephanow is concerned about the discharged effluent's potential to exacerbate flooding in the area. Ms. Stephanow is also concerned about erosion and the community's use of Cypress Creek for recreation. OPIC finds that the issues raised by Ms. Stephanow are either not

addressable by the law governing these proceedings, or otherwise are common to the general public; therefore, OPIC finds that Leah Stephnow is not an affected person.

William C. Wilson

Mr. Wilson is generally concerned about flooding, pollution, Nantucket's source of fresh water, fertilizers, and Nantucket's development plans. Mr. Wilson resides over eight miles from the discharge route and the Facility. OPIC finds that Mr. Wilson failed to relate his general concerns to a personal justiciable interest. Because of this, OPIC finds that William C. Wilson is not an affected person.

B. Issues Raised in the Hearing Requests of Affected Persons

The hearing requesters raise the following issues:

1. Whether the draft permit is protective against nuisance conditions, including odors.
2. Whether the discharged effluent will impair neighboring landowners' use and enjoyment of their property.
3. Whether the draft permit includes water quality standards protective of human health and aquatic life.
4. Whether issuance of this permit is consistent with the TCEQ's regionalization policy.
5. Whether the discharge route has been properly characterized.
6. Whether the draft permit is protective of groundwater wells.
7. Whether the discharged effluent will adversely affect recreational activities at Cypress Creek.
8. Whether the discharged effluent will cause aesthetic changes to Cypress Creek.
9. Whether the Applicant can fund the construction and operation of the Facility.
10. Whether the discharged effluent will exacerbate existing flooding issues in the area.
11. Whether the housing development will overburden transportation services, schools, and other public services.

C. Issues Raised in the Comment Period

Issues must be raised during the comment period and must have not been withdrawn, 30 TAC §§ 55.201(c) & (d)(4), 55.211(c)(2)(A). All the issues raised by the requesters were raised during the comment period and not withdrawn.

D. Disputed Issues

There is no agreement between the requesters and the ED on the issues raised in the hearing requests.

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). Issues No. 1–11 are issues of fact.

F. Relevant and Material Issues

Issues No. 1–3, 6–8 relating to health, water wells, and environmental degradation are relevant and material to the Commission’s decision under the requirements of 30 TAC § 55.211(c)(2). TCEQ rules provide that “[i]t is the policy of this state....to maintain the quality of water in the state consistent with public health...” 30 TAC § 307.1. The rules prescribe specific distances between wastewater treatment facilities and private and public wells. 30 TAC § 309.13(c). Further, TCEQ rules provide that a wastewater treatment facility “abate and control a nuisance of odor prior to construction.” 30 TAC § 309.13(e). Chapter 309 of Title 30 of the Texas Administrative Code provides for numerous additional effluent limitations and standards.

~~Issues No. 4–5 concerning the characterization of the discharge route and consistent application of TCEQ rules are relevant and material to the Commission’s decision on this application because the TCEQ is charged with applying the State’s water quality management program. 30 TAC § 309.1(e).~~

Issue No. 9 is relevant and material to the Commission’s decision on this application because financial planning and bonding are part of the application review process.

Issues No. 10–11 are not relevant and material because they are beyond the Commission’s jurisdiction to review in proceedings on this water quality application.

G. Issue Recommended for Referral

OPIC recommends referring Issues No. 1–9 in § III. B to 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 nine months from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

Any person may file a request for reconsideration of the ED’s decision. 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than thirty days after the Chief Clerk mails the ED’s decision and response to comments. The request must expressly state that the person is requesting reconsideration of the ED’s decision and give reasons why the decision should be reconsidered.

Janie Laird and Cathy Levin would like the ED to reconsider the approval of this permit and deny Nantucket the permit. Janie Laird and Cathy Levin cite flooding in their requests for reconsideration. Both requesters are also concerned about future development in the area and the impact this will have on schools. Ms. Laird is concerned about her fruit trees and her ability to

enjoy their produce. Ms. Levin is concerned about the existence of detention ponds, unethical actions, and runoff stormwater.

