

TCEQ DOCKET NO. 2022-0939-MWD

**APPLICATION BY FM 2920
LAND COMPANY, LTD FOR
NEW TPDES
PERMIT NO. WQ0015977001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by FM 2920 Land Company, Ltd. (Applicant or FM 2920), for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015977001. Attached for Commission consideration are the Executive Director's Satellite Maps.

I. Summary of Recommendation

The Executive Director recommends the Commission grant the hearing requests of James Paul Long and Renee L. Sanchez and deny all other hearing requests. The Executive Director also recommends referring the following issue to the State Office of Administrative Hearings:

Issue 1. Whether the proposed facility will cause nuisance odors.

II. Description of the Proposed Wastewater Treatment Facility

FM 2920 Land Company, Ltd. has applied to the TCEQ for a new TPDES permit that would authorize the discharge of treated domestic wastewater via Outfall 001 at a daily average flow not to exceed 120,000 gallons per day. The FM 2920 Land Wastewater Treatment Facility (WWTF) will be an activated sludge process plant operated in the complete mix mode. Treatment units in the Interim phase include one lift station, one bar screen, one aeration basin, one final clarifier, one sludge digester, and one chlorine contact chamber. Treatment units in the Final phase include one lift station, one bar screen, two aeration basins, one final clarifier, two sludge digesters, and two chlorine contact chambers. The facility has not been constructed.

The effluent limitations in both the Interim and Final phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen

demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 63 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The pH must be in the range of 6.0 to 9.0 standard units in all phases.

The WWTF will be located on Farm-to-Market Road 2920 approximately 550 feet east of the intersection of Farm-to-Market Road 2920 and Three Pines Drive, in Harris County, Texas 77447. The treated effluent will be discharged to a man-made ditch, thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The receiving water uses are minimal aquatic life use for the man-made ditch and high aquatic life use for Spring Creek. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use.

III. Procedural Background

The TCEQ received the application on April 15, 2021, and declared it administratively complete on May 20, 2021. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published on June 11, 2021, in the *Houston Business Journal* and on July 7, 2021, in the *Houston Chronicle dba La Voz*. The ED completed the technical review of the application on September 7, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on October 22, 2021, in the *Houston Business Journal*, and in Spanish October 31 - November 1, 2021 in the *La Prensa de Houston*. The Combined NAPD and Public Meeting Notice was published on January 4, 2022, in the *Houston Business Journal*. The public meeting was virtually held on February 7, 2022. The public comment period ended on February 7, 2022, at the close of the public meeting. The hearing request period ended on May 26, 2022.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the

requirements for comments and contested case hearings This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. which issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or of law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
6. whether the issues are relevant and material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be

made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments, and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

1. give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
2. identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
3. request a contested case hearing;
4. for applications filed:
5. (B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
6. provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Requirement that Requestor be an Affected Person/“Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected” person. Section 55.203 sets out who may be considered an affected person.

- a. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c. In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 1. whether the interest claimed is one protected by the law under which the application will be considered;
 2. distance restrictions or other limitations imposed by law on the affected interest;
 3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
 4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 5. likely impact of the regulated activity on use of the impacted natural resource by the person;
 6. whether the requestor timely submitted comments on the application which were not withdrawn; and
 7. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the executive director; and
3. any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

1. involves a disputed question of fact or a mixed question of law and fact;
2. was raised during the public comment period by an affected person whose hearing request is granted; and
3. is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

B. Whether the Individual Requesters Meet the Affected Person Requirements

Persons the Executive Director Recommends the Commission Find are Affected Persons

The Executive Director reviewed the factors in 30 TAC § 55.201 (c) and (d), and § 55.203 for determining if a person is an affected person and recommends the Commission finds James Paul Long and Renee Sanchez are affected persons. All hearing requests were in writing, provided the required contact information; and raised the issues that are the basis of the individual hearing requests in the person's timely comments.

