

**TCEQ DOCKET NO. 2022-0531-MWD**

**PETITION BY 1817 LACEY, LTD. § BEFORE THE TEXAS COMMISSION**  
**TO REVOKE TEXAS POLLUTION §**  
**DISCHARGE ELIMINATION § ON**  
**SYSTEM (“TPDES”) PERMIT §**  
**NO. WQ0015722001 § ENVIRONMENTAL QUALITY**

**REPLY TO RESPONSES TO PETITION TO REVOKE**  
**TPDES PERMIT NO. WQ0015722001**

This is a straightforward case. The petitioner, whose land is directly affected by a permitted wastewater discharge from a neighboring property, did not receive notice of the permit application and therefore was deprived of its right to challenge the application. The reason the petitioner did not receive notice is because the permittee provided false information to the TCEQ chief clerk about who owned the affected land. The fact that the petitioner owned the land was at all times easily ascertainable from the Tarrant Appraisal District website. Pursuant to the Texas Water Code and TCEQ rules, because the permittee provided false information to the TCEQ and the petitioner thus received no notice and could not participate in the permitting process, the Commission should revoke the permit.

**Introduction**

Despite including over 150 pages in its response, SigmaPro Properties, LLC (“SigmaPro”) did not offer *any* evidence to controvert these undisputed material facts established in the Petition to Revoke Texas Pollution Discharge Elimination System (“TPDES”) Permit No. WQ0015722001 (the “Permit”) (the “Petition”) filed by 1817 Lacey Ltd. (“1817 Lacey” or “Petitioner”):

- Petitioner has owned 1817 Lacy Drive since 2005.<sup>1</sup>

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<sup>1</sup> Exhibit B to Petition, a printout of the Tarrant Appraisal District account webpage for Petitioner’s property at 1817 Lacy Drive, and Exhibit C to Petition, (Account 06985513), a printout of the interactive map linked on that webpage; Exhibit D to Petition, Affidavit of Mabel Simpson, ¶ 2.

- 1817 Lacy Drive, identified in SigmaPro’s application for the Permit (“Permit Application”) as Property “4”, is immediately north of SigmaPro’s property from which the wastewater is discharged under the Permit, and the permitted discharge path goes through and across 1817 Lacy Drive.<sup>2</sup>
- SigmaPro represented in the Permit Application that the source of the information SigmaPro provided in the Permit Application regarding the affected landowner names and addresses was the Tarrant County Appraisal District.<sup>3</sup>
- The Tarrant Appraisal District<sup>4</sup> (“TAD”) website clearly shows, and would have shown at any time during the course of preparing the Permit Application and at the time SigmaPro filed it with the TCEQ, that Petitioner owns the property located at 1817 Lacy Drive and has since 2005.<sup>5</sup>
- The representations and statements made by SigmaPro in the Permit Application that Closner Equipment Co. Inc. (“Closner”) was the owner of 1817 Lacy Drive<sup>6</sup> were *false and misleading and were misrepresentations of relevant facts. SigmaPro failed to disclose in the Permit Application that Petitioner owned 1817 Lacy Drive.*
- 1817 Lacey Ltd. did not receive mailed notice of the Notice of Receipt of Application and Intent to Obtain Permit (“NORI”) or the Notice of Application and Preliminary Decision (“NAPD”), nor did it receive actual notice of the NORI, the NAPD or the Permit Application, and thus was unable to participate in the permitting process as it was entitled to under the applicable law.<sup>7</sup>

Proper notice is fundamental to any administrative proceeding, and providing false information in a permit application regarding adjacent landowners entitled to notice is a basic flaw in the permitting process. SigmaPro’s provision of inaccurate adjacent landowner information in

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<sup>2</sup> Exhibit A to Petition, pages 54-55 [Attachment C to Permit Application, Landowner Map and Affected Landowner Information], 95-98 [Revised Attachment C to Permit Application]; Exhibit D to Petition, Affidavit of Mabel Simpson, ¶¶ 2, 6)

<sup>3</sup> Exhibit A to Petition, page 16.

<sup>4</sup> The appraisal district that was referred to in the Permit Application and the Petition as “Tarrant County Appraisal District” is actually called the “Tarrant Appraisal District”, and will be referred to as such throughout this reply.

<sup>5</sup> Exhibits B and C to Petition.

<sup>6</sup> Exhibit A to Petition, pages 54-55 [Attachment C to Permit Application, Landowner Map and Affected Landowner Information], 62 [Attachment E to Permit Application, Buffer Zone Map], 96-97 [Revised Attachment C to Permit Application] and 97-98 [Revised Landowner Labels].

<sup>7</sup> Exhibit C to Petition, Affidavit of Mabel Simpson, ¶¶ 4-7.

the Permit Application compromised the entire permitting process by thwarting 1817 Lacey, Ltd.'s ability to participate. Therefore, SigmaPro's failure to provide truthful and accurate landowner information to the TCEQ rules when applying for the Permit is significant and cannot be corrected; the only way such failure could be corrected is for affected landowners like Petitioner to receive proper notice before the Permit was issued.

The Permit has not become a vested right and may be revoked by the Commission at any time for good cause shown, after opportunity for a public hearing.<sup>8</sup> Petitioner has shown through uncontroverted evidence in the Petition (as well as the additional evidence submitted with this reply, as described below) that SigmaPro in the Permit Application misrepresented and failed to fully disclose relevant facts regarding ownership of 1817 Lacy Drive, and made false and misleading statements in the Permit Application regarding ownership of 1817 Lacy Drive. Therefore, good cause has been established under 30 Texas Administrative Code § 305.66(a)(1)(4) and (f)(3) for revocation of the Permit following a public hearing by the Commission at open agenda.