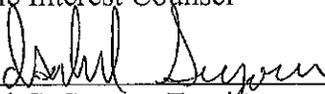
OPIC recommends denying the requests for reconsideration. The TCEQ does not have authority to require an applicant to build a wastewater treatment facility at a specific site; the TCEQ may only evaluate an application based on the site provided by the applicant. The flooding issues raised by the requesters were addressed in the ED's Response to Public Comment, using the best available information, to the fullest extent possible. To the extent that any such requests raise substantive issues affecting human health or the environment that could be addressed under the TCAA, an evidentiary hearing would be required to develop a record on such issues. Therefore, at this time, OPIC cannot recommend granting these requests for reconsideration.

V. CONCLUSION

For the reasons set forth above, OPIC recommends granting the hearing requests of: Charles Bertani, Julia Canney, Jamie Caraway, Jarrod L. Compton, Sandra Compton, David W. Edinger, Dixie Edinger, Samuel A. Edwards, Janie and John Laird, Deborah A. Leppelt, Philip Neisel, John Parker, Poppy Parker, Amber Pool, Jeff Pool, C. Radick, David L. Rathkamp, Donna Rathkamp, Don Royall, Gail Rudloff, Clayton Terry, T. Weeks, Norman J. Woodward, and Kathleen Zofsak. ~~OPIC recommends denying the remaining hearing requests and requests for reconsideration.~~

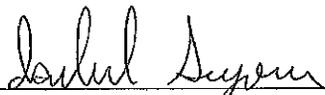
Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: 
Isabel G. Segarra Treviño
Staff Attorney
Public Interest Counsel
State Bar No. 24075857
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
isabelsegarra.trevino@tceq.texas.gov
(512) 239-4014 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2016 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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

**MAILING LIST
NANTUCKET HOUSING, LLC
TCEQ DOCKET NO. 2016-0787-MWD**

FOR THE APPLICANT:

H. Chris Richardson, President
Nantucket Housing, LLC
9219 Katy Freeway, Suite 264
Houston, Texas 77024-1565

Katherine D. Hallaway, P.E.
Brown & Gay Engineers, Inc.
10777 Westheimer Road, Suite 400
Houston, Texas 77042-3475
Tel: 713/488-8251 Fax: 713/488-8250

FOR THE EXECUTIVE DIRECTOR:

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

Larry Diamond, Technical Staff
TCEQ Water Quality Division, MC- 148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0037 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
TCEQ Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTERS:

