

**Lori Rowe**

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**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, September 22, 2021 1:55 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0002959000  
**Attachments:** 2021.09.22 Touchstone Ranch Comments with Attachment A.pdf

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**From:** christa@txenvirolaw.com <christa@txenvirolaw.com>  
**Sent:** Wednesday, September 22, 2021 1:52 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0002959000

**REGULATED ENTY NAME MOO-OVER DAIRY**

**RN NUMBER:** RN100797141

**PERMIT NUMBER:** WQ0002959000

**DOCKET NUMBER:**

**COUNTY:** ERATH

**PRINCIPAL NAME:** OSINGA, JONATHAN CARTER, OSINGA, LAURA CHRISTINE

**CN NUMBER:** CN605832658, CN605832641

**FROM**

**NAME:** Eric Allmon

**E-MAIL:** [christa@txenvirolaw.com](mailto:christa@txenvirolaw.com)

**COMPANY:** Perales, Allmon & Ice, P.C.

**ADDRESS:** 1206 SAN ANTONIO ST  
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**PHONE:** 5124696000

**FAX:**

**COMMENTS:** Please see attached comments.

PERALES, ALLMON & ICE, P.C.

ATTORNEYS AT LAW

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Of Counsel:  
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Richard Lowerre  
Brad Rockwell

September 22, 2021

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
P.O. Box 13087  
Austin, Texas 78701-3087

*Via TCEQ Online Comment Form*

**RE: Comment and Hearing Request regarding Application by Jonathan Carter Osinga and Laura Christine Osinga for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002959000.**

Dear Ms. Gharis:

Touchstone Ranch Land LLC and Touchstone Ranch Recovery Center (collectively, “Touchstone Ranch”) submit these comments, and request for a contested case hearing, regarding the application of Jonathan Carter Osinga and Laura Christine Osinga (“Applicant”) for major amendment of TPDES Permit No. WQ0002959000. The application seeks to amend the permit for a facility which commonly does business as “Overcrest Dairy.” Touchstone Ranch may be contacted through my office at the address and telephone number indicated above.

**I. Touchstone Ranch is an “Affected Person”**

Touchstone Ranch Recovery Center operates on property owned by Touchstone Ranch Land LLC. The proximate property upon which Touchstone Ranch Recovery Center operates is located approximately 1500 feet north of Overcrest Dairy.<sup>1</sup>

Touchstone Ranch Recovery Center offers equine therapy and individualized treatment for substance use disorders. Touchstone Ranch is a 26 bed, state licensed Residential Detoxification, Intensive Residential, Supportive Residential, Intensive Outpatient Treatment Center for persons being treated for substance use disorder and co-occurring psychiatric conditions. Many of the clients admitted to Touchstone Ranch already have compromised health conditions which can

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<sup>1</sup> See Attachment A.

potentially increase their risk of infections. Touchstone Ranch's clients reside on the Touchstone Ranch property 24 hours a day/seven days a week.

As proposed to be permitted, Overcrest Dairy will potentially produce significant foul odors. The emission of such odor will potentially interfere with the ability of Touchstone Ranch to provide effective outdoor equine therapy to its clients. Touchstone Ranch maintains Joint Commission accreditation and certification, which reflects the Ranch's commitment to providing excellent care for its clients. Facilities holding such accreditation seek to provide safe and effective care of the highest quality and value. The proposed expansion potentially impacts Touchstone Ranch's ability to provide effective care to its clients.

Touchstone Ranch also relies on a groundwater well upon its property as the source of water for its operations, including use for bathing and preparation of food. Touchstone Ranch is concerned that the proposed CAFO expansion would potentially increase the risk of contamination of groundwater in the area, which would potentially adversely impact Touchstone Ranch's ability to maintain safe and effective operations.

**II. Applicant has not demonstrated compliance with TCEQ requirements related to odor control, dust, and vector control.**

Applicant has not shown that the facility as proposed is designed and operated to adequately control and prevent odor as required by TCEQ rules. Applicant has not demonstrated the development of an odor control plan compliant with 30 TAC § 321.43. Contrary to Applicant's claim, the dairy did not commence operations prior to August 19, 1998. Rather, the dairy operation was first registered as a *new* facility by Mike Schouten in 2000. Accordingly, the CAFO is required to have both a ¼ mile buffer *and* an odor control plan, rather than simply an odor control plan. Dust is also a potential problem at the facility that has not been sufficiently addressed. Vectors such as flies are attracted to the dairy, and potentially cause nuisance conditions for nearby landowners. The attraction of these vectors has not been addressed sufficiently consistent with the requirements of the TCEQ rules.

