

TCEQ DOCKET NO. 2022-0148-MWD

APPLICATION FROM HARRIS COUNTY	§	BEFORE THE
MUNICIPAL UTILITY DISTRICT NO. 495	§	
FOR MAJOR AMENDMENT TO TEXAS	§	TEXAS COMMISSION ON
POLLUTANT DISCHARGE ELIMINATION	§	
SYSTEM PERMIT NO. WQ0015222001	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Harris County Municipal Utility District No. 495 (“District” or “Applicant”) and files this response to the hearing requests regarding the application for amendment of Texas Pollution Discharge Elimination System (“TPDES”) Permit No. WQ0015222001 (the “Application”), and respectfully shows the following:

I. INTRODUCTION

A. Facility Description

The District has applied to the TCEQ for an amendment to its existing TPDES permit to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 0.90 million gallons per day (“MGD”) to an annual average flow not to exceed 1.50 MGD from the Applicant’s Wastewater Treatment Facility (“the Facility”). Under the amended permit, the Facility would serve up to 1,125,000 connections. The Facility is located at 5455 ½ Porter Road, in Harris County, Texas 77493. The treated effluent is discharged to South Mayde Creek, then to Buffalo Bayou, then to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for South Mayde Creek. The designated uses for Segment No. 1014 are limited aquatic life use and primary contact recreation.

B. Procedural Background

The Application was submitted to TCEQ on March 10, 2020, and declared administratively complete on June 12, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) was published in English on June 24, 2020, in the *Houston Chronicle dba Examiner* and in Spanish on June 21, 2020, in the *El Perico Newspaper*. The Executive Director’s (“ED’s”) staff completed the technical review of the Application on February 1, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit (“NAPD”) was published in English on April 21, 2021, in the *Houston Chronicle dba Examiner* and in Spanish on April 18, 2021, in the *El Perico Newspaper*. The first public comment period ended on May 21, 2021. After the first public comment period, the ED issued a Response to Comments (“RTC”) on September 23, 2021. After it was discovered that a webpage link in the NAPD contained a typographical error, a new Combined Notice of Receipt and Intent/Notice of Application and Preliminary Decision was published in English on November 3, 2021 in the *Houston Chronicle dba Examiner* and in Spanish on October 31, 2021 in the *El Perico Newspaper*. The second comment period ended on December 3, 2021. While no new comments were received, the ED issued a second RTC on December 14, 2021. The deadline for requesting a contested case hearing or reconsideration of the ED’s decision was on or about January 20, 2022.

II. LEGAL STANDARDS GOVERNING HEARING REQUESTS

Because the Application was administratively complete on or after September 1, 1999, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and TCEQ rules at 30 Tex. Admin. Code (“TAC”) Chapter 55, Subchapter G, §§ 55.200-55.211.

Commission rules provide that a request for a contested case hearing shall be granted if the request is made by an “affected person” and it:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the Commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201¹ of this title (relating to Requests for Reconsideration or Contested Case Hearing).

30 TAC § 55.211(c)(2).

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).

Commission rules also provide relevant factors that are to be considered in determining affected person status, including, but not limited to, the following:

- (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 the property of the person; and

¹ Section § 55.201 specifies the requirements for reconsideration or contested case hearing. A request for a contested case hearing by an affected person must be in writing, filed with the Chief Clerk no later than 30 days after the Chief Clerk mails (or otherwise transmits) the Executive Director's decision and response to comments and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing with the Chief Clerk prior to the filing of the ED's Response to Comments. The hearing request must substantially comply with the following: (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group; (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public; (3) request a contested case hearing; and (4) list all relevant and material disputed issues of fact that were raised in the public comment period and that are the basis of the hearing request. 30 TAC § 55.201(c) & (d).

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.

30 TAC § 55.203(c).

Commission rules specify that a response to a request for hearing must specifically address the following:

- (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 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. ANALYSIS OF HEARING REQUESTORS' STATUS AS AFFECTED PERSONS

The timely hearing requestors on this application are Donnisha Spicer and Christopher Spicer. Applicant takes no position as to whether they should be deemed affected persons.