William F Ahlersmeyer
13502 Maxwell Rd
Cypress, TX 77429-2311

Brenda S & Kenneth Ahlhorn
13011 Lakecrest Dr
Cypress, TX 77429-2644

Forres C Ahlhorn Jr
12715 Retreat Trl
Cypress, TX 77429-2631

Craig Alford
13514 Shurlin Pl
Cypress, TX 77429-5321

Betty J Allen
12902 Chavile
Cypress, TX 77429-2958

Doug Allen
13607 Pallwood Ln
Cypress, TX 77429-3829

Elayne Arnold
12906 Maxwell Rd
Cypress, TX 77429-2317

Cathy & Chuck Atwood
13610 Pristine Lake Ln
Cypress, TX 77429-6007

Andrew J Baird
13826 Greenwood Manor Dr
Cypress, TX 77429-6983

Nick Benefiel & Sara Garcia
12911 Red Laurel Ct
Cypress, TX 77429-3769

Charles Bertani
14146 Bertani Ln
Cypress, TX 77429-5895

Jim Black
13807 Oak Fair Bnd
Cypress, TX 77429-7270

Georgette Blanchard
Tate Blanchard
13114 Maxwell Rd
Cypress, TX 77429-2316

Lynne M Boehm
Richard W Boehm
12719 Retreat Trl
Cypress, TX 77429-2631

Stephanie Bounds
11603 Breckan Ct
Cypress, TX 77429-5393

Jeff & Melody Braun
13703 Cypress Pond Cir
Cypress, TX 77429-5114

Susan Brennan
13102 Mansion Ct
Cypress, TX 77429-3751

Diana Browning
13402 Maxwell Rd
Cypress, TX 77429-2313

David Bruce
13019 Lakecrest Dr
Cypress, TX 77429-2644

Linda Camacho
13415 Raven Flight Dr
Cypress, TX 77429-3730

Julia Canney
12506 Maxwell Rd
Cypress, TX 77429-2323

Jamie Caraway
14146 Bertani Ln Apt B
Cypress, TX 77429-5896

Peter Carpenter
Sheri Carpenter
14323 Empire Heights Ct
Cypress, TX 77429-4874

Terri Cesnik
13635 Cardinal Flowers Dr
Cypress, TX 77429-5457

Carolynn Christian
15326 Hilltop View Dr
Cypress, TX 77429-6116

Eva Cisneros
Regino Cisneros
12515 Campos Dr
Houston, TX 77065-2305

Keven Coates
12306 Ravens Mate Dr
Cypress, TX 77429-3186

Betty Collette
Brian Collette
12903 Lemur Ln
Cypress, TX 77429-3553

Elizabeth R Collins
Ray G. Collins, III
12302 Francel Ln
Cypress, TX 77429-6039

Jarrold L Compton
Sandra Compton
13423 Lindsey Rd
Cypress, TX 77429-2332

Ann Cummins
12107 Dakar Dr
Houston, TX 77065-2714

Renee Davis
13435 Maxwell Rd
Cypress, TX 77429-2314

Arlis D Dean
13810 Lake Port
Cypress, TX 77429-7272

Grant & Mary Dempster
15918 Ashton Hills Dr
Cypress, TX 77429-8007

Terry Deville
13114 Tall Forest Dr
Cypress, TX 77429-3129

Jill Dimiceli
Michael Dimiceli
13106 Blossomheath Rd
Cypress, TX 77429-4114

Jason Doolen
13907 Hartcrest Dr
Cypress, TX 77429-8127

Diana S Dougherty
16011 Port Barrow Dr
Cypress, TX 77429-8206

Gwen Durrenberger
13106 Youngfield Dr
Cypress, TX 77429-3813

David W Edinger
Dixie Edinger
13614 Maxwell Rd
Cypress, TX 77429-2353

Chris Edwards
Ethan Edwards
13019 Vivienne Westmoreland Dr
Cypress, TX 77429-6886