**III. Applicant has not demonstrated that the proposed amendment is sufficiently protective of surface water quality and ground water quality.**

The proposed dairy expansion is located within the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin. Within this Segment, the dairy is located in the contributing watershed for the “below Stephenville” gage. Segment 1226 is impaired for narrative water quality standards related to nutrients and plant growth. In response to these impairments, the Texas Natural Resource Conservation Commission (TNRCC, TCEQ’s predecessor agency) developed two total maximum daily loads (TMDLs) for phosphorus in the North Bosque River. TNRCC found that phosphorus is the controlling factor in the growth of algae within the North Bosque watershed, and through the TMDL for Segment 1226 TCEQ determined the quantity of pollutant that Segment 1226 could receive and still attain compliance with the applicable water quality standards. The numeric statement of the goal of these North Bosque River TMDLs is to reduce average total-annual loading of soluble reactive phosphorus by approximately 50% for the entire North Bosque River watershed.<sup>2</sup> The adopted TMDLs state that the agency will use the TMDLs and the Texas Water Quality Management Plan (in which the TMDLs have been incorporated) in reviewing and making determinations for wastewater discharge permits and in the agency’s nonpoint source pollution abatement programs.<sup>3</sup> The TMDL further states that:

a TMDL is a quantitative plan that determines the amount of a particular pollutant that a water body can receive and still meet its applicable water quality standards. In other words, TMDLs are the best possible estimates of the assimilative capacity of the water body for a pollutant under consideration. A TMDL is commonly expressed as a load, with units of mass per time period, but may be expressed in other ways also. TMDLs must also estimate how much the pollutant load needs to be reduced from current levels in order to achieve water quality standards.<sup>4</sup>

The TMDL continues to note that the TMDLs adopted for Segments 1225 and 1226, “establish the *allowable* pollutant loading for each water body, distributed among the source categories that contribute the pollutant.”<sup>5</sup> The adopted TMDLs found that nonpoint source loading of phosphorus in the contributing watershed for the Below Stephenville gage would need to be

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<sup>2</sup> *Two Total Maximum Daily Loads for Phosphorus in the North Bosque River*, TNRCC, February 2001, at pp. 3-4

<sup>3</sup> *Id.* at p. 2.

<sup>4</sup> *Id.* at p. 1.

<sup>5</sup> *Id.* at p. 14.

reduced by 55% in order to achieve compliance with the Texas Water Quality Standards (WQS), and point source loading of phosphorus in the contributing watershed for the Below Stephenville gage would need to be reduced by 67%.<sup>6</sup>

Each permit issued by TCEQ is required to contain conditions necessary to ensure that all applicable water quality standards will be achieved *and* ensure consistency with the state water quality plan.<sup>7</sup> Contrary to this requirement, the draft permit for Overcrest's proposed expansion does not include conditions adequate to ensure consistency of the permit with the applicable TMDL, as incorporated into the State Water Quality Management Plan. No analysis has been provided as to the cumulative pollutant load of phosphorus in the North Bosque River watershed that will result from the issuance of the proposed permit. Without such an analysis, it is not possible to determine that issuance of the permit is consistent with the applicable TMDLs. While the TMDL found that significant *reductions* in phosphorus contributions were necessary in order to achieve compliance with the state WQS, the application seeks to *increase* the number of dairy cattle housed at the dairy, thereby creating the potential for the increased loading of phosphorus in the watershed.

Additionally, Applicant has not demonstrated that the nutrient application rates set forth in the application are limited consistent with the requirements of the TCEQ rules, including, without limitation, those set forth at 30 TAC §§ 321.36, 321.40, and 321.42. The soils in the application fields have limitations due to depth to bedrock, the droughty nature of some soils, slow water movement, and filtering capacity. These limitations have not been addressed in a specific fashion adequate to prevent the harmful runoff of nutrients.

Furthermore, the permitted application of nutrients is excessive. The yield goals for the crops identified have not been demonstrated to be realistic, and, thus, the nutrient application rates have not been shown to be appropriate.

Applicant has also not demonstrated that the retention control structures at the site are proposed to be designed and operated in a manner protective of the environment and compliant with the requirements of the TCEQ rules. The standards of the Midwest Plan Services do not provide adequate protection to be sufficient to meet the requirements of the TCEQ rules.

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<sup>6</sup> *Id.* at p. 16 (Table 5).

<sup>7</sup> 30 T.A.C. § 305.531(4), incorporating 40 C.F.R. 122.44(d).

The best management practices for the handling of wastewater and potential pollutants at the facility have not been demonstrated to be compliant with TCEQ regulations.

**IV. Conclusion.**

For the above reasons, Touchstone Ranch respectfully requests that the Application be denied. If not denied, Touchstone Ranch requests a contested case hearing with regard to the issues raised in these comments and hearing request.