IV. POTENTIAL ISSUES FOR REFERRAL

To the extent the Commission determines that one or more hearing requestors are affected persons, the Commission must determine which issues should be referred to the State Office of Administrative Hearings ("SOAH") for consideration in the contested case hearing. See Tex. Water Code § 5.556. Section 5.556 also requires the Commission to limit the number and scope of issues that are referred to SOAH for hearing. *Id.*

Most of the issues that were raised in this case were addressed in the ED's RTCs, dated September 23, 2021 and December 14, 2021, and the analysis below will attempt to track the RTC's review.

1. Potential Trespass on the Spicers' Property (ED's RTC No. 2)

Both Christopher and Donnisha Spicer raised concerns that the increased discharge under the permit would increase the risk of wastewater effluent coming onto their property, particularly during medium to high rain events. The draft permit authorizes Applicant to discharge wastewater that is treated to meet water quality standards under the permit. The draft permit does not grant the District the right to use private or public property for conveyance of untreated or partially treated wastewater along the discharge route described in the permit, nor does it permit any invasion of personal property rights. Instead, the permit contains appropriate provisions designed to prevent unauthorized discharges of wastewater, such as two-hour average discharge limits; requirements to initiate engineering and financial planning for expansion if flow reaches a certain volume for specified extended periods of time; and a requirement that Applicant "take all reasonable steps to minimize or prevent any discharge...that has a reasonable likelihood of adversely affecting human health or the environment." Draft permit, Permit Conditions, Item 2.d., Page 9. Additionally, pursuant to Item 7 of the Monitoring and Reporting Requirements in the draft permit, the District must report any unauthorized discharge to the TCEQ within 24 hours. Applicant is also subject to potential enforcement action if it fails to comply with TCEQ rules.

Further, no TCEQ regulations support the consideration of whether the permitted wastewater discharge represents a trespass of adjacent landowners' property. Consequently, this issue is not relevant or material for referral in this case. To the extent the Spicers are concerned about trespass on their property, the draft permit does not limit the ability of an individual to seek

legal remedies against the District regarding any potential trespass, nuisance, or other interference with the normal use and enjoyment of property.

2. Potential Flooding (ED's RTC No. 3)

The Spicers raised concerns that the increased discharge would potentially increase the risk of flooding and wastewater flowing onto their property. As the ED's RTC noted, the TCEQ does not have jurisdiction to address flooding issues as part of the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into waters of the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Consequently, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

According to the Application, the wastewater treatment plant site is located above the 100-year floodplain. Further, the draft permit includes Other Requirement Number 5, which requires the District to provide protection for the Facility from a 100-year flood. If this issue is referred to SOAH, Applicant respectfully requests that it be described as follows: "Whether the Application complies with TCEQ regulations at 30 TAC § 309.13(a) regarding facility protection from a 100-year flood event."

3. Effects on Human Health and Safety, Stocked Ponds and Farmed Vegetation (ED's RTC No. 4)

The Spicers expressed concern that if wastewater comes onto their property, it could impact their stocked pond and farmed vegetation. Additionally, the Spicers expressed concern for their family's health, safety, and welfare in light of the close proximity of the Facility to their house.

TCEQ's Water Quality Standards are designed to protect aquatic and terrestrial life and human health and welfare, and the draft permit was developed to comply with those standards. In particular, the effluent limits in the draft permit were calculated to maintain and protect the existing uses of the receiving waters. In this case, the receiving stream use is minimal aquatic life use and

the designated uses are primary contact recreation and limited aquatic life use. The ED ultimately determined that these uses will be protected if the District operates the Facility in accordance with the draft permit and applicable regulations. As such, Applicant's compliance with the draft permit and TCEQ's rules regarding wastewater treatment facility design and operation will protect aquatic life and human health.

Under 30 TAC § 305.125(4), the District must take all reasonable steps to minimize or prevent a permit violation that has a reasonable likelihood of adversely affecting human health or the environment. The Applicant must also report any noncompliance that may endanger human health or safety or the environment to TCEQ within 24 hours pursuant to 30 TAC § 305.125(9) and Monitoring and Reporting Requirement No. 7 in the draft permit.

To the extent this issue is referred to SOAH, the District respectfully requests that it be described as follows: "Whether the Application and draft permit comply with TCEQ regulations at 30 TAC §§ 307.4 – 307.5 regarding water quality sufficient to protect aquatic life and existing uses and at 30 TAC § 309.3 regarding disinfection of effluent."