Pat & Susan Edwards
13302 Raven Roost Dr
Cypress, TX 77429-3719

Samuel A Edwards
12823 Raven Tree Dr
Cypress, TX 77429-2616

James Ellis
13007 New Cypress Dr
Cypress, TX 77429-2270

T Casey Fleming
13814 Medina Lake Ct
Cypress, TX 77429-4376

Lisa C Foley
14102 Sherburn Manor Dr
Cypress, TX 77429-8171

Kathy & Larry Gaithe
15818 Stenbury Ct
Cypress, TX 77429-6969

Ofilia Garcia
12818 Secret Forest Ct
Cypress, TX 77429-8309

Patricia Guarino
13431 Wiley Martin Dr
Cypress, TX 77429-2615

Betty L Guthrie
Edward A Guthrie
12306 Francel Ln
Cypress, TX 77429-6039

Michael D Hado
12603 Campsite Trl
Cypress, TX 77429-2621

Kim Hamilton
Mary Hamilton
12011 Glenway Dr
Houston, TX 77070-2722

Jerod Hammerstein
16230 Haden Crest Ct
Cypress, TX 77429-6812

Renate Hardaway
13014 Carla Way
Cypress, TX 77429-2978

Allen L Hartman
Elaine Hartman
12114 Advance Dr
Houston, TX 77065-2607

Francis Hassis
12214 Francel Ln
Cypress, TX 77429-6038

Forrest B Heap
12627 Campsite Trl
Cypress, TX 77429-2621

Jena M Heap
Lauren A Heap
12627 Campsite Trl
Cypress, TX 77429-2621

Greg S Hood
Kathryn Hood
13811 Carrington Ln
Cypress, TX 77429-1866

Mary Ihfe
13406 Gainesway Dr
Cypress, TX 77429-5193

Charles Irvine
Irvine & Conner PLLC
4709 Austin St
Houston, TX 77004-5004

Kevin Jensen
13511 Kluge Corner Ln
Cypress, TX 77429-5954

Donald Jett
13311 Tall Forest Dr
Cypress, TX 77429-3131

Marianne Johnson
12522 Retreat Trl
Cypress, TX 77429-2635

Karolin Jones
16234 Jordyn Lake Dr
Tomball, TX 77377-8223

Henrietta J Kaiser
13410 Raven Flight Dr
Cypress, TX 77429-3717

Nipa Kamdar
13102 Avalange Ct
Cypress, TX 77429-491

Karen J Kimbro
11706 Fawnview Dr
Houston, TX 77070-2801

Darlene King
13910 Maxwell Rd
Cypress, TX 77429-2308

James King
Pat King
13103 Oak Plaza Dr
Cypress, TX 77429-5924

Mark Kite
13903 Springmint Dr
Cypress, TX 77429-5183

Brandy Klafka
13402 Ravens Caw Dr
Cypress, TX 77429-3721

Doris Kohut
12111 Advance Dr
Houston, TX 77065-2622

Catherine Kralowetz
12302 Ravens Chase Ln
Cypress, TX 77429-3470

Becky Kriegal
12614 Scouts Ln
Cypress, TX 77429-2626

Nettie J Kuykendall
O W Kuykendall
12727 Scouts Ln
Cypress, TX 77429-2623

Jean Labelle
13307 Raven Flight Dr
Cypress, TX 77429-3729

Janie M Laird
John S Laird II
12554 Texas Army Trl
Cypress, TX 77429-2618

Anna Laughlin
12546 Saracen Dr
Cypress, TX 77429-2627

Adrienne Leigh
17619 Cypress Fields Ave
Cypress, TX 77429-1532

Deborah A Leppelt
12451 Texas Army Trl
Cypress, TX 77429-2607

Cathy Levin
12506 Raven South Dr
Cypress, TX 77429-3710

Matthew Lund
13410 Oak Alley Ln
Cypress, TX 77429-4853

Jennie Mackel
John Mackel
13418 Maxwell Rd
Cypress, TX 77429-2313

Robert L Mahan
16215 Diamond Rock Dr
Cypress, TX 77429-2465

Angela Nina Martin
11215 Crooked Pine Dr
Cypress, TX 77429-3093

Jody Martinez
Marcus Martinez
13026 Maxwell Rd
Cypress, TX 77429-2357

Cathy Mattiza
12915 Maxim Dr
Houston, TX 77065-2211

Haley Mattiza
12618 Ravens Chase Ln
Cypress, TX 77429-3870

Marjean Maxwell
13418 Lindsey Rd
Cypress, TX 77429-2331

Nancy McCreary
Robert McCreary
11503 Advance Dr