#### **Additional Evidence Supporting Revocation**

As additional evidence of Petitioner's ownership of 1817 Lacy Drive and that the records of the Tarrant Appraisal District at the time the Permit Application was prepared and filed would have indicated to anyone conducting a very basic search of the TAD website that Petitioner was the owner of 1817 Lacy Drive, Petitioner submits Exhibit A to this reply, the affidavit of Jeff Law, TAD's Chief Appraiser, chief administrator and chief executive officer.

Ownership of 1817 Lacy Drive, and all of the properties shown on the Landowner Map included by SigmaPro in the Permit Application, has been and continues to be a matter of public

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<sup>8</sup> 30 Tex. Admin. Code § 305.66(a).

record. Anyone can conduct the simple and basic search of TAD records to determine the owners of any of those properties, both now and at the time the Permit Application was filed. While SigmaPro contends in its response that it conducted “research” and “investigations” to determine who was entitled to mailed notice of the Permit Application, it was SigmaPro’s duty and obligation to at the very least perform a proper search of the TAD records to confirm ownership of 1817 Lacy Drive and the other neighboring properties entitled to mailed notice, especially since SigmaPro represented to the TCEQ that TAD records were the source of the landowner information it provided in the Permit Application. Mr. Law’s affidavit makes it crystal clear that such a search of TAD records would have shown Petitioner as the owner of 1817 Lacy Drive, yet the Permit Application identifies Closner as the owner.

Furthermore, Petitioner was not the only affected landowner who was improperly omitted from the Landowner Map and accompanying Affected Landowner Information sheet filed by SigmaPro as Attachment C to the Permit Application. SigmaPro misrepresented the owner of Property “1” on the Landowner Map (street address: 13201 Harmon Road) as “Ferguson Enterprises Inc” with a mailing address of “12500 Jefferson Ave, Newport News, VA 23602-4314”.<sup>9</sup> A simple search of the TAD records shows that since June 2009, the record owner of Property “1” on the Landowner Map has been “Stepp/WCJ Investments LLC” with a mailing address of “2525 Ridgmar Blvd. Ste. 420, Fort Worth, TX 76116-4584”.<sup>10</sup> Also, SigmaPro misrepresented the owner of Property “2” on the Landowner Map (street address: 1724 Lacy Drive) as “Comlink Wireless” with an address of “776 Windemere Way, Keller, TX 76248”.<sup>11</sup> A

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<sup>9</sup> Exhibit A to Petition at 54-55, 96-98.

<sup>10</sup> Exhibit B to this Reply, a printout of the Tarrant Appraisal District account webpage for the real property located at 13201 Harmon Road, and Exhibit C to this Reply, (Account 07051999), a printout of the interactive map linked on that webpage.

<sup>11</sup> Exhibit A to Petition at 54-55, 96-98.

simple search of the TAD records shows that since October 2016, the record owner of Property “2” on the Landowner Map has been “Lacy Drive Investment LLC” with a mailing address of “P.O. Box 92762, Southlake, TX 76092”.<sup>12</sup>

It has also become apparent from SigmaPro’s response to the Petition that besides misrepresenting the identity of the owner of 1817 Lacy Drive in the Permit Application, SigmaPro also made a false or misleading statement in the Permit Application in representing that the Tarrant Appraisal District was the source of the landowners’ names and addresses.<sup>13</sup> SigmaPro’s response includes two affidavits as exhibits, one from Janet Sims (identified as the project manager for the consulting firm [Perkins Engineering] hired by SigmaPro to prepare and file the Permit Application) and another from Robert Berman (identified as SigmaPro’s in-house project manager). Mr. Berman and Ms. Sims testify that they were responsible for preparing and filing the Permit Application, including the landowner names and addresses provided in Attachment C, the Landowner Map and Affected Landowner Information sheet.<sup>14</sup> Ms. Sims testifies that she consulted with Mr. Berman to verify owners of property downstream of the proposed discharge outfall and the downstream discharge route.<sup>15</sup> She says Mr. Berman was helpful in providing the names and addresses of those owners because of “his familiarity with the area” and “because he was reaching out and making . . . contact with . . . the persons operating on the properties . . .”<sup>16</sup>

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<sup>12</sup> Exhibit D to this Reply, a printout of the Tarrant Appraisal District account webpage for the real property located at 1724 Lacy Drive, and Exhibit E to this Reply, (Account 07157053), a printout of the interactive map linked on that webpage.

<sup>13</sup> Exhibit A to Petition at page 16.

<sup>14</sup> Exhibit A to SigmaPro Response, Affidavit of Janet Sims, ¶¶ 8-12; Exhibit B to SigmaPro Response, Affidavit of Robert Berman at ¶ 6.

<sup>15</sup> Id. at ¶ 8.

<sup>16</sup> Id. at ¶ 9.

Ms. Sims testifies that she gave Mr. Berman the Landowner Map and Affected Landowner Information sheet for his use in visiting the properties.<sup>17</sup>

Tellingly, neither Ms. Sims nor Mr. Berman even mention the Tarrant Appraisal District, much less testify that the landowner names and addresses included in Attachment C of the Permit Application came from the Tarrant Appraisal District. Instead, it appears clear from SigmaPro's response that Ms. Sims and her team at Perkins identified the tracts of property whose owners were entitled to receive mailed notice, and Mr. Berman used his "familiarity with the area" and his personal contacts with occupants of those properties to "verify" the list of landowner names and mailing addresses that was provided in Attachment C. Indeed, SigmaPro's response states that Closner was identified in the Permit Application as the owner of 1817 Lacy not based on TAD records but "based on its occupancy and presence on Tract 4."<sup>18</sup> SigmaPro's response and the affidavits of Ms. Sims and Mr. Berman contradict the representation made by SigmaPro in the Permit Application that the Tarrant Appraisal District was the source of the landowner names and mailing addresses. That representation was misleading at the very least, and it certainly misrepresented and failed to fully disclose all relevant facts regarding the source of the affected landowner information SigmaPro provided in Attachment C to the Permit Application. Had Mr. Berman or Ms. Sims and her team actually researched the TAD records, it is unquestionable that they would have discovered that Petitioner owned 1817 Lacy Drive and thus belonged on Attachment C.<sup>19</sup>

SigmaPro's misrepresentation in the Permit Application regarding the source of the landowner names and mailing addresses included in Attachment C, and its misrepresentations of

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<sup>17</sup> Id.