4. Effects on Natural Drainage Basins (ED's RTC No. 5)

The Spicers were concerned about the effects of the increased discharge on the natural drainage basins. As the ED's Response noted, the TCEQ does not have jurisdiction to address a discharge's impact on flooding or erosion along the discharge route as part of the wastewater permitting process. Accordingly, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

5. Potential Odors (ED's RTC No. 6)

The Spicers raised concerns regarding potential odors associated with wastewater discharges from the Facility. Commission regulations require the permit holder to establish buffer zones or an odor control plan for abating nuisance odor. For this permit, the buffer zone

requirements would be met by the District by submitting sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by Applicant. In this case, the hearing requestors' property is well beyond the 150-foot buffer zone requirement. Applicant believes the map included as Attachment 1 to this response demonstrates that their residence is well outside the 150-foot buffer zone.

Furthermore, Applicant submitted a nuisance odor prevention request for approval by the ED, as required in order to obtain a TPDES permit. This request must take the form of an engineering report addressing existing climatological conditions, surrounding land use, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. The ED determined that the Application was in compliance with all odor-related requirements. Consequently, it is the District's position that this issue is not a material issue for consideration regarding issuance of this permit. Nevertheless, if the Commission chooses to refer this issue to SOAH, the District respectfully recommends that the issue be described as follows: "Whether the Application and draft permit meet the applicable requirements of 30 TAC § 309.13(e)."

6. Effects on Farm Animals (ED's RTC No. 7)

The Spicers expressed concern that they and other residents of the neighborhood have farm animals that will be affected by the increased effluent flowing onto their property during flooding. The Texas Surface Water Quality Standards ("TSWQS") are designed to protect both aquatic and terrestrial wildlife. The draft permit requires Applicant to comply with the TSWQS and management practices designed to protect public health, livestock, and wildlife. In approving the draft permit, the ED determined that if the District operates the Facility in accordance with applicable TCEQ regulations and the draft permit, the Facility should not have an adverse impact

on public health, livestock, or wildlife. Furthermore, as explained in Subsection 2 above, the TCEQ does not have jurisdiction to address flooding issues as part of the wastewater permitting process.

Therefore, this issue is not a material issue for consideration regarding issuance of this permit. However, if the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issues concerning flooding (Item No. 2 above) be used to address this concern, since they involve the same issue.

7. Noise and Light (ED's RTC No. 8)

The Spicers raised concerns regarding the effects of noise and light from the Facility on the quality of life and enjoyment of their property. As the ED's RTC noted, the TCEQ does not have authority to address concerns about noise pollution when deciding whether to grant a discharge permit application. The TCEQ also lacks authority to address concerns with luminescence when deciding whether to approve a discharge permit application. Accordingly, these issues are not relevant and material for this case and should not be considered for referral to SOAH.

8. Outdated Wind Studies (ED's RTC No. 9)

The Spicers expressed concerns that the current wind studies are outdated and a significant distance from the Facility's location, and that more updated and closer proximity wind studies need to be performed. In the Spicers' comments, these concerns were raised in the context of noise issues. However, in the RTC, the ED addressed this comment as it related to odor issues. As explained in Subsection 7 above, the TCEQ does not have authority to address concerns about noise pollution when deciding whether to grant a discharge permit application. As such, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

Furthermore, the Application is in compliance with all TPDES application requirements regarding nuisance odors. As required in order to obtain a TPDES permit, Applicant submitted a nuisance odor prevention request to the ED for approval in the form of a wind rose attached to the Application. The ED determined that the wind rose satisfies the TPDES application requirements regarding nuisance odors. Accordingly, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH. To the extent the Commission determines that this issue should be referred for hearing, Applicant respectfully requests that the issue concerning potential odors (Item No. 5 above) be used to address this concern, since they involve the same issue.

9. Contributing to the 100-Year Floodplain (ED's RTC No. 10)

The Spicers raised concerns that the increased wastewater effluent will directly contribute to and affect the 100-year floodplain. As explained in Subsection 2 above and as the ED's Response noted, the TCEQ does not have jurisdiction to address flooding issues as part of the wastewater permitting process. Consequently, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH. To the extent this issue is referred to SOAH, the District respectfully requests that it be described as follows: "Whether the Application complies with TCEQ regulations at 30 TAC § 309.13(a) regarding facility protection from a 100-year flood event."

