

**TPDES PERMIT NO. WQ0015722001**

<b>PETITION BY 1817 LACEY, LTD.</b>	§	<b>BEFORE THE TEXAS COMMISSION</b>
<b>TO REVOKE TEXAS POLLUTION</b>	§	
<b>DISCHARGE ELIMINATION</b>	§	<b>ON</b>
<b>SYSTEM ("TPDES") PERMIT</b>	§	
<b>NO. WQ0015722001</b>	§	<b>ENVIRONMENTAL QUALITY</b>

**PERMITTEE SIGMA PRO PROPERTIES, LTD.'S RESPONSE  
TO 1817 LACEY, LTD.'S PETITION TO REVOKE/SUSPEND  
TPDES PERMIT NO. WQ0015722001**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, SigmaPro Properties, LLC ("SigmaPro" or "Permittee"), holder of TPDES Permit No. WQ0015722001 (the "Permit") and files this response to the Petition of 1817 Lacey Ltd. to Revoke or Suspend TPDES Permit No. WQ0015722001 (the "Petition"), and would show the Commission as follows:

**I.  
INTRODUCTION**

**A. "Off With Their Head".**

On April 21, 2022, 1817 Lacey Ltd. ("Lacey" or "Petitioner") filed a collateral attack on SigmaPro's Permit by its Petition seeking the revocation or suspension of SigmaPro's TPDES Permit No. WQ0015722001 (the "Permit") pursuant to the Commission's Rule 305.66 (30 TAC), subsections (a)(4), (a)(10 and (f)(3). In order to secure the imposition of the Draconian "death penalty" on SigmaPro, *i.e.*, revocation of its 3-year old Permit, Lacey grounds its complaint in the form of allegations that characterize SigmaPro as having acted with malice aforethought, and the specific intent (i) to deceive the Commission and (ii) "hide" its Application from Petitioner.

**1. Petitioner’s Unsupported Allegations of Malfeasance.**

Lacey’s Petition contains the following *unsupported* allegations:

- (i) SigmaPro “*falsely identified* a different entity as owning 1817 Lacey Drive [Fort Worth, Tarrant County, Texas]. (Lacey Pet. at 1-2) (emphasis added);
- (ii) SigmaPro “*misrepresented*” the owner of the property Lacey claims to own as being “Closner Equipment Co., Inc. (Lacey Pet. at 1) (emphasis added);
- (iii) “SigmaPro provided the TCEQ with *false information* on the landowner map and the sheet attached to the landowner map,…” (Lacey Pet. at 1) (emphasis added);
- (iv) “SigmaPro made a *material misrepresentation* in Attachment C to the Permit Application because Lacey, not Closner Equipment Co., Inc., was the owner of property “4”…” (Lacey Pet. at 3) (emphasis added);
- (v) “The mailing labels included by SigmaPro…*falsely list* Closner Equipment as an affected landowner…” (Lacey Pet. at 3) (emphasis added); and
- (vi) “SigmaPro *gave the Chief Clerk false and misleading information* regarding the owners of property adjacent to the site of the proposed wastewater discharge point.” (Lacey Pet. at 4) (emphasis added).

**2. Petitioner’s Unsupported Characterization of Impacts of its Unsupported Allegations.**

To enhance its hyperbolic allegations of SigmaPro’s “malfeasance,” Petitioner inflates the effect of not receiving mailed notice addressed to 1817 Lacey Ltd., with the following claims that are facially inaccurate, as a matter of law:

- (i) “Petitioner never received *any notice* of the NORI or the NAPD” (Lacey’s Pet. at 2) (emphasis added);
- (ii) “SigmaPro’s *misrepresentation* resulted in *a lack of notice to Petitioner* of the NORI or the NAPD” (Lacey’s Pet. at 3) (emphasis added); and
- (iii) “SigmaPro’s failure to provide the correct landowner information in the Permit Application *deprived Petitioner of any opportunity to contest the Permit Application*” (Lacey Pet. at 3-4) (emphasis added).