Respectfully submitted,

/s/ Eric Allmon

Eric Allmon

State Bar No. 24031819

**PERALES, ALLMON & ICE,  
P.C.**

1206 San Antonio

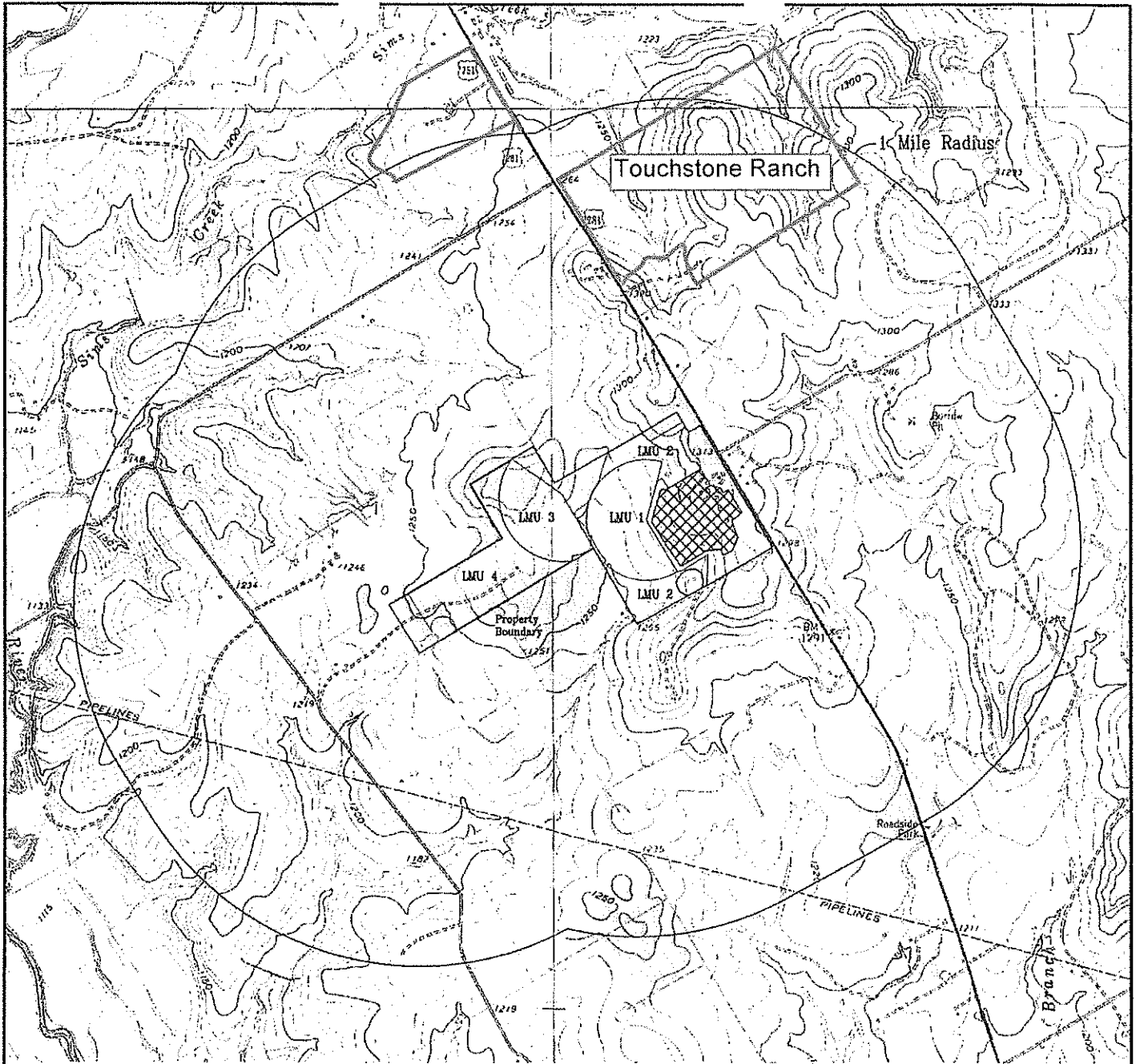
Austin, Texas 78701

512-469-6000 (t)

512-482-9346 (f)

COUNSEL FOR TOUCHSTONE  
RANCH RECOVERY CENTER  
AND TOUCHSTONE RANCH  
LAND LLC

# ATTACHMENT A




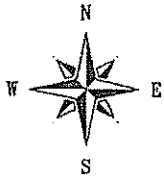
Touchstone Ranch

1 Mile Radius

Map Generated 11/11/2020

**LEGEND:**

 Denotes Production Area



1200' 0 1200' 2400'

SCALED AS SHOWN

**RECEIVED**  
**DEC 09 2020**  
 Water Quality Applications Team

Source: USDS-NRCS. Geospatial Data Gateway. Available at:  
<http://datagateway.nrcs.usda.gov/>. Digital Raster Graphic  
 County Mosaic by NRCS - Accessed March, 2015.

• Refer to Figures 1.3 & 1.4 for overall facility maps.

Overcrest Dairy  
 Hico, Texas  
 Erath County

USGS 7.5 Min. Quadrangle Map  
 Figure 1.2  
 Page 3



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