10. Potential Groundwater Pollution (ED's RTC No. 11)

The Spicers expressed concerns that the proposed discharge could cause groundwater pollution and that they are on a water well system. The ED's Response on this issue treated it as a water quality concern. Applicant agrees with the ED's response, but believes that the TCEQ's requirement for facility offset distance from private water wells more directly addresses this comment. For properly constructed water wells, there is virtually no opportunity for commingling

with surface water. Moreover, in contrast to an underground injection control permit, the only requirement in a TPDES permit application involving water wells is an offset requirement for the wastewater treatment plant unit of 250 feet from a private water well. 30 TAC § 309.13(c). Further, the Application demonstrates that the Facility meets this offset requirement. Consequently, it is the District's position that this issue is not one that is material to consideration regarding permitting in this case. Nevertheless, if the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the proposed wastewater treatment plant will meet the appropriate separation distance from private water wells specified in 30 TAC § 309.13(c)."

11. Containment Provisions (ED's RTC No. 12)

The Spicers asked whether the draft permit has containment provisions associated with the increase in effluent. This is a question about the draft permit, not an issue of fact. The answer to the Spicers' question is that the draft permit does have containment provisions related to the increase in effluent discharge. The Facility must comply with the TCEQ design criteria for a domestic wastewater system under 30 TAC Chapter 217. These criteria are designed to ensure the plant can adequately treat the domestic wastewater in accordance with effluent limitations in the proposed permit. Other Requirement No. 7 in the draft permit requires Applicant to submit a summary transmittal letter to the ED certifying that the plans and specifications for the Facility satisfy the design criteria in 30 TAC Chapter 217. The Wastewater Permitting Section may request that Applicant submit its plans and specifications for review to ensure all requirements are met, including adequate containment.

This statement by the Spicers does not identify a relevant and material disputed issue of fact for hearing. It is simply an inquiry, to which the ED responded in the RTC.

12. Type 1 Reclaimed Water Standards (ED's RTC No. 13)

The Spicers expressed concern about the need to ensure all effluent wastewater is treated to meet Type 1 reclaimed water standards in 30 TAC Chapter 210 to ensure the health and safety of their family. However, authorizations for beneficial reuse of reclaimed water are separate and distinct from TPDES permits. Pursuant to 30 TAC § 210.5(a), obtaining a TPDES permit or Texas Land Application Permit ("TLAP") is a prerequisite to obtaining authorization for beneficial reuse of reclaimed water. Reclaimed water may only be transferred from a provider to a user on a "demand only basis" so that reclaimed water is not provided during times it cannot be beneficially reused. 30 TAC § 210.7. Therefore, reclaimed water providers must have a TPDES or TLAP permit in order to discharge excess reclaimed water.

The District does not intend to provide reclaimed water to users for reuse. Therefore, Applicant does not currently have a reuse authorization under 30 TAC Chapter 210, and the District will not need such authorization in the future unless it decides to begin providing reclaimed water to others for reuse. The TCEQ does not have authority to require the District to obtain a reuse authorization in the absence of such a decision. Accordingly, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

13. Potential to Attract Pests (ED's RTC No. 14)

The Spicers expressed concern that the Facility could potentially attract pests to the Facility and surrounding properties. The plans and specifications of the plant comply with the Design Criteria for Domestic Wastewater Systems contained in 30 TAC Chapter 217, and pursuant to Operational Requirements Item 1 in the Draft Permit, the District must ensure the Facility and all of its collection, treatment, and disposal systems are properly operated and maintained. Therefore, a health hazard as a result of pests should not occur. It is Applicant's position that this is not a material issue for consideration regarding issuance of this permit. If the Commission decides to

refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: “Whether the proposed changes to the wastewater treatment plant will meet the appropriate design criteria specified in 30 TAC Chapter 217.”