**II.**  
**BACKGROUND FACTS**

**A. Introduction.**

In 2018, SigmaPro developed an application for its TPDES Permit to treat and directly discharge domestic wastewater into a watercourse at a point on SigmaPro’s property that is an unnamed tributary of the Trinity River in the Trinity River Basin up to 9,500 gallons of domestic wastewater effluent. As part of that process, SigmaPro engaged qualified consultants experienced in the preparation and filing of TPDES Permits, as well as the design, construction and operation of the permitted wastewater treatment facilities. Among these consultants was Perkins Engineering Consultants, Inc. (“Perkins”). *See* Exhibit “A” (Affidavit of Janet Sims). Ms. Janet Sims, with three decades of experience working on wastewater permitting applications, was the Project Manager on the Perkins Team for the SigmaPro Application. *Id.*

The Perkins Team coordinated her efforts to develop the Permit Application, sending information related to the Application and Application drafts to SigmaPro through its in-house Project Manager, Mr. Robert Berman for review, signature and other action. *See* Exhibit “B” (Affidavit of Robert Berman); *see also* Exhibit “A” (Sims Affidavit). Acting in good faith in the

Application process, Ms. Sims and Mr. Berman identified the persons or entities, and their mailing addresses related to neighboring properties believed to be neighboring landowners entitled to receive mailed notice. *See* Exhibit “A” (Sims’ Affidavit, including Exhibit Nos. 1 and 2, thereto); Exhibit “B” (Berman Affidavit, including Exhibit A thereto). Petitioner has presented no evidence that supports a conclusion to the contrary, *i.e.*, a conclusion that there was bad faith, deceitful intent or similar motivation on the part of SigmaPro as the Applicant to hide the Application from Petitioner or otherwise exclude Petitioner from the TCEQ’s Permitting Process.

**B. SigmaPro’s “Notice” Efforts.**

The evidence of record and documented in this Response reflects a yeoman’s effort to disseminate information about its Application and facilitate participation. In an effort to convey information about the SigmaPro Application to neighboring property owners, SigmaPro researched the Tarrant County Appraisal District’s online records, and undertook personal outreach efforts to contact landowners and give them notice of the Application, including the Commissioner’s Permitting Process that would result in them receiving mailed notice of the NORI (Notice of Receipt of Application and Intent to Obtain Permit) and NAPD (Notice of Application and Preliminary Decision) going forward. *See* Exhibit “B” (Berman Affidavit). While not a perfect resource, use of Central Appraisal Records is an accepted methodology for identifying owners of property.

With respect to SigmaPro’s efforts to communicate information about the SigmaPro Application to neighboring landowners, SigmaPro went further. Specifically, Mr. David Underwood, P.E., owner of SigmaPro had tasked the SigmaPro Project Manager, Mr. Robert Berman, to visit personally each of the neighboring properties evidenced on the Landowner Map included as Exhibit A to his Affidavit (*see* Exhibit “B” hereto, Berman Affidavit), and explain to them that SigmaPro had filed its Application for the Permit, the purpose of the Permit Application

and the TCEQ Permitting Process, and that they would be receiving mailed notice from the Commission. *See* Exhibit “B” (Berman Affidavit). Mr. Underwood did not want his neighbors to learn about the SigmaPro Application for the first time upon receipt of mailed notice from TCEQ. *Id.*, Exhibit “B” (Berman Affidavit).

Pursuant to Mr. Underwood’s directive, Mr. Berman “made the rounds” to each of the Properties identified on the Landowner Map (*see* Exhibits Nos. 1 and 2 to the Sims Affidavit (Exhibit “A” hereto) and Exhibit A to the Berman Affidavit (Exhibit “B” hereto) to brief the occupants of each tract on the Landowner Map about the SigmaPro Application and the TCEQ Permitting Process. *See* Exhibit “B” (Berman Affidavit). If the occupant of an identified property on the Landowner Map was not on the premises when he visited, Mr. Berman would leave a note with his contact information in the mailbox for them to contact him upon their return.

Further, following receipt of both the determination of administrative completeness of the Notice of Receipt of Application and Intent to Obtain Permit (“NORI”), and the separate Executive Director’s Notice of Application and Preliminary Decision (the “NAPD”), SigmaPro published notice in both English and Spanish in two newspapers of general circulation within Tarrant County. Attached to Janet Sims’ Affidavit (Exhibit “A” hereto) are Publisher’s Affidavits identified as Exhibit Nos. 3, 4, 5 and 6.

Exhibit No. 3 is the October 20, 2018 Publisher’s Affidavit from the *Star Telegram* newspaper in Fort Worth, Tarrant County, of the Notice of the NORI. Exhibit No. 4 is the January 26, 2020 Publisher’s Affidavit from the *Star Telegram* newspaper, Fort Worth, Tarrant County, of the Executive Director’s NAPD. Exhibit No. 5 is the October 20, 2018 Publisher’s Affidavit from *La Estrella* newspaper in Fort Worth, Tarrant County, providing the Spanish version of the Notice of the NORI. Exhibit No. 6 is the February 9, 2019 Publisher’s Affidavit from *La Estrella*

newspaper in Fort Worth, Tarrant County, providing the Spanish version of the Notice of the NAPD.