<sup>18</sup> SigmaPro Response at page 13.

<sup>19</sup> Exhibits B and C to Petition; Exhibit A to this reply, Affidavit of Jeff Law, ¶¶ 3-4.

the names and mailing addresses of the owners of Properties 1 and 2 on the Landowner Map in Attachment C, constitute additional bases and good cause for the Commission to revoke the Permit.

**The Executive Director Found Lack of Required Notice to Petitioner**

In his response, the TCEQ Executive Director (“ED”) agrees that Petitioner, as the owner of 1817 Lacy Drive, was entitled to mailed notice pursuant to the Texas Water Code and TCEQ rules, and should have been included on the adjacent landowner list and map included in the Permit Application as Attachment C.<sup>20</sup> The ED also agrees that had Petitioner been provided notice of the NORI and NAPD to which it was legally entitled, Petitioner could have at the very least submitted comments on the Permit Application, but more importantly, could have “request[ed] a contested case hearing to ensure that its interests were protected.”<sup>21</sup> Nothing in SigmaPro’s response in any way contradicts or impacts these findings by the ED.

**SigmaPro’s Response Seeks to Deflect, Distract and Muddy the Waters**

At its core, SigmaPro’s response to the Petition is nothing more than a veiled attempt to confuse the situation and thus avoid addressing head-on the material misrepresentations that SigmaPro made in the Permit Application. The response is bloated with extensive argument and voluminous exhibits concerning extraneous issues in an apparent effort to bog the Commission down in subjects that have nothing to do with the matter at hand and thereby distract it from the narrow issue raised by the Petition. The response is wholly lacking in relevant substance and completely fails to draw into question any of the operative facts regarding SigmaPro’s misidentification of the owner of 1817 Lacy Drive in the Permit Application. Instead, it spills an

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<sup>20</sup> ED Response at 8-9.

<sup>21</sup> Id. at 9.

inordinate amount of ink trying to prove SigmaPro did not intentionally deceive the TCEQ, try to hide the Permit Application from Petitioner, or otherwise seek to exclude Petitioner from the permitting process. The response contends that those in charge of preparing the Permit Application acted “in good faith” in identifying the entities they “believed” were neighboring landowners entitled to mailed notice.<sup>22</sup> None of these things matter to the TCEQ’s decision on the Petition. Whether SigmaPro intentionally provided false affected landowner information in the Permit Application and sought to prevent Petitioner from learning of the Permit Application, or whether they were pure of heart and provided what they believed was truthful information, is immaterial and irrelevant. What does matter is that the uncontroverted evidence shows that SigmaPro provided false and misleading affected landowner information in the Permit Application, when the correct information was readily available to SigmaPro at the TAD website, and that as a result Petitioner did not receive notice of and was wrongly excluded from the permitting process.

Contrary to SigmaPro’s argument, the rule allowing for revocation of a permit does not require a showing of “malfeasance” or “misfeasance”, that the misrepresentations in the Permit Application were made “knowingly” or “with malice aforethought”, or that SigmaPro intended to deceive the Commission or Petitioner. Revocation may be based on misrepresentations or false or misleading statements made in the Permit Application, or failure to disclose fully in the Permit Application all relevant facts.<sup>23</sup> The correct identity of the owners of adjacent properties entitled to mailed notice is certainly relevant, and regardless of its intention, SigmaPro misrepresented the identity of the owner of 1817 Lacy Drive as Closner and by doing so, failed to fully disclose the relevant fact that Petitioner owns 1817 Lacy Drive.

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<sup>22</sup> SigmaPro Response at pages 3-4.

<sup>23</sup> 30 Tex. Admin. Code § 305.66(a)(1)(4), (f)(3).

Finally, as previously discussed above, SigmaPro's response fails to controvert the evidence Petitioner has put forth showing that TAD records would have revealed to SigmaPro when it was preparing and filing the Permit Application that Petitioner owned 1817 Lacy Drive. The uncontroverted and undisputed evidence shows that at the time SigmaPro prepared and filed the Permit Application, TAD records would have shown that Petitioner, not Closner, was the owner of 1817 Lacy Drive and had been since 2005.<sup>24</sup> Therefore, SigmaPro's representation that TAD records were the source of the landowner information in the Permit Application was false or misleading. Most importantly, nothing in SigmaPro's response shows that the TCEQ Chief Clerk provided mailed notice of the NORI or NAPD to Petitioner, as required under TCEQ rules, or that Petitioner had actual notice of either the NORI or NAPD.

**Mailed Notice is Required Under Statute and Rule**

Constructive notice and published notice do not apply; SigmaPro's argument to the contrary has no support in the law and is contradicted by the plain language of the Texas Water Code and TCEQ rules requiring mailed notice.<sup>25</sup> Similarly, SigmaPro's contention that the information Mr. Berman allegedly provided to occupants of Petitioner's property constituted proper and adequate notice provided to Petitioner's "agents" is similarly baseless, has no support in the law or the facts, and does not meet the specific statutory and regulatory notice requirements at issue here. The alleged "yeoman's effort" that Mr. Berman made to talk with neighbors and people other than Petitioner about the Permit Application is irrelevant. Any meetings and conversations that Mr. Berman purportedly had with occupants of Petitioner's property, and his

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<sup>24</sup> Exhibits B and C to Petition; Exhibit B to this Reply, Affidavit of Jeff Law, ¶¶ 3-4.

<sup>25</sup> Texas Water Code § 26.028(a); 30 Tex. Admin. Code § 39.551(b)(1), (c)(2); 30 TAC § 39.418(b)(2); 30 TAC § 39.413(1).

claim that no one told him that Petitioner was the owner, have no bearing on the TCEQ's decision on the Petition.