14. Water Levels Along the Discharge Route (ED’s RTC No. 15)

The Spicers expressed concern regarding the water levels along the discharge route, particularly that the drainage ditches along the discharge route will be unable to carry the additional effluent. As the ED’s Response noted, the TCEQ does not have jurisdiction to address flooding or erosion issues as part of the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into waters of the state and protecting the water quality of the state’s rivers, lakes, and coastal waters. Consequently, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

15. Effects of Temperature (ED’s RTC No. 16)

The Spicers raised concerns regarding the effects of increased summer temperatures on the effluent. TCEQ assessments analyzing the receiving water account for summertime, low-flow conditions when determining whether a draft permit is protective of water quality. For example, TCEQ staff perform a Receiving Water Assessment (“RWA”) to collect data on the physical, chemical, and biological components of a receiving water. RWAs are typically performed during the “critical period” from July 1 to September 30, when maximum temperatures and minimum flows occur in Texas. The proposed TPDES permit must contain effluent requirements that are protective of the receiving water even during these “critical period” conditions. Additionally, to ensure a water body is capable of assimilating the oxygen-demanding components of wastewater discharge, dissolved oxygen modeling predictions are analyzed under hot and dry conditions, when the impacts of wastewater discharge on dissolved oxygen levels are expected to be greatest. Other

technical reviews, such as nutrient screening and recommendations for whole effluent toxicity testing, are also evaluated under summertime, low-flow conditions.

Because the draft permit is based on evaluations by TCEQ staff of the water receiving Applicant's wastewater discharge under high temperature, low flow conditions, the draft permit ensures the permit requirements are protective of water quality under those conditions. Therefore, it is the District's position that this is not a material issue for consideration regarding issuance of this permit. If the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the discharge authorized in the draft permit will comply with applicable Texas Surface Water Quality Standards in 30 TAC Chapter 307."

16. Soil and Water Contamination (ED's RTC No. 17)

The Spicers raised concerns about soil and water contamination with pharmaceutical drugs, personal care products, house chemicals, and antibiotics. These are considered emerging contaminants and are not processed in wastewater treatment plants. There are currently no state or federal effluent limits for emerging contaminants or state or federal rules regulating the treatment of emerging contaminants in domestic wastewater. Because there are no rules or standards applicable to Applicant related to these emerging contaminants, this issue is not a relevant and material issue for this case and should not be considered for referral to SOAH.

17. Dilution of Effluent (ED's RTC No. 18)

The Spicers expressed concerns about whether the receiving waters were able to sufficiently dilute the increased effluent. As the ED explained in RTC Number 16, TCEQ staff performed an RWA to collect data on the physical, chemical, and biological components of the receiving water. RWAs are often performed during times of low flow to ensure the effluent parameters are protective even at times when the receiving waters have low water capacity.

Additionally, as part of the TPDES permit application process, TCEQ staff must determine the uses of the receiving waters and set effluent limits that are protective of those uses. The unclassified receiving water use for South Mayde Creek is minimal aquatic use, and the designated uses for Segment No. 1014 are primary contact recreation and limited aquatic life use. The effluent limits and monitoring requirements in the draft permit are designed to ensure the wastewater is sufficiently treated to protect these uses. Therefore, it is Applicant's position that this is not a material issue for consideration regarding issuance of this permit. If the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the discharge authorized in the draft permit will comply with applicable Texas Surface Water Quality Standards in 30 TAC Chapter 307."

18. Nitrogen and Phosphorus (ED's RTC No. 19)

The Spicers expressed concerns regarding the potential for high levels of nitrogen and phosphorus to cause algae blooms. The TCEQ established effluent limits in the draft permit that are determined to be adequate to maintain dissolved oxygen levels above the criteria stipulated by the Standards Implementation Team for South Mayde Creek. In the draft permit, ammonia nitrogen (NH₃-N) is limited to 2 mg/L, which is the minimum effluent treatment that must be met by a domestic wastewater discharge into the Buffalo Bayou Above Tidal (Segment 1014) or its tributaries (South Mayde Creek). Concentration limits for other oxygen-demanding constituents included in the draft permit, carbonaceous biochemical oxygen demand and minimum dissolved oxygen, are set at the minimum protective levels for Segment 1014 and South Mayde Creek as well. Furthermore, the proposed discharge was modeled to ensure the instream dissolved oxygen levels will be maintained above the protective criteria for the receiving waters even during hot and dry conditions.