Constructive notice is authorized by law and creates the presumption that once given, all members of the public within the area of the general circulation is on notice of the application, including 1817 Lacey Ltd.

**C. Mr. Berman's Extraordinary Personal Contacts with Occupants of Tract No. 4.**

With respect to Tract No. 4 on the Landowner Map, the property identified in the Petition and which SigmaPro had identified as being owned by Closner Equipment Company, Inc. ("Closner"), Mr. Berman successfully met with the Closner onsite manager. *See* Exhibit "B" (Berman Affidavit). Neither Ms. Sims nor Mr. Berman had seen any evidence of 1817 Lacey Ltd. as the owner of Tract No. 4 in 2018. *See* Exhibit "A" (Sims Affidavit) and Exhibit "B" (Berman Affidavit).

Attached to Mr. Berman's Affidavit (Exhibit "B") are true and correct copies of photographs he took from the SigmaPro Property looking to the north which included in the background Tract No. 4 (*see* Exhibits B and C to Exhibit "B" (Berman Affidavit)). The two photographs reflect the existence of buildings on the Tract No. 4 property. *See id.* One of those buildings has signage that reads "Closner Equipment." *See* Exhibit C to Exhibit "B" (Berman Affidavit).

When Mr. Berman made his visit to the Closner Offices on Tract No. 4 in 2018, he asked, as he did at all of the properties he visited, to speak to the "owner." When he was told that the owner was "out of town," Mr. Berman asked to speak to the Closner onsite manager. *See* Exhibit "B" (Berman Affidavit). Mr. Berman met with the Closner onsite manager on Tract 4 and told him SigmaPro's story about the Permit Application and the TCEQ's permitting process including

the mailed notice. *Id.* According to Mr. Berman, nothing was disclosed to him during the visit that 1817 Lacey Ltd. was actually the owner of the property.

After finishing his visit with the Closner onsite manager, Mr. Berman noticed as he was leaving Tract No. 4, signage on another building located on Tract No. 4 with signage for “Premier Paving Ltd.” *See* Exhibit “B” (Berman Affidavit). Mr. Berman went into the office at the Premier Paving Ltd. Office, introduced himself and asked to speak to the owner or onsite manager. *Id.*

Mr. Berman met with Premier Paving’s onsite manager and, as he had done at the Closner building on Tract No. 4 and other identified properties on the Landowner Map he visited in 2018, explained the SigmaPro Permit Application story to the manager. Again, no mention was made of 1817 Lacey Ltd., or that 1817 Lacey Ltd. was the owner of Tract No. 4. *See* Exhibit “B” (Berman Affidavit).

The occupants of Tract No. 4 both received detailed personal notice of SigmaPro’s Application and the TCEQ Permitting Process. *See* Exhibit “B” (Berman Affidavit). Closner which was identified on the SigmaPro Landowner Map as the owner of Tract No. 4 subsequently received mailed notice of the SigmaPro Application from the TCEQ Chief Clerk when the Clerk mailed Closner the NORI and NAPD. Petitioner does not dispute this fact.

Assuming neither Closner nor Premier was the owner of Tract No. 4, the fact is that they were occupying Tract No. 4, did receive notice, and according to Mr. Berman did not tell him 1817 Lacey Ltd. was the owner of Tract No. 4. Assuming they were “tenants” of 1817 Lacey Ltd., a fact Petitioner does not share with the Commission in the Petition, they were at a minimum *de facto* representatives of 1817 Lacey Ltd. They were capable of transmitting the notice and information they received from SigmaPro, both during Mr. Berman’s visit, and in the case of Closner, upon receipt of the TCEQ Clerk’s mailed notice of the NORI and NAPD to Petitioner.

Assuming the validity of the claim of 1817 Lacey Ltd. that it acquired the property identified as Tract No. 4 on the Landowner Map, there was no evidence to that effect on the ground at Tract No. 4.<sup>1</sup> To the contrary, in 2018 Tract No. 4, which takes up two street addresses, *i.e.*, 1817 Lacy Drive and 1819 Lacy Drive (*see* Exhibit “B” (Berman Affidavit)), was occupied by Closner Equipment Company, Inc. (“Closner”) and a second entity named Premier Paving Ltd. (“Premier Paving”). There was no evidence observed by Mr. Berman on the ground that the owner of Tract No. 4 was 1817 Lacey Ltd. *See* Exhibit “B” (Berman Affidavit).