Houston, TX 77065-2628

Lauri Jo McDonald
13207 Tall Forest Dr
Cypress, TX 77429-3130

Linda McQuinn
13018 Cricket Hollow Ln
Cypress, TX 77429-2262

Stephen A Moore
13423 Raven Flight Dr
Cypress, TX 77429-3730

Philip Neisel
14203 Cypress Creek Blvd
Cypress, TX 77429-3749

Mike Nelub
12911 Lemur Ln
Cypress, TX 77429-3553

Brandon W Newton
12306 Foxburo Dr
Houston, TX 77065-3404

John Parker
Poppy Parker
12562 Texas Army Trl
Cypress, TX 77429-2618

Michael Patton
14319 Spyglen Ln
Cypress, TX 77429-5311

Lawrence Petru
12311 Francel Ln
Cypress, TX 77429-6041

Amber Pool
Jeff Pool
14146 Bertani Ln Apt C
Cypress, TX 77429-5896

Louise Burke Purvis
11414 Cypresswood Trail Dr
Houston, TX 77070-5967

Teri Quance
15306 Bandera Falls Bnd
Cypress, TX 77429-6111

C Radick
12255 Maxwell Rd
Cypress, TX 77429-2364

David L Rathkamp
Donna Rathkamp
12827 Raven Tree Dr
Cypress, TX 77429-2616

Brenda Reinhardt
13422 Blackbird Dr
Cypress, TX 77429-3727

Don Royall
12534 Texas Army Trl
Cypress, TX 77429-2618

Christine Royer
12214 Francel Ln
Cypress, TX 77429-6038

Gail Rudloff
13526 Raven Hill Dr
Cypress, TX 77429-2617

Melba Salcido
12603 Oak Plaza Dr
Cypress, TX 77429-2894

Gina Salway
13130 Rosewood Glen Dr
Cypress, TX 77429-5105

Lois Saucier
13414 Tall Forest Dr
Cypress, TX 77429-3132

Jill Schubert
Kirdes Schubert, Jr.
13103 Blossomheath Rd
Cypress, TX 77429-4109

Tommy Shelton
13118 Avalange Ct.
Cypress, TX 77429

Carl Shook
Terri Shook
16211 Diamond Rock Dr
Cypress, TX 77429-2465

Barbara P Smith
12511 Campos Dr
Houston, TX 77065-2305

Sherry Spears
12903 Carla Way
Cypress, TX 77429-2961

Leah Stephanow
12607 Texas Army Trl
Cypress, TX 77429-2665

John M Sturgill
13427 Maxwell Rd
Cypress, TX 77429-2314

A C Tally
Molly Webb Tally
13003 Lazdins Cir
Cypress, TX 77429-2645

Bill Taylor
Maureen Taylor
11802 Advance Dr
Houston, TX 77065-2604

Brett Taylor
13303 Ravens Caw Dr
Cypress, TX 77429-3736

Jeff Taylor
13306 Raven Roost Dr
Cypress, TX 77429-3719

Clayton Terry
12502 Cypress Cir
Cypress, TX 77429-3195

Bridget A Todaro
13723 Meisterwood Dr
Houston, TX 77065-1039

Laura Turcotte
14231 Autumn Mist
Cypress, TX 77429-4881

Sara Salter Ward
13510 Maxwell Rd
Cypress, TX 77429-2311

A J Warren III
13810 Maxwell Rd
Cypress, TX 77429-2354

T Weeks
12915 Maxwell Rd
Cypress, TX 77429-2318

Roseanna West
13422 Nevermore Dr
Cypress, TX 77429-3160

Heidi Wheeler
13710 Gainesway Dr
Cypress, TX 77429-5125

Letricia Wilbanks
13411 Copeland Oaks Blvd
Cypress, TX 77429-5191

Scotti Wilkinson
12527 Saracen Dr
Cypress, TX 77429-2666

William C Wilson
16814 Empire Gold Dr
Cypress, TX 77433-6241

Ann Wohn
Gary Wohn
13415 Ravens Caw Dr
Cypress, TX 77429-3169

Norman J Woodward
13402 Rifleman Cir
Cypress, TX 77429-2628

Janet & Robert Worden
12415 Pleasant Grove Rd
Cypress, TX 77429-4131

Joyce Young
14714 Salamanca Ct
Cypress, TX 77429-5452

Karen Zalar
13903 Maxwell Rd
Cypress, TX 77429-2307

Kathleen Zofsak
12523 Huffmeister Rd
Cypress, TX 77429-3213

Diana Zylicz
Larry Zylicz
14503 S Kolbe Spur Dr
Cypress, TX 77429-3320