**Other Litigation Between the Parties is Irrelevant**

SigmaPro in its Response provides lengthy but ultimately irrelevant commentary and exhibits pertaining to its version of the dispute over the discharges of wastewater across Petitioner's property that has occurred over the last two years. It is true that SigmaPro and Petitioner have been involved in litigation concerning this situation, and obviously there is substantial disagreement regarding the facts and circumstances surrounding the claims asserted in that litigation. This is not the forum in which to reassert or quibble over those facts because they are not applicable to the relief sought by the Petition.

**Exhaustion of Administrative Remedies Does Not Apply**

As to SigmaPro's argument that Petitioner failed to exhaust its administrative remedies, the rule and statute cited by SigmaPro only apply to parties who have been properly put on notice of a permit application that could affect their interests and could thus participate in the administrative process that led to issuance of the Permit. Here, it is uncontroverted that due to SigmaPro providing false and misleading information to the TCEQ regarding ownership of Petitioner's property, Petitioner did not receive notice of the Permit until well over a year after it was issued, and thus could not participate in the permitting process or file a motion to overturn the issuance of the Permit or a lawsuit to challenge the Permit under the time frames set forth in the rules and statute governing such actions.<sup>26</sup> Moreover, SigmaPro's argument regarding exhaustion of administrative remedies makes no sense in this context: that doctrine precludes *judicial* review of agency action. The Petition obviously does not seek judicial review but asks the Commission

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<sup>26</sup> Exhibit D to Petition, Affidavit of Mabel Simpson at ¶ 4.

to revoke the Permit which was granted without opposition based on SigmaPro's failure to provide correct affected landowner information. And finally, SigmaPro's argument that Petitioner did not timely file for revocation of the Permit is controverted by the very rule under which Petition has sought revocation. The TCEQ may *at any time* revoke a permit it has issued, and there is no deadline by which an affected person must file a petition seeking revocation.<sup>27</sup>

### **Significance of Misrepresentations and Failure to Correct**

SigmaPro contends in its response that it was not afforded to the opportunity to cure its failure to fully disclose relevant facts in the Permit Application with regard to Petitioner's ownership of 1817 Lacy Drive. However, the subsection of the rule that provides the basis for the Petition that SigmaPro relies upon for this argument is inapplicable. Specifically, as the ED has previously set forth, the structure and history of 30 Texas Administrative Code § 305.66 indicates that the showing that a violation is significant and that the permit holder has not made a substantial effort to correct it is not required when the grounds for revocation arise under 30 TAC § 305.66(f)(3), relating to false or misleading statements.<sup>28</sup>

Even if the significant standard and effort-to-correct showing apply to petitions to revoke based on false or misleading statements, the misidentification of Closner as the owner of the property immediately downstream of the wastewater discharge point authorized by the Permit is a significant false statement because it resulted in lack of statutorily-required mailed notice to Petitioner, lack of actual notice of the NORI and NAPD to Petitioner, and Petitioner's inability to protect its interests during the permitting process. As the ALJ noted in the Fall Hills case in which the TPDES permit holder made similar misrepresentations regarding affected landowners in its

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<sup>27</sup> 30 Tex. Admin. Code § 305.66(a), (d).

<sup>28</sup> See Executive Director's Closing Arguments Brief, TCEQ Docket No. 2009-0290-MWD, *Petition to Revoke TPDES Permit No. WQ0014555002 Issued to Fall Hills Utility District*, at page 3-4.

application, such misrepresentations are significant because they lead to lack of notice to affected landowners, depriving them of a fundamental right to participate in the permitting process.<sup>29</sup>

Further, the only way a permit holder can correct such misrepresentations is for affected person to receive notice, which the uncontroverted evidence here shows that Petitioner did not.<sup>30</sup> Despite SigmaPro's protestations that it had no "opportunity to cure," it continues to refuse to acknowledge that it provided false information to the Commission in the Permit Application regarding the identity of the owner of 1817 Lacy Drive.<sup>31</sup> Consistent with SigmaPro's irrational denial of the irrefutable facts, since July 2020 when Petitioner informed SigmaPro that it had not received notice of the Permit Application due to SigmaPro providing false information to the TCEQ regarding ownership of 1817 Lacy Drive,<sup>32</sup> SigmaPro has not informed the TCEQ that it submitted incorrect information in the Permit Application regarding the owner of 1817 Lacy Drive or taken any other action to correct these false statements and misrepresentations.<sup>33</sup>

Finally, there is significant precedent to support a finding by the Commission that the Permit is void because it was issued without proper notice to Petitioner as required by the Texas Water Code and TCEQ rules.<sup>34</sup>

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<sup>29</sup> See Proposal for Decision, TCEQ Docket No. 2009-0290-MWD, *Petition to Revoke TPDES Permit No. WQ0014555002 Issued to Fall Hills Utility District*, at 15, proposed Findings of Fact Nos. 57-58.

<sup>30</sup> *Id.*

<sup>31</sup> See SigmaPro's Response at 7 ("Assuming neither Closner nor Premier was the owner of Tract No. 4, . . ."); 8 ("Assuming the validity of the claim of 1817 Lacey Ltd. that it acquired the property identified as Tract No. 4 on the Landowner Map, . . ."); 8, footnote 1 ("Aside from its assertion of ownership, Petitioner has not presented a deed establishing title to Tract No. 4."); 13 ("Tract No. 4 is the property that Petitioner claims to be the owner of, . . .").

<sup>32</sup> SigmaPro's response does show that Petitioner became aware of the Permit and of SigmaPro having provided false landowner information in the Permit Application in July 2020, not August 2020 as was stated in the Petition. See Exhibit C to SigmaPro's Response.