**D. Petitioner’s Unclean Hands.**

Petitioner filed its Petition with “unclean hands.” The facts that support this conclusion include the following:

1. Petitioner admits that it has known about SigmaPro’s wastewater permit application and its Permit since the summer of 2020, albeit in a veiled statement by Petitioner in the Petition. *See* Lacey Pet. at 6 (“SigmaPro has not made any attempt to correct the violation, which was brought to its attention by letter sent in *August 2020.*”). (emphasis added)

2. Petitioner’s statement, quoted in subparagraph 1. above, is false. SigmaPro did respond to the letter and other communications from Petitioner, and Petitioner’s tenant in August 2020, Premier Paving, Ltd. In fact, as demonstrated by e-mail exchanges attached hereto as Exhibit “C,” Petitioner and SigmaPro representatives were communicating about the Permit and SigmaPro’s discharges at least as early as July 2020. *Id.*

3. Petitioner failed to disclose in its Petition that communications between Petitioner and SigmaPro had commenced two months earlier in July. *See* Exhibit “C.” Petitioner had contacted SigmaPro and SigmaPro representatives had provided information to and met with

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<sup>1</sup> Aside from its assertion of ownership, Petitioner has not presented a deed establishing its title to Tract No. 4.



Petitioner, including providing copies of the Permit. Petitioner was dissatisfied with the outcome of those meetings. *Id.*

4. Petitioner escalated its attack on SigmaPro by contacting representatives of Tarrant County and the City of Fort Worth to seek their intervention in shutting down SigmaPro's lawful treatment and discharge of wastewater pursuant to its Permit. *See* Exhibits "D, "E" and "F."

5. Petitioner then resorted to "self-help" in violation of Section 11.086, Texas Water Code and provisions of Section 404 of the Federal Clean Water Act by dumping dirt and fill material into the creek on its property for the purpose of causing drainage in the creek, including the treated effluent stream discharge pursuant to the SigmaPro Permit, to back-up and flood the SigmaPro Property. *See* Exhibits "D" and "G" (e-mails from Petitioner and Petitioner Tenant, Premier Paving Ltd., representatives); *cf.*, Exhibit "A" (Correspondence from USACE regarding Section 404 violations).

6. Petitioner waited (i) almost two years from the documented date of Petitioner's actual knowledge of the Permit, and SigmaPro's treatment and discharge of wastewater effluent pursuant to the Permit, to file its Petition, and (ii) more than three years from the date the Permit was issued.

7. As noted above, Petitioner's hyperbolic description of SigmaPro's intent and activities in preparing and filing its Application for the Permit, without any supporting documentation of actual malevolent intent, deceit or fraud on the part of SigmaPro, further support the conclusion that Petitioner's collateral attack on the Permit is unsupported by any showing of "good cause" that would support the revocation or suspension of the Permit pursuant to 30 TAC § 305.66.

*See* Response to Petition, *supra*, at pages 1-3.

**E. Petitioner’s Unlawful “Self-Help” Activities.**

As noted above, Petitioner resorted to “self-help” remedies in violation of both State and Federal law, *i.e.*, Section 11.086, Texas Water Code, and Sections 301 and 404, United States Clean Water Act. Petitioner’s unlawful self-help activities forced SigmaPro to file suit in State District Court, and obtain a Temporary Restraining Order and, thereafter, a Temporary Injunction against Petitioner in Cause No. 352-326387-21, *SigmaPro Properties Ltd. v. 1817 Lacey Ltd.*, in the 352<sup>nd</sup> District Court of Tarrant County. Exhibit “I” is a true and correct copy of SigmaPro’s verified Motion to Show Cause and for Contempt by Petitioner, Exhibit “J” is a true and correct copy of the Order granting Temporary Injunction against Petitioner dated 3/21/22, and Exhibit “K” is a true and correct copy of the Order granting Temporary Restraining Order issued 7/21/21 against Petitioner.

As evidenced by the letter dated January 18, 2022 from the Department of the Army, United States Army Corps of Engineer, Fort Worth District, addressed to 1817 Lacey, Ltd. c/o Mabel Simpson, advising Petitioner of the USACE’s investigation into the discharge of fill materials into the waters of the United States, including wetlands, in violation of Section 301(a) absent a permit issued under Section 404 of the Clean Water Act by Petitioner at 1817 Lacy Drive. *See* Exhibit “H.” That investigation by the Corps of Engineers is ongoing.

**III.**  
**TCEQ’s RULE 305.66**

Technically, the Petition should be denied outright because Petitioner failed to exhaust its administrative remedies in a timely fashion. Specifically, the controlling vehicle to challenge an action by TCEQ on an application for a Permit is 30 TAC § 50.139. Section 50.139 prescribes the filing of a motion to overturn the challenged action, which motion is to be filed by an express deadline:

The applicant, public interest counsel or other person may file with the chief clerk a motion to overturn the executive director's action on an application. A motion to overturn must be filed no later than 23 days after the date the agency mails notice of the signed permit.