Due to ambient conditions, total phosphorus and total nitrogen are not a concern for this Facility. The receiving waters have relatively heavy shading from tree canopy, a mud or sand bottom, and turbid waters. These conditions are not conducive to algal growth, as algae typically thrive in still waters that receive generous sunlight. Accordingly, the draft permit does not contain a total phosphorus limit. Permits for similar facilities that discharge into these receiving waters also do not have total phosphorus limits.

In their comments, the Spicers describe the effects of excess nitrogen and phosphorus on algae growth. However, they do not present any information that contradicts the TCEQ's determination that phosphorus and nitrogen are not a concern for the receiving waters affected by this draft permit. Therefore, it is Applicant's position that this is not a material issue for consideration regarding issuance of this permit. If the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the discharge authorized in the draft permit will comply with applicable Texas Surface Water Quality Standards in 30 TAC Chapter 307."

19. Good Faith (ED's RTC No. 20)

The Spicers claimed that the draft permit was not approved in good faith because it would allow the District to discharge in excess of the Phase III limit approved in the original permit. Pursuant to 30 TAC § 305.62(a), a permittee may request an amendment to an existing permit. Applicant sought this amendment to its permit to increase the ultimate capacity of the wastewater treatment plant due to new connections from property annexation into Harris County Municipal Utility District ("MUD") 495. The property annexation into Harris County MUD 495 represents a change in conditions from when Applicant applied for the original permit in 2014. Furthermore, in signing Section 14 of the Application, the District certified under penalty of law that the Application "and all attachments were prepared under [their] direction or supervision in

accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted” and that “based on [their] inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of [their] knowledge and belief, true, accurate, and complete.” Therefore, Applicant acted with good faith in requesting this amendment, and the TCEQ acted in good faith in approving the draft permit. Accordingly, whether the Application was submitted or approved in good faith is not a relevant or material issue for consideration in this case.

20. Environmental Impact Study and Impacts on Migratory Birds (ED’s RTC No. 21)

The Spicers claimed that an independent environmental impact study must be performed and that Executive Order 13186: Responsibilities of federal agencies to protect migratory birds, the North American Waterfowl Management Plan, the North American Wetlands Conservation Act, the U.S Shorebird Conservation Plan, and the North American Waterbird Conservation Plan must be taken into account. The National Environmental Policy Act (“NEPA”) requires agencies to consider the environmental impacts of federal actions by requiring them to prepare an Environmental Assessment (“EA”), Finding of No Significant Impact (“FONSI”), or an Environmental Impact Statement (“EIS”). However, NEPA only applies to federal actions, and there is no state equivalent in Texas. The TPDES wastewater permitting process is a state process related to state action. Therefore, there is no requirement to prepare an EA, FONSI, or EIS under NEPA before approving the District’s draft permit. Additionally, the state regulations that apply to this permitting action do not contain any requirement to perform an environmental impact study. Accordingly, this is not a material issue for consideration regarding issuance of this permit.

Because the draft permit complies with the TSWQS, terrestrial wildlife, including migratory birds, would not be negatively impacted by discharges from the Facility. The TSWQS were established to “maintain the quality of water in the state consistent with...propagation and

protection of terrestrial and aquatic life.” 30 TAC § 307.1. The TCEQ Water Quality Assessment Section has determined that the draft permit meets the requirements of the TSWQS, and there are no other applicable water-quality based effluent requirements for water consumed by wildlife. Further, the ED determined that discharge from the draft permit is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or their critical habitat. Accordingly, the effects on migratory birds and other wildlife have been taken into account in reviewing this draft permit, and the effluent limits in the draft permit have been deemed sufficient to prevent negative impacts to terrestrial and aquatic wildlife. It is Applicant’s position that this is not a material issue for consideration regarding issuance of this permit. However, if the Commission decides to refer this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: “Whether the discharge authorized in the draft permit will comply with applicable Texas Surface Water Quality Standards in 30 TAC Chapter 307.”

21. Drainage Ditches and Toxicity (ED’s RTC No. 22)

The Spicers stated that the drainage ditches along the discharge route would not be able to carry the additional effluent and indicated that the effluent is toxic. Domestic sewage typically does not contain toxic compounds in quantities that would result in toxic effects in the receiving water bodies unless there are significant industrial users contributing to the waste stream. The ED conducted a review to determine whether any industrial users contribute to the waste stream in Harris County MUD No. 495, and none were found. Otherwise, the draft permit contains pretreatment requirements that are appropriate for a facility of this size and complexity, as well as a requirement that Applicant biomonitor its effluent to ensure it will not cause toxic conditions in the receiving stream.