<sup>33</sup> The Permit itself requires SigmaPro to submit facts and information promptly to the TCEQ when it becomes aware that it had submitted incorrect information in the Permit Application. See Exhibit F to this Reply, a true and correct copy of the Permit, at page 9, Permit Conditions at 1.a.

<sup>34</sup> *Anadarko E & P Co., L.P. v. R.R. Comm'n of Tex.*, No. 03-04-00027-CV, 2009 WL 47112 (Tex. App.—Austin Jan. 7, 2009, no pet.); *R.R. Comm'n of Tex. v. McKnight*, 619 S.W.2d 255 (Tex. 1981); *Magnolia Petroleum Co. v. New Process Prod. Co.*, 104 S.W.2d 1106 (Tex. 1937).

## **Conclusion**

The issue raised by the Petition is simple: SigmaPro made misrepresentations and false and misleading statements in the Permit Application regarding the name and address of the owner of 1817 Lacy Drive and failed to disclose that Petitioner was the owner, and the TCEQ Chief Clerk relied on that misinformation in issuing legally required mailed notice to a party (Closner) who was not the owner of 1817 Lacy Drive. SigmaPro did not identify the people that Mr. Berman allegedly spoke with at Petitioner's property or any signs that Mr. Berman saw on Petitioner's property as the sources of the affected landowner information included in the Permit Application. Instead, SigmaPro represented that the landowner information in the Permit Application came from Tarrant Appraisal District.<sup>35</sup> The uncontroverted evidence before the Commission shows that the TAD records would have shown SigmaPro that Petitioner was the owner of 1817 Lacy Drive.<sup>36</sup> SigmaPro's CEO and owner certified under oath and penalty of law that the statement in the Permit Application regarding the source of the landowner information was true, correct and accurate.<sup>37</sup> Now, in its response, SigmaPro contradicts that statement by stating that it identified Closner as an affected landowner based on occupancy and presence."<sup>38</sup>

Because SigmaPro offered no evidence in its response to contradict the only facts that are determinative to a decision to revoke the Permit, there is no basis for the Petition to be referred to the State Office of Administrative Hearings ("SOAH") for an evidentiary proceeding. There is no dispute as to any relevant or material fact: (a) Petitioner was and is the owner of Property 4 on the Landowner Map that SigmaPro submitted in in the Permit Application; (b) SigmaPro failed to

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<sup>35</sup> Exhibit A to Petition, page 16.

<sup>36</sup> Exhibit B and C to Petition; Exhibit A to this reply, Affidavit of Jeff Law, ¶¶ 3-4.

<sup>37</sup> Exhibit A to Petition, page 15

<sup>38</sup> SigmaPro Response at 13.

identify Petitioner as owner of Property 4 on the Landowner Map and instead falsely identified Closner as the owner of Petitioner's property; (c) Petitioner failed to receive the notice of the NORI and NAPD to which it was legally entitled because of SigmaPro's misrepresentations and false statements and failure to disclose Petitioner as owner of 1817 Lacy Drive; and (d) this lack of notice deprived Petitioner of its legal right to participate in the process that resulted in the TCEQ issuing the Permit. These facts establish good cause for revocation as a matter of law under the applicable TCEQ rule, such that a contested case at SOAH is wholly unnecessary and inappropriate.

Even in its response, SigmaPro refuses to acknowledge the uncontroverted truth: that Petitioner owns 1817 Lacy Drive and that Tarrant Appraisal District records that SigmaPro purportedly relied on for the affected landowner information it provided in the Permit Application show and confirm today and at the time the Permit Application was filed that Petitioner owned 1817 Lacy Drive. SigmaPro's misrepresentations and false statements regarding and failure to fully disclose accurate ownership of 1817 Lacy Drive in the Permit Application are significant because they resulted in Petitioner's loss of a fundamental right, and they cannot be corrected absent revocation of the Permit. Petitioner respectfully requests the Commission hold a public hearing on the Petition and then issue an order revoking TPDES Permit No. WQ0015722001.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Bell', with a long horizontal flourish extending to the right.

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# **EXHIBIT A**

**TPDES PERMIT NO. WQ0015722001**

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

**AFFIDAVIT OF JEFF LAW**

STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Jeff Law, who on his oath, did depose and say as follows:

1. "My name is Jeff Law. I am over twenty-one (21) years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am the Chief Appraiser of the Tarrant Appraisal District ("TAD"). I have held that position since 2008. As the Chief Appraiser, appointed by the Board of Directors, I am TAD's chief administrator and chief executive officer.
3. As part of my job duties, I have gained direct knowledge of how TAD's website is set up and how it operates. The website is kept up-to-date with current information regarding real property in the district, including information regarding current ownership of all properties in the district. If a parcel of real property changes ownership, the website is typically updated typically within 1-2 days to reflect the identity and contact information of the new owner(s). Any person may access records for real property located in Tarrant County, Texas, by doing a property search on TAD's website at [www.tad.org](http://www.tad.org). Once on the home page of the website, by checking the box(es) for the type(s) of property you are searching

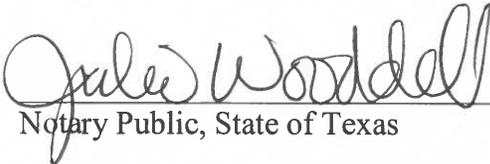
for (Residential, Commercial, Mineral or Personal Property) and then entering the real property's street address in the search box, a page opens showing the account number, property address, property city, primary owner name, and market value of the property. Clicking on the (blue) account number provides the searcher with information on the property's data, the property's owner/s, the property's values, and certain exemptions.

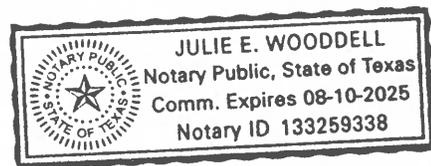
4. Following the directions from the preceding paragraph, TAD's website shows that the owner of the property at 1817 Lacy Drive is "1817 Lacey Ltd." The website reflects that the change in ownership occurred in 2005, so TAD's website would have continuously shown 1817 Lacey Ltd. as the owner of the real property located at 1817 Lacy Drive at all times in subsequent years, *i.e.* from 2006 to the present date. This information could have been obtained by anyone accessing TAD's website during that time period using the simple steps set forth in the preceding paragraph."