*See* 30 TAC § 50.139 (a)-(b) (emphasis added). The Petitioner failed to meet such TCEQ requirements, and its Petition should be denied as a result. *Id.*

Additionally, Petitioner failed to exercise the remedy provided for in Texas Water Code Section 5.351. Section 5.351 authorized a person aggrieved by an order or action of the Commission (or the Executive Director when authorized to act) to file a petition in the District Court in Travis County to overturn the action. That petition must be filed within 30 days of issuance. *See* Texas Water Code § 5.351. *See, e.g., Van Indep. Sch. Dist. v. McCarty*, 165 S.W.3d 351, 354 (Tex. 2005) (holding that the exhaustion of administrative remedies requires procedural compliance and rejecting the argument that “administrative procedures can be ignored if a creative applicant convinces a court that some other procedure was just as good”); *Texas Water Comm’n v. Dellana*, 849 S.W.2d 808, 809–10 (Tex. 1993) (holding that “only a party that has exhausted all available administrative remedies may seek judicial review” of TCEQ decisions under Texas Water Code Section 5.351).

Under the TCEQ’s Rule 305.66 authorizing the extraordinary remedy of filing a petition to revoke or suspend a permit, the Commission may revoke a permit *if* it finds after notice and hearing that the permittee:

“made a false or misleading statement in connection with an original or renewal application either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees.”

*See* 30 TAC §305.66(f)(3); *cf., Id.* §305.66 (a)(4), (a)(10)(providing examples of circumstances that might support a finding of “cause”) . Before exercising such a Draconian “death penalty” sanction, the Commission must find (i) that the violation is significant and (ii) that the permittee

“has not made a substantial attempt to correct” the violation once it was brought to their attention. *See* 30 TAC §305.66(g)(1).

As the “moving party,” the burden of proof in this case is on the Petitioner to show sufficient probably that the Permittee, SigmaPro, is guilty of such misfeasance as contemplated by Subsections (a)(4) and (a)(10) of Section 305.66 as Petitioner alleges. That burden of proof is more than the use of hyperbolic adjectives in its claims. *See* 30 TAC § 80.17(a); *see generally* 30 TAC §305.66.

Other than the claim that it did not receive mailed notice of the NORI or NAPD because it was not identified on the Landowner Map and accompanying set of addresses, Petitioner has not provide any credible evidence that such failure to be included on the Landowner Map and accompanying set of addresses was the result of any intent, or knowing effort of SigmaPro to deceive the Commission, including its employees, or to hide its Application from the Petitioner to prevent the Petitioner from having any notice or opportunity to participate in the Permitting Process. The evidence presented by SigmaPro as the Permittee demonstrates the exact opposite. SigmaPro was proactive to identify and communicate with the persons or entities associated with each of the Tracts identified on the Landowner Map, to include Petitioner’s Tract No. 4, that it had filed an Application for a TPDES Permit, its intent in doing so, and information of what they could expect during the TCEQ Permit process. Rule 305.66 does not require the Commission to hold a hearing to deny a Petition on the basis that the Petitioner has failed to carry its threshold burden to warrant to the Commission to order a hearing. The Commission can make that determination to deny the Petition based upon the Pleadings presented to it for consideration at it Agenda Conference where the Petition is considered.

Based upon the Facts presented, *supra*, and the Arguments below, the Commission can find that Petitioner has failed to carry its burden of proof and dismiss the Petition. Moreover, the

facts presented *supra*, also support the conclusion that Petitioner’s claims are not brought on their merit, but brought with “unclean hands” and in frustration to Petitioner’s inability to find another avenue to terminate SigmaPro’s lawful operations pursuant to its Permit. Equity further supports the conclusion that Rule 305.66, and its Draconian “death penalty” sanction should not be considered, but rather that the Petition should be dismissed.

**IV.**  
**ARGUMENT**

**A. Mailed Notice.**

The record is clear that SigmaPro identified neighboring properties, including downstream properties that could be potentially affected by the SigmaPro Permit if its Application were granted, on its Landowner Map. Included in those properties was the property identified as “Tract No. 4.” Tract No. 4 is the property that Petitioner claims to be the owner of, and was the tract that in 2018 was occupied by two entities, Closner Equipment Company, Inc. and Premier Paving Ltd., *not* 1817 Lacey Ltd. or any entity identified as 1817 Lacey Ltd.

Among the entities identified in SigmaPro’s Application was Closner Equipment Company, Inc. based upon its occupancy and presence on Tract 4. Mailed notice was sent to all of the tracts identified in the Application on the Landowner Map, copies of which are included in both the Affidavits of Janet Sims and Robert Berman. Unfortunately, 1817 Lacey Ltd. was not identified by SigmaPro in its review of the Tarrant County Appraisal District records or its investigations on the ground and, therefore, was not included on the Landowner Map.