James Paul Long

James Paul Long filed a timely comment letter and is included on the list of persons requesting a contested case hearing in the hearing request submitted by Charles Irvine. Mr. Long provided the information required in his comment letter. According to the address provided he lives in the general vicinity of the proposed WWTF, but not along the discharge route. Mr. Long raised a material and relevant issue of fact regarding potential odors from the WWTF during the public comment period. Specifically, Mr. Long raised other issues regarding; coordination with other agencies; increase in crime; lack of resources (fire and EMS services); flooding and subsidence; ownership of the property where the WWTF will be located; potential discrepancies in the application; flooding; the distance between the location of the proposed WWTF and the receiving water will vary with the seasons; the existence of endangered species on FM 2920's property; and the existence of a homestead on the FM 2920's property. Additionally, according to the Hearing Request submitted by Charles Irvine, Renee L. Sanchez owns the property also owned by James Paul Long; however, she did not provide comments during the comment period.

Mr. Long's hearing request sufficiently meets the section 55.201(c) and (d) requirements and should be granted. Additionally, since Mr. Irvine represented that Ms. Sanchez owns the property with James Paul Long, the Executive Director recommends that the Commission find both James Paul Lang and Renee Sanchez are affected persons.

Persons the Executive Director Recommends the Commission Find are not Affected Persons because they did not demonstrate a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application that is not common to members of the general public.

The Executive Director reviewed the factors in 30 TAC § 55.201 (c) and (d), and § 55.203 for determining if a person is an affected person and recommends the Commission find that Dana Boehm, William Cooper, Liana Jones, Lynda Rezzoffi and Pete Rezzoffi are not affected persons because they did not demonstrate a personal justiciable interest in the application.

1. Dana Boehm

Dana Boehm submitted timely comments and hearing requests; however, she did not demonstrate a personal justiciable interest that would be affected by the application. According to the address in Ms. Boehm's hearing request her property is located in the general vicinity of the WWTF, but not along the discharge route. Ms. Boehm did not raise a specific issue, rather she requested a "public hearing." A request for a public hearing is not sufficient to demonstrate that she has a personal justiciable interest not in common to members of the general public, and therefore, should be denied.

2. William Cooper

According to the information provided by William Cooper, he lives in the general vicinity of the WWTF; however, he does not live along the discharge route. Mr. Cooper raised concerns about flooding. Mr. Cooper's concern about flooding is not protected by the law under which the application will be considered and, thus, is not referable. Therefore, Mr. Cooper does not have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is not an affected person. Deborah Cooper did not provide timely comments.

The Executive Director recommends the Commission find that William and Deborah Cooper **are not** affected persons.

3. Liana Jones. Liana Jones filed a timely comment letter and is also included on the list of persons requesting a contested case hearing in the hearing request

submitted by Charles Irvine. Liana Jones provided the required contact information in her individual comment. According to the address provided by Liana Jones she lives in the vicinity of the proposed WWTF, but not along the discharge route. Ms. Jones raised issues regarding: contamination of the receiving water; notification of nearby property owners of a failure at the WWTF; potential discrepancies in the application; whether approval from other agencies was obtained; contamination of wells; potential blockages of the receiving water by debris, trees, or plants; noise, air and light pollution; and requested the Executive Director perform a site visit. The issues raised by Ms. Jones either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that Ms. Jones has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Ms. Jones's request does not demonstrate that she has an interest not common to members of the general public. Thus, she is not an affected person, and her issues are not referable. Therefore, Liana Jones' hearing request does not sufficiently meet the 30 TAC § 55.201 (d) requirements and should not be granted.

The Executive Director recommends the Commission find that Liana Jones is not an affected person.

Persons Represented by Charles Irvine

Charles Irvine submitted a request for a contested case hearing on May 26, 2022. In his request, he named 39 individuals/couples that he indicates requested a hearing. Mr. Irvine did not indicate that his requests was on behalf of a group or association, nor did his hearing requests comply with the requirements in 30 TAC § 55.205 (Request by Group or Association). Because Mr. Irvine did not indicate that his hearing request was on behalf of a group or association, the Executive Director analyzed the individuals/couples individually.

The rules governing the determination of Affected Person require the Commission consider "whether the requestor timely submitted comments on the application that were not withdrawn." 30 TAC § 55.203(c)(6). Additionally, the rules governing requests for contested case hearings require the response to hearing request to specifically address whether the issues were raised during the public comment period. 30 TAC § 55.209(e)(4). Of the 39 individuals/couples that Mr. Irvine included in

his Hearing Request, 12 individuals submitted timely comments; the Executive Director evaluated each hearing requests individually using the parameters in 30 TAC §§ 55.201, 55.203, and 55.209.

a. Persons Represented by Charles Irvine that Submitted Timely Comments That the Executive Director Recommends the Commission Find Are Not Affected Persons.