Furthermore, the effluent governed by this permit is discharged into South Mayde Creek, which is classified as a stream, not a ditch. The discharge then flows to Buffalo Bayou and then

to Buffalo Bayou Above Tidal in Segment 1014 of the San Jacinto River Basin. To the extent the Spicers are concerned that the stream cannot hold the additional effluent, we refer to our responses in Subsections 1 and 14 above. Additionally, as the ED's RTC noted, the draft permit was reviewed in accordance with the TSWQS requirements contained in 30 TAC § 307.4 for unclassified water bodies and the TCEQ's implementation procedures for those standards, and the draft permit was deemed to be in compliance. In approving the draft permit, the ED also confirmed that the permit complies with the requirements in 30 TAC § 307.6 related to toxic materials.

It is Applicant's position that this is not a material issue for consideration regarding issuance of this permit. If the Commission decides to refer the issue of drainage ditch capacity to SOAH, Applicant respectfully requests that the issues concerning potential effluent on the Spicers' property and water levels along the discharge route (Item Nos. 1 and 14 above) be used to address this concern, since they involve the same issue; and if the Commission decides to refer the issue of toxicity or water quality to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the discharge authorized in the draft permit will comply with applicable Texas Surface Water Quality Standards in 30 TAC Chapter 307."

22. Impact to Property Values (Not addressed by ED in his RTC)

The Spicers expressed concern that the increased effluent will impact their property values. TCEQ does not have jurisdiction over property value issues. Consequently, this issue is not a relevant or material issue for consideration at a contested case hearing in this matter.

23. Potential Air Pollutant Impacts (Not addressed by ED in his RTC)

The Spicers raised concerns that wind will push air pollution from the Facility onto their property. The wind rose diagram in the Application shows that the primary wind direction at the proposed plant site is from the southeast, so wind primarily blows to the northwest. The Spicers' property is located southeast of the proposed plant site, and thus, wind would primarily blow away

from the plant site in the opposite direction from which the Spicers' property is located. Consequently, this is not a material issue for considerations regarding permitting in this case. Nevertheless, to the extent the Commission determines that this issue should be referred for hearing, Applicant respectfully requests that the issue concerning the buffer zone in connection with potential odors (Item No. 5 above) be used to address this concern, since they involve the same issue.


V. MAXIMUM DURATION OF HEARING

Should the Commission decide to refer this case to SOAH for a hearing, given the limited number and scope of issues Applicant believes may be appropriate in this case, the maximum expected duration of a hearing on this Application and draft permit should be no longer than six months from the first date of the preliminary hearing until the proposal for decision is issued.


VI. CONCLUSION

For the reasons set forth above, Applicant respectfully requests that the Commission deny Protestants' hearing requests, not refer this matter for a contested case hearing, and approve the District's Application and issue amended TPDES Permit No. WQ0015222001. Should the Commission decide to grant the Protestants' hearing requests, Applicant respectfully requests that the Commission limit the issues addressed in the contested case hearing to only those that the Commission determines to be relevant and material to this permit application as we have identified herein and for the duration specified above.

Respectfully submitted,

By: 

Danny Worrell
State Bar No. 22002000

By: 

Katie Windle
State Bar No. 24121891

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HARRIS COUNTY MUD NO. 495

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following the following counsel/persons in this case on February 14, 2022.