Notice, however, was provided to the occupant of Tract No. 4 and Petitioner’s tenant in 2018, Closner Equipment Company, located on Tract 4. Accordingly, SigmaPro did provide mailed notice to the affected tracts. There is no evidence that SigmaPro tried to hide its Application from any of the properties shown on the Map and in fact, the record is to the contrary.

The mailed notice includes the occupant of Tract 4 in 2018 as well as the extraordinary effort of SigmaPro, through the personal visits by its in-house Project Manager, Mr. Robert Berman, to the properties, including both Closner and Premier Paving on Tract 4. Accordingly, there is no evidence or basis to support any of Petitioner's claims that SigmaPro misrepresented, falsified or tried to mislead or deceive the Commission or avoid giving notice of the Application to persons or entities related to Tract 4 so that they would have the opportunity to fully review SigmaPro's Permit Application and take whatever steps or actions in response thereto they deemed appropriate in 2018.

There is no evidence in the record, and in fact the evidence of record and the documentation provided by the Petitioner and herein supports the conclusion to the contrary, that would support the Commission's authority to exercise the Draconian "death penalty" remedy of revocation of SigmaPro's Permit sought by Petitioner. There is no evidence of cause supported by bad faith, malfeasance, fraud or deceit as alleged by Petitioner related to the error in not mailing the notice to the entity identified as 1817 Lacey, Ltd.

**B. Constructive Notice.**

In addition to the mailed notice undisputedly sent to Petitioner's tenant Closner, and personal notice to the occupants of Tract No. 4, *i.e.*, Closner and Premier Paving, 1817 Lacey Ltd. also had *constructive notice* of the SigmaPro Permit Application. Following receipt of both the determination of administrative completeness of the Notice of Receipt of Application and Intent to Obtain Permit ("NORI"), and the separate Executive Director's Notice of Application and Preliminary Decision (the "NAPD"), SigmaPro published notice in both English and Spanish in two newspapers of general circulation within Tarrant County. Attached to Janet Sims' Affidavit (Exhibit "A" hereto) are Publisher's Affidavits identified as Exhibit Nos. 3, 4, 5 and 6.

Exhibit No. 3 is the October 20, 2018 Publisher's Affidavit from the *Star Telegram* newspaper in Fort Worth, Tarrant County, of the Notice of the NORI. Exhibit No. 4 is the January 26, 2020 Publisher's Affidavit from the *Star Telegram* newspaper, Fort Worth, Tarrant County, of the Executive Director's NAPD. Exhibit No. 5 is the October 20, 2018 Publisher's Affidavit from *La Estrella* newspaper in Fort Worth, Tarrant County, providing the Spanish version of the Notice of the NORI. Exhibit No. 6 is the February 9, 2019 Publisher's Affidavit from *La Estrella* newspaper in Fort Worth, Tarrant County, providing the Spanish version of the Notice of the NAPD.

Constructive notice is authorized by law and creates the presumption that once given, all members of the public within the area of the general circulation is on notice of the application. Accordingly, 1817 Lacey Ltd. should be deemed to have received notice of the Application.

Moreover, while 1817 Lacey Ltd. failed to disclose in its Petition that both Closner and Premier Paving were its tenants on Tract No. 4, and the occupants of 1817 Lacy Drive in 2018, presumably, those tenant occupants of Tract No. 4, both of whom were visited by Mr. Robert Berman as the representative of SigmaPro, and Closner which received mailed notice as evidenced by the Application and documents of record, received personal and direct notice of the SigmaPro Application. That information should have been communicated to their respective landlord/lessor, 1817 Lacey Ltd. These facts further support the conclusion that 1817 Lacey Ltd. had at a minimum constructive notice, and probably actual notice of the Application, as a result of the notice to its tenants on Tract No. 4.

**C. Petitioner's Behavior.**

On March 21, 2019, after a rigorous application process which included notifying all affected landowners, SigmaPro received TPDES Permit No. WQ0015722001 (the "Permit") from the TCEQ authorizing the treatment and discharge of wastes from SigmaPro Wastewater

Treatment Facility into a specified discharge route. The Permit specified limitations, monitoring requirements, and other conditions to ensure the safe discharge of effluent.