1. Colin and Judy Allison

According to the information provided by Colin and Judy Allison they reside in the general vicinity of the WWTF, however they are not adjacent to the discharge route. The Allisons raise issues regarding: erosion; flooding; general environmental concerns; safety; increased algal growth; odor from decaying algae; and insects. The Allisons' concerns regarding an increase in algal growth is related to the potential for degradation from the proposed discharge. However, the issues raised by Colin and Judy Allison either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that Colin and Judy Allison have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Colin and Judy Allison's request does not demonstrate that they have an interest not common to members of the general public. Thus, they are not affected persons, and their issues are not referrable.

The Executive Director recommends the Commission find that Colin and Judy Allison are **not** affected persons.

2. Rick and Renay Carter

According to the information provided by Rick Carter, he lives in the general vicinity of the proposed WWTF, however he does not live along the discharge route. Mr. Carter raised concerns regarding: flooding, damage to wetlands, pollution, and discrepancies in the application. Mr. Carter also requested the Executive Director perform a site visit. The issues raised by Rick and Renay Carter either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, their request does not demonstrate that they have an interest not common to

members of the general public. Thus, they are not affected persons, and their issues are not referable. Renay Carter did not provide timely comments.

The Executive Director recommends the Commission find that Rick and Renay Carter are **not** affected persons.

3. *Kevin and Cynthia Crane*

According to the information provided by Kevin and Cynthia Crane, they live in the general vicinity of the proposed WWTF; however, they do not live along the discharge route. Kevin and Cynthia Crane raised concerns regarding: flooding, effect of the downstream environment, power failures, property values, design of the proposed facility, wildlife that will be displaced by the proposed development, and long-term impacts. However, the issues raised by Kevin and Cynthia Crane either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Kevin and Cynthia Crane's request does not demonstrate that they have an interest not common to members of the general public. Thus, they are not affected persons, and their issues are not referable.

The Executive Director recommends the Commission find that Kevin and Cynthia Crane **are not** affected persons.

4. *Jana Epplin*

According to the information provided by Jana Epplin, she lives in the general vicinity of the proposed WWTF; however, she does not live along the discharge route. Ms. Epplin raised concerns regarding: discrepancies in the application, trash, trash collection, general water contamination, human excrement, illegal dumping, gas, oil, and antifreeze runoff running into the creek, security, negative impact to Kleb Park, and disturbance of a bald eagle habitat on the Applicant's property. Ms. Epplin also expressed concerns that the proposed WWTF would negatively impact wetlands on her property, however, according to the address she provided, her property is downstream of the location of the proposed WWTF and discharge route. However, the issues raised by Ms. Epplin either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that she has a

personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Jana Epplin's request does not demonstrate that they have an interest not common to members of the general public. Thus, she is not an affected person, and her issues are not referrable.

The Executive Director recommends the Commission find that Jana Epplin is not an affected person.

5. *Kenny Gardner and Betsey Gardner*

According to the information provided by Kenny Gardner and Betsey Gardner, they live in the general vicinity of the proposed WWTF, however, they do not live along the discharge route. Kenny Gardner and Betsey Gardner raised issues regarding: flooding; impact to wetlands on FM 2920's property, whether the application was correct and accurate; design of the proposed facility; impact to water supply, including wells; public access to reports; general water quality concerns, the need for a sanitary survey, and air quality. However, the issues raised by Kenny and Betsey Gardner either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, their request does not demonstrate that they have an interest not common to members of the general public. Thus, they are not affected persons, and their issues are not referrable.

The Executive Director recommends the Commission find that Kenny Gardner and Betsey Gardner are not affected persons.

6. *Tom Glass*

According to the information provided by Tom Glass he lives in the general vicinity of the proposed WWTF; however, he does not live along the discharge route. Tom Glass raised issues regarding: ownership of the Applicant's property; flooding; the distance between the WWTF and Spring Creek; discrepancies in the application; whether wetlands exist on the Applicant's property; and the design of the WWTF. However, the issues raised by Tom Glass either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that he has a personal justiciable interest related to a legal right, duty,

privilege, power, or economic interest affected by the application. As a result, Tom Glass' request does not demonstrate that he has an interest not common to members of the general public. Thus, he is not an affected person, and his issues are not referrable.