Further, Affiant sayeth not.

  
\_\_\_\_\_  
JEFF LAW

SWORN TO and subscribed before me on the 10th day of June 2022, by Jeff Law.

  
\_\_\_\_\_  
Notary Public, State of Texas



# **EXHIBIT B**

# Account #: 07051999

## Location

**Property Address:** 13201 HARMON RD [Interactive Maps](#)  
**City:** TARRANT COUNTY  
**Zipcode:** 76052  
**Georeference:** [A 611-1J](#)  
**Neighborhood Code:** [WH-Alliance/Alliance Gateway General](#)  
**Latitude:** 32.9406245802  
**Longitude:** -97.3246113145  
**TAD Map:** [2048-460](#)  
**MAPSCO:** [TAR-021F](#)

## Property Data

**Legal Description:** GOODWIN, J M SURVEY  
 Abstract 611 Tract 1J

**Jurisdictions:** 220 TARRANT COUNTY  
 911 NORTHWEST ISD  
 224 TARRANT COUNTY  
 HOSPITAL  
 225 TARRANT COUNTY  
 COLLEGE  
 222 EMERGENCY SVCS DIST  
 #1

**State Code:** F1 Commercial

**Personal Property Account:** [11201797](#)

**Agent:** None

**Notice Sent:** 04-29-2022

**Notice Value:** \$1,106,448

**Protest Deadline:** 05-31-2022

**Site Number:** [80733611](#)

**Site Name:** FERGUSON ENTERPRISES  
 PLUMBING

**Site Class:** WHStorage - Warehouse-Storage  
**# of Parcels:** 1

**Primary Building:**

**Building Name:** PLUMBING WHOLESALER / 07051999

**Building Type:** Commercial

**Year Built:** 1998

**Gross Building Area** †††: 15,480

**Net Leasable Area** †††: 13,980

**Land Sqft** ♦: 218,235

**Land Acres** ♦: 5.0100

**Pool:** N

††† Rounded

♦ This represents one of a hierarchy of possible values ranked in the following order: Recorded, Computed, System, Calculated

## Owner Information

**Current Owner:**

[STEPP/WCJ INVESTMENTS LLC](#)  
 % WILLIAM C JENNINGS CO  
[2525 RIDGMAR BLVD STE 420](#)  
 FORT WORTH, TX 76116-4584

**Deed Date:** 06-25-2009  
**Deed Volume:** 0000000  
**Deed Page:** 0000000  
**Instrument:** [D209171243](#)

**Previous Owners:**

Name	Date	Instrument	Deed Vol	Deed Page
SER & REP INC	09-15-1997	00129280000461	0012928	0000461

## Values

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database. [Tarrant County Tax Office Account Information](#)

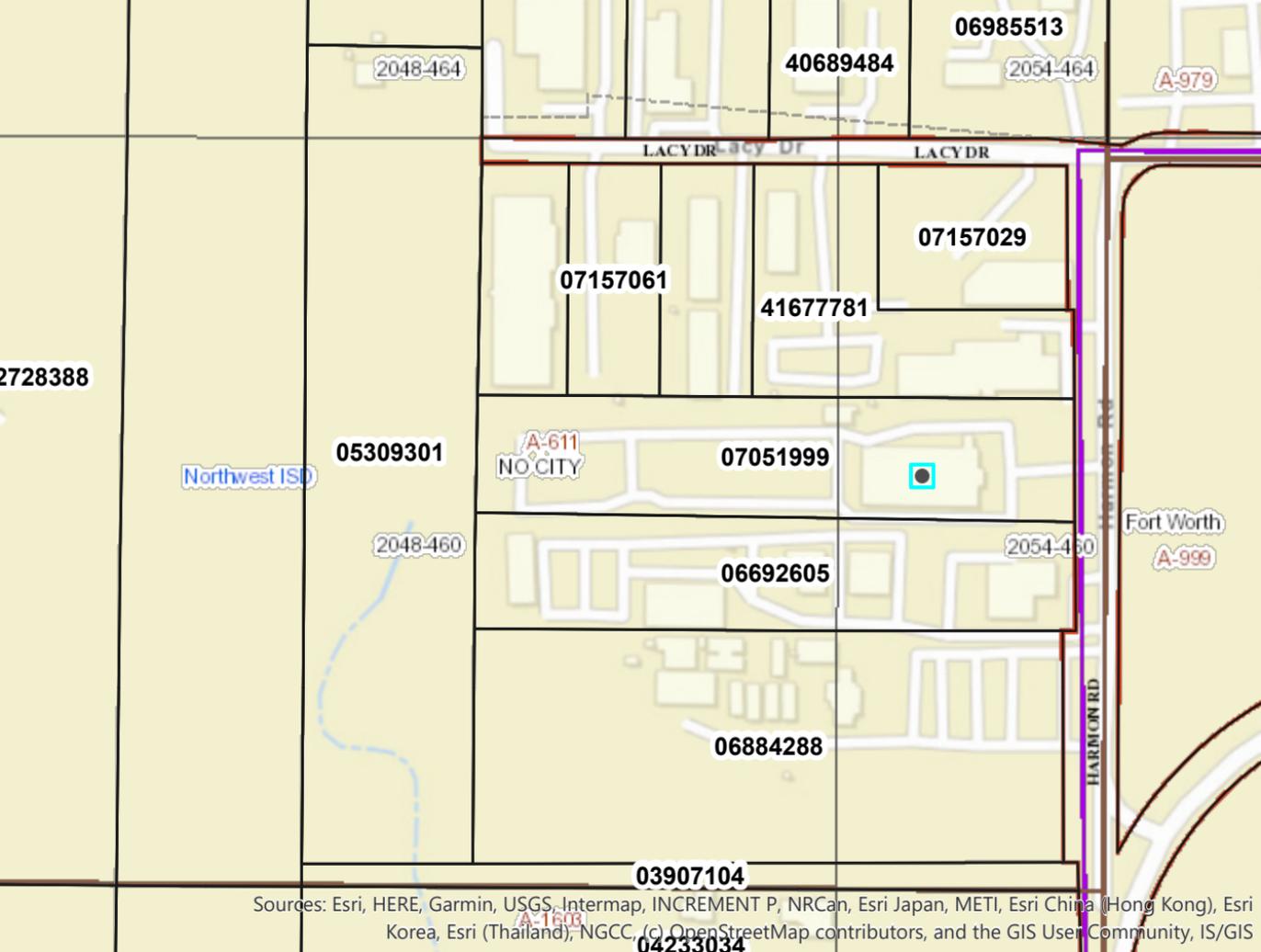
Year	Improvement Market	Land Market	Total Market	Total Appraised †
2022	\$860,333	\$246,115	\$1,106,448	\$1,106,448
2021	\$860,333	\$246,115	\$1,106,448	\$1,106,448
2020	\$860,333	\$246,115	\$1,106,448	\$1,106,448
2019	\$860,333	\$246,115	\$1,106,448	\$1,106,448
2018	\$676,207	\$246,115	\$922,322	\$922,322
2017	\$676,207	\$246,115	\$922,322	\$922,322