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FOR THE CHIEF CLERK

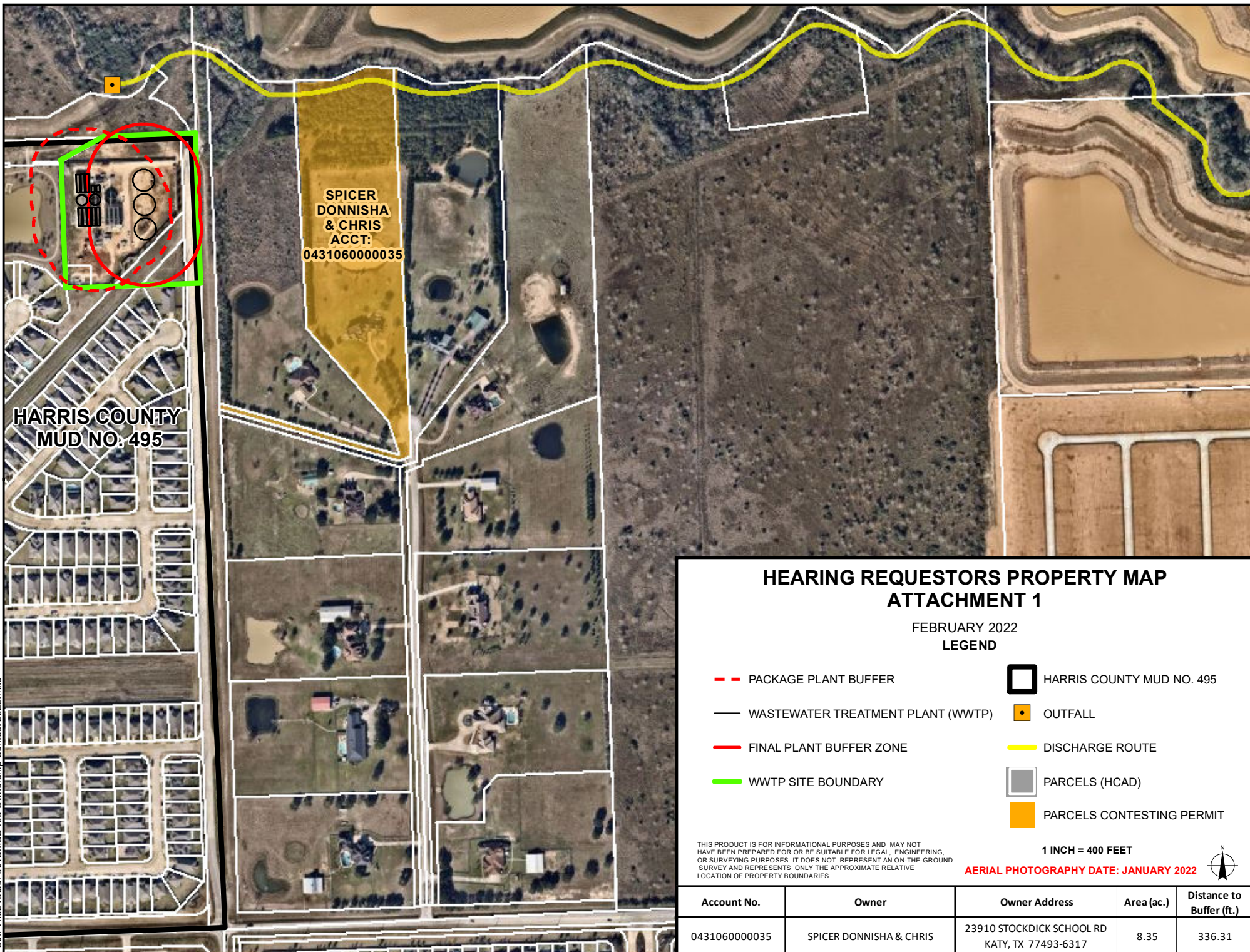
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Danny Worrell

ATTACHMENT 1



HARRIS COUNTY
MUD NO. 495

SPICER
DONNISHA
& CHRIS
ACCT:
0431060000035

HEARING REQUESTORS PROPERTY MAP ATTACHMENT 1

FEBRUARY 2022
LEGEND

- PACKAGE PLANT BUFFER
- WASTEWATER TREATMENT PLANT (WWTP)
- FINAL PLANT BUFFER ZONE
- WWTP SITE BOUNDARY
- HARRIS COUNTY MUD NO. 495
- OUTFALL
- DISCHARGE ROUTE
- PARCELS (HCAD)
- PARCELS CONTESTING PERMIT

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.

1 INCH = 400 FEET
AERIAL PHOTOGRAPHY DATE: JANUARY 2022



Account No.	Owner	Owner Address	Area (ac.)	Distance to Buffer (ft.)
0431060000035	SPICER DONNISHA & CHRIS	23910 STOCKDICK SCHOOL RD KATY, TX 77493-6317	8.35	336.31

Path: T:\0218\070\H\CMUD495 Ownership Contest 2022.mxd