Around June 2020, Hugh Simpson, property manager for 1817 Lacey Ltd., claims to have first learned of the Permit which he mistakenly believes allows SigmaPro to dump its “poo water” onto 1817 Lacey Ltd.’s property. *See* Exhibit “L” (E-mail dated June 18, 2020, from Mr. Simpson). From that point until today, 1817 Lacey Ltd. has engaged in an aggressive course of harassing behavior, apparently on a mission to have the Permit revoked, or to prevent the authorized activities allowed by the Permit. The Petition is the latest attempt.

Unsurprisingly, Mr. Simpson’s initial contact with SigmaPro about the Permit in June 2020 contained thinly-veiled threats of “escalating” his complaints if SigmaPro did not stop discharging entirely. *See* Exhibit “M” (voicemail from Mr. Simpson to Mr. Berman). Despite the tone of Mr. Simpson’s communications, SigmaPro reached out to Mr. Simpson and explained that the Permit allowed for discharge along the specified discharge route, which includes the unnamed tributary that runs through the 1817 Lacey Ltd. property. SigmaPro’s refusal to capitulate to Mr. Simpson’s unreasonable demands appears to have driven Mr. Simpson into a fervor. Mr. Simpson hired engineering consultants and water-quality testers in an attempt to determine if any violations of the permit had been made by SigmaPro. *See* Exhibit “N.” Notably, the results of all water-quality and soil tests came back negative for any pollutants or contamination on Tract No. 4 caused by SigmaPro’s lawful operations pursuant to the Permit. *Id.*

At the advice of his consultants, Mr. Simpson reached out to the City of Fort Worth and Tarrant County complaining about SigmaPro’s permitted discharge—all to no avail. *See* Exhibits “D,” “E” and “F.” When that effort did not produce the desired result, Mr. Simpson next filed a complaint to the TCEQ who sent an investigator to SigmaPro’s property. The investigator’s report, dated September 15, 2020, identified a few unrelated technical issues which were quickly



resolved, but ultimately found that 1817 Lacey Ltd.’s complaints “were not substantiated” and SigmaPro was discharging along the discharge route. *See* Exhibit “O.” The 2020 TCEQ report went on to say that 1817 Lacey Ltd. should file a petition to investigate all other complaints.

1817 Lacey Ltd., through its Property Manager, Mr. Simpson did not follow the TCEQ investigator’s advice in 2020. Instead, in April 2021, Mr. Simpson took matters into his own hands and ordered multiple large loads of fill dirt be dumped on the 1717 Lacey Ltd. property in the discharge route across the street from SigmaPro’s discharge point. Initially, this presented no issue due to the relatively small amount of discharge allowed by the Permit. However, by July 2021, there was enough rainfall in the area which coupled with the discharge caused water to back-up behind Petitioner’s unpermitted and unauthorized “dam” over the county road separating 1817 Lacey Ltd.’s Tract No. 4 and SigmaPro to cause flooding on SigmaPro’s property. Mr. Simpson and his engineering consultant jokingly e-mailed each other about causing SigmaPro injury:

**From:** Carnes, Kris  
**Sent:** Friday, July 2, 2021 11:56 PM  
**To:** Hugh Simpson; Mabel Simpson  
**Subject:** Re: Lake Sigma Pro...now he can eat the mosquitoes as he waves his TCEQ permit over his head.

That’s great. Let me know if he needs an engineer to help him out with his drainage. Lol

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**From:** Hugh Simpson <hsimpson@Simpsonlaw.org>  
**Sent:** Friday, July 2, 2021 2:38:57 PM  
**To:** Mabel Simpson <msimpson@munckwilson.com>; Brad Greer (brad@bgaainc.com) <brad@bgaainc.com>  
**Cc:** Carnes, Kris <kris.carnes@elitepipingcivil.com>  
**Subject:** Lake Sigma Pro...now he can eat the mosquitoes as he waves his TCEQ permit over his head.

*See* Exhibit “G.”

SigmaPro had no choice but to file a petition in the Tarrant County District Court for a Temporary Restraining Order (“TRO”) against 1817 Lacey Ltd. On July 7, 2021, SigmaPro filed

*Sigma Pro Properties, LLC v. 1817 Lacey Ltd.*; Cause No. 352-326387-21 in the 352<sup>nd</sup> District Court. *See* Exhibits “I,” “J” and “K.” The District Court issued a TRO that same day.

Thereafter, a full-day hearing was held on July 26, 2021 in which multiple witnesses testified, including a Tarrant County engineer. At the conclusion of the hearing, the District Court entered a Temporary Injunction requiring 1817 Lacey Ltd. to “remove the dirt and fill [1817 Lacey Ltd.] placed that is blocking the flow of water going north.” *See* Exhibit “J.” Even with the plain language of the injunction, SigmaPro had to file a Motion for Contempt before 1817 Lacey Ltd. complied and removed the fill dirt. *See* Exhibit “I.”