A zero value indicates that the property record has not yet been completed for the indicated tax year

† Appraised value may be less than market value due to state-mandated limitations on value increases

## Exemptions

# **EXHIBIT C**



2048-464

40689484

06985513

2054-464

A-979

LACYDR-3cy DT

LACYDR

07157061

41677781

07157029

2728388

05309301

A-611  
NO CITY

07051999

Northwest ISD

2048-460

06692605

2054-460

Fort Worth  
A-999

06884288

HARMON RD

03907104

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community, IS/GIS

A-1603

04233034

# **EXHIBIT D**

# Account #: 07157053

## Location

**Property Address:** 1724 LACY DR [Interactive Maps](#)  
**City:** TARRANT COUNTY  
**Zipcode:** 76052  
**Georeference:** [23048M-4-4](#)  
**Neighborhood Code:** [WH-Alliance/Alliance Gateway General](#)  
**Latitude:** 32.9414621287  
**Longitude:** -97.325017167  
**TAD Map:** [2048-460](#)  
**MAPSCO:** [TAR-021E](#)

## Property Data

**Legal Description:** LACY ACRES Block 4 Lot 4  
**Jurisdictions:** 220 TARRANT COUNTY  
911 NORTHWEST ISD  
224 TARRANT COUNTY  
HOSPITAL  
225 TARRANT COUNTY  
COLLEGE  
222 EMERGENCY SVCS DIST  
#1

**State Code:** F1 Commercial

**Personal Property Account:** [14847511](#)

**Agent:** [RESOLUTE PROPERTY TAX SOLUTION](#)  
(00988)

**Notice Sent:** 04-29-2022

**Notice Value:** \$1,621,926

**Protest Deadline:** 05-31-2022

**Site Number:** [80806783](#)

**Site Name:** 1724 LACY DR

**Site Class:** WHFlex - Warehouse-Flex/Multi-Use  
**# of Parcels:** 1

**Primary Building:**

**Building Name:** 1724 LACY DR / 07157053

**Building Type:** Commercial

**Year Built:** 2004

**Gross Building Area** †††: 16,952

**Net Leasable Area** †††: 16,000

**Land Sqft** ♦: 65,340

**Land Acres** ♦: 1.5000

**Pool:** N

††† Rounded

♦ This represents one of a hierarchy of possible values ranked in the following order: Recorded, Computed, System, Calculated

## Owner Information

**Current Owner:**

[LACY DRIVE INVESTMENT LLC](#)

[PO BOX 92762](#)

SOUTHLAKE, TX 76092

**Deed Date:** 10-28-2016

**Instrument:** [D216255513](#)

**Previous Owners:**

Name	Date	Instrument	Deed Vol	Deed Page
WINDEMERE VENTURES LLC	01-11-2007	<a href="#">D207022410</a>	0000000	0000000
KYLE BOOKOUT ENTERPRISES LLC	11-07-2003	<a href="#">D203427867</a>	0000000	0000000
BOOKOUT SHAWN MAIRE;BOOKOUT WM KYLE	10-14-2000	00146090000167	0014609	0000167
HASLETT HEIGHTS LTD	01-01-1998	00000000000000	0000000	0000000

## Values

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database. [Tarrant County Tax Office Account Information](#)

Year	Improvement Market	Land Market	Total Market	Total Appraised †
2022	\$1,442,241	\$179,685	\$1,621,926	\$1,621,926
2021	\$1,188,315	\$179,685	\$1,368,000	\$1,368,000
2020	\$1,188,315	\$179,685	\$1,368,000	\$1,368,000
2019	\$940,315	\$179,685	\$1,120,000	\$1,120,000
2018	\$700,315	\$179,685	\$880,000	\$880,000
2017	\$582,894	\$89,690	\$672,584	\$672,584

A zero value indicates that the property record has not yet been completed for the indicated tax year

† Appraised value may be less than market value due to state-mandated limitations on value increases

## Exemptions

# **EXHIBIT E**

NO 07157061

A-611

2048-460  
Northwest ISD

07157053

# **EXHIBIT F**



TPDES PERMIT NO. WQ0015722001  
[For TCEQ office use only - EPA I.D.  
No. TX0138754]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. Box 13087  
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES  
under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

SigmaPro Properties, LLC

whose mailing address is

13241 Harmon Road  
Fort Worth, Texas 76177

is authorized to treat and discharge wastes from the SigmaPro Wastewater Treatment Facility, SIC Code 6519

located at 13241 Harmon Road, in Tarrant County, Texas 76177

to an unnamed tributary; thence to Buffalo Creek; thence to Henrietta Creek; thence to Elizabeth Creek; thence to Denton Creek; thence to Grapevine Lake in Segment No. 0826 of the Trinity River Basin

only according to effluent limitations, monitoring requirements, and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **five years from the date of issuance.**

ISSUED DATE: March 21, 2019

A handwritten signature in cursive script, appearing to read "T. G. Baker", written over a horizontal line.