The Executive Director recommends the Commission find that Tom Glass is not an affected person.

7. Terry and Paula Hart

According to the information provided by Terry Hart, he lives in the general vicinity of the proposed WWTF; however, he does not live along the discharge route. Terry Hart raised concerns about: the design of the WWTF; pests; access to reports; operation of the proposed WWTF; whether the development's water needs impact his water supply; drainage; type of WWTF system; access to reports generated by the WWTF; whether the water used by the proposed development will affect his water supply; whether the proposed development should use on-site sewage disposal systems; and traffic. However, the issues raised by Terry Hart either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Terry Hart's request does not demonstrate that he has an interest not common to members of the general public. Thus, are not affected persons, and their issues are not referrable. Paula Hart did not submit timely comments.

The Executive Director recommends the Commission find that Terry and Paula Hart are not affected persons.

8. Scott and Karen Hill

According to the information provided by Scott and Karen Hill, they live in the general vicinity of the proposed WWTF, however, they do not live along the discharge route. They raised concerns regarding: design of the proposed WWTF; discrepancies in the application; flooding; whether the creek will be able to support aquatic life with the addition of multiple discharges; contamination of the water supply; and whether the Applicant's property is properly platted. However, the issues raised by Scott and Karen Hill either did not raise any issues that are protected by the law under which the

application will be considered or are too vague to demonstrate that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, their request does not demonstrate that they have an interest not common to members of the general public. Thus, they are not affected persons, and their issues are not referrable.

The Executive Director recommends the Commission find that Scott and Karen Hill are not affected persons.

9. Liana Jones

According to the information provided by Liana Jones, she owns property in the general vicinity of the proposed WWTF; however, she does not live along the discharge route. Ms. Jones raised concerns about: lights; noise; air pollution; debris in the creek; groundwater contamination; flooding; notification of surrounding neighbors if the WWTF fails; whether the TCEQ considered input from the Harris County Flood Control District or EPA; whether the discharge will impact wetlands; whether the proposed permit complies with the watershed protection plan for Cypress Creek and other waterways in the Houston area; and whether the application was complete and accurate. However, the issues raised by Liana Jones either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that she has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, her request does not demonstrate that she has an interest not common to members of the general public. Thus, she is not an affected person, and her issues are not referrable.

The Executive Director recommends the Commission find that Liana Jones is not an affected person.

10. Lynda and Pete Rezzoffi

According to the information provided by Lynda and Pete Rezzoffi they live in the general vicinity of the proposed WWTF, however, they do not live along the discharge route. Lynda and Pete Rezzoffi raised concerns regarding: the density of the proposed neighborhood to be served by the proposed WWFT, the proposed discharge to Spring Creek, traffic, and property value. However, the issues raised by Linda and

Pete Rezzoffi either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, their request does not demonstrate that they have an interest not common to members of the general public. Thus, they are not affected persons, and their issues are not referable.

The Executive Director recommends the Commission find that Lynda and Pete Rezzoffi are not affected persons.

11. Vic (and Linda) Smart

According to the information provided by Vic and Linda Smart they in the general vicinity of the proposed WWTF, however, they do not live along the discharge route. Vic Smart raised concerns about: endangered species, specifically alligator snapping turtles which have been found in Spring Creek; subsidence caused by the Applicant's water well; and flooding.

Vic Smart's concern regarding endangered species could be protected by the law under which the application will be considered, however, he has not demonstrated how he will be affected differently than the general public, thus, is not referable. Therefore, Vic Smart does not have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is not an affected person. Linda Smart did not provide comments on the draft permit.

The Executive Director recommends the Commission find that Vic and Linda Smart are not affected persons.

b. Persons Represented by Charles Irvine that Did Not Submit Timely Comments

As discussed above, for a person to be determined an affected person, the person's hearing request must be based on comments made by the individual during the comment period that were not withdrawn. The following individuals did not provide timely comments during the comment period, thus the Executive Director recommends the Commission find that they are not affected persons.

John and Catherine Abbruscato

Thomas and Norma Adkins
Renee Arias
Donald and Iris Blackwell
Ian Blane