By the Petition, it appears that 1817 Lacey Ltd. has filed a complaint collaterally attacking the Permit, as well as the rulings by the State District Court. 1817 Lacey Ltd.’s motives are clear.

What is not clear is why they waited almost two years from the time Petitioner admits to having actual knowledge of the Permit to challenge a Permit Petitioner now claims is an “immediate threat”? *See* Lacey Pet. at 7.

One explanation that is in keeping with 1817 Lacey Ltd.’s vindictive behavior may be the fact that 1817 Lacey Ltd. has recently come under investigation by the United States Army Corps of Engineers for unauthorized discharge of fill material. *See* Exhibit “H.”

**E. SigmaPro Had “No Opportunity To Cure.”**

Section 305.66 (g)(1) provides that as a prerequisite to the revocation or suspension of a permit pursuant to Section 305.66, the Commission must find that the permit holder “has *not* made a substantial attempt to correct the violations.” *See* 30 TAC § 305.66 (g)(1) (emphasis added). The facts in this case, as presented in the Petition, demonstrate that the permit holder, SigmaPro, had no opportunity to make a substantial attempt to correct any violation. First, there is no evidence presented that supports the conclusion that SigmaPro committed a violation of either subsection (a)(4) or (a)(10) as required by subsection (f)(3). Even assuming that there had

been some demonstration that SigmaPro was guilty of the malevolent, deceitful, fraudulent acts alleged by Petitioner, due to the timing of Petitioner's bringing these facts to the attention of both the Commission and the Permittee, there is no ability to correct the violation had it occurred. The notices having been issued, the permit having been granted, and becoming final pursuant to 30 TAC § 50.139, and Texas Water Code § 5.351, it is possible for SigmaPro to retroactively address the alleged violation.

What the facts presented herein do demonstrate, however, is that SigmaPro was proactive in its efforts to disseminate the information and ensure that proper notices were made to the best of its ability. The discussion herein, supported by the Affidavit of Robert Berman, Project Manager for SigmaPro, demonstrate that through his personal visits to each of the tracts to discuss with the landowner and/or its management the SigmaPro Application, its proposed Permit and the Permitting Process were an effort to prophylactically avoid any form of violation, or failure to provide notice to potentially affected parties. These are facts the Commission should consider, which support the conclusion that the Petition should be denied. *See Exhibit "B" (Berman Affidavit).*

#### **IV.** **CONCLUSION & PRAYER**

Petitioner, 1817 Lacey, Ltd., has failed to carry its burden to establish that pursuant to Section 305.66(a)(4), (a)(10) and (f)(3), 30 TAC, SigmaPro's Permit should be revoked, or suspended. While the record reflects, and SigmaPro does not challenge the fact that "mailed notice" was not sent addressed to an entity named "1817 Lacey Ltd.," the record does *not* support the conclusion that SigmaPro intentionally made a significant misrepresentation or knowingly made any false representation(s) in its Application or, as Petitioner alleges, SigmaPro with malice aforethought, knowingly and/or intentionally filed false information with the TCEQ's Chief Clerk, or the Executive Director or his water quality staff. Nor has Petitioner shown by any

credible evidence that SigmaPro knowingly or intentionally sought to mislead TCEQ, or to knowingly and intentionally hide notice of its Application from Petitioner, 1817 Lacey Ltd.

To the contrary, SigmaPro's efforts to disclose and disseminate information about the filing of its Application and the TCEQ Permitting Process are well documented. Under the facts and circumstances presented by the Parties, the Commission could in its discretion find on the Pleadings filed that there is not good cause to revoke or suspend SigmaPro's Permit pursuant to 30 TAC §305.66 and, specifically, subsections (a)(4) and (a)(10) relied upon by Petitioner. Alternatively, if the Commission elects to refer the matter to SOAH to develop the record on the absence of good cause, SigmaPro will be prepared to participate and, thereafter, come back to the Commission for a final determination that the Petitioner should be denied.

WHEREFORE, PREMISES CONSIDERED, SigmaPro Properties LLC, Permittee, prays the Commission deny the Petition of 1817 Lacey, Ltd.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2022, the foregoing Response of Permittee SigmaPro to 1817 Lacey Ltd.'s Petition to Revoke/Suspend TPDES Permit No. WQ0015722001 was filed with the TCEQ's Office of the Chief Clerk via e-filing and facsimile, and on the Parties to this Docket through their respective Counsel of Record as shown on the Service List attached hereto by electronic mail, facsimile transmission or deposit in the U.S. Mail, postage prepaid.

/s/ Edmond R. McCarthy, Jr.  
Edmond R. McCarthy, Jr.

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