For the Commission

## DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

### 1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

### 2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
  - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

- b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

## **MONITORING AND REPORTING REQUIREMENTS**

### **1. Self-Reporting**

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, effluent monitoring data shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. Monitoring results must be signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

### **2. Test Procedures**

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

### **3. Records of Results**

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

#### 7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Except as allowed by 30 TAC § 305.132, report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. For Publicly Owned Treatment Works (POTWs), effective September 1, 2020, the permittee must submit the written report for unauthorized discharges and unanticipated bypasses that exceed any effluent limit in the permit using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
  - b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
    - i. Unauthorized discharges as defined in Permit Condition 2(g).
    - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
    - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
  - c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
  - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances, shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after

**PERMIT CONDITIONS**

## 1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
  - i. Violation of any terms or conditions of this permit;
  - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
  - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

## 2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.

#### 4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
  - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the TWC § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA § 307(a) for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be

- i. the permittee;
  - ii. an entity (as that term is defined in 11 USC, § 101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
  - iii. an affiliate (as that term is defined in 11 USC, § 101(2)) of the permittee.
- b. This notification must indicate:
- i. the name of the permittee and the permit number(s);
  - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
  - iii. the date of filing of the petition.

### **OPERATIONAL REQUIREMENTS**

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
  - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
  - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.
  - c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
11. Facilities that generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:
  - a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
  - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
  - c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.

## SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of Class A or Class AB Sewage Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

### SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

#### A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

#### B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method that receives the prior approval of the TCEQ for the contaminants listed in 40 CFR Part 261.24, Table 1. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 4) within seven (7) days after failing the TCLP Test.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of must be treated in one of the Processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of must be treated in a process that has been approved by the U. S. Environmental Protection Agency as being equivalent to those in Alternative 5.

- b. For sewage sludge to be classified as Class AB with respect to pathogens, the density of fecal coliform in the sewage sludge be less than 1,000 MPN per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. In addition, one of the alternatives listed below must be met.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

- c. Sewage sludge that meets the requirements of Class AB sewage sludge may be classified a Class A sewage sludge if a variance request is submitted in writing that is supported by substantial documentation demonstrating equivalent methods for reducing odors and written approval is granted by the executive director. The executive director may deny the variance request or revoke that approved variance if it is determined that the variance may potentially endanger human health or the environment, or create nuisance odor conditions.
- d. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The Executive Director will accept from the U.S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

- i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.

- Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 9 -
- i. Sewage sludge shall be injected below the surface of the land.
  - ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
  - iii. When sewage sludge that is injected below the surface of the land is Class A or Class AB with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
- Alternative 10-
- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
  - ii. When sewage sludge that is incorporated into the soil is Class A or Class AB with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

### C. Monitoring Requirements

Toxicity Characteristic Leaching Procedure (TCLP) Test	- once during the term of this permit
PCBs	- once during the term of this permit

All metal constituents and fecal coliform or *Salmonella* sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC § 312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(\*) *The amount of bulk sewage sludge applied to the land (dry wt. basis).*

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC § 312.7.

**SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A, CLASS AB or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3**

For those permittees meeting Class A, Class AB or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

**A. Pollutant Limits**

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)*</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

\*Dry weight basis

**B. Pathogen Control**

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A, Class AB or Class B pathogen reduction requirements as defined above in Section I.B.3.

the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class AB and Class B sludge, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

“I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC § 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC § 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained. The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply:
  - a. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii), as applicable, and to the permittee’s specific sludge treatment activities.
  - b. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
  - c. The number of acres in each site on which bulk sludge is applied.
  - d. The date and time sludge is applied to each site.

14. Identify each of the analytic methods used by the facility to analyze enteric viruses, fecal coliforms, helminth ova, *Salmonella* sp., and other regulated parameters.
15. Vector attraction reduction alternative used as listed in Section I.B.4.
16. Amount of sludge transported in dry tons/year.
17. The certification statement listed in either 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
18. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
  - a. The location, by street address, and specific latitude and longitude.
  - b. The number of acres in each site on which bulk sewage sludge is applied.
  - c. The date and time bulk sewage sludge is applied to each site.
  - d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
  - e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

#### G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 4) and Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30<sup>th</sup> of each year the following information. Effective September 1, 2020, the permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

1. Identify in the following categories (as applicable) the sewage sludge treatment process or processes at the facility: preliminary operations (e.g., sludge grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.
2. Toxicity Characteristic Leaching Procedure (TCLP) results.
3. Annual sludge production in dry tons/year.
4. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
5. Amount of sludge transported interstate in dry tons/year.
6. A certification that the sewage sludge meets the requirements of 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
7. Identity of hauler(s) and transporter registration number.
8. Owner of disposal site(s).
9. Location of disposal site(s).
10. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

### C. Reporting Requirements

The permittee shall report the following information annually to the TCEQ Regional Office (MC Region 4) and Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30<sup>th</sup> of each year. Effective September 1, 2020, the permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

1. Identify in the following categories (as applicable) the sewage sludge treatment process or processes at the facility: preliminary operations (e.g., sludge grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.
2. the annual sludge production;
3. the amount of sludge transported;
4. the owner of each receiving facility;
5. the location of each receiving facility; and
6. the date(s) of disposal at each receiving facility.

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requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge from the facility described by this permit, whichever occurs first. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 4) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first, on Notification of Completion Form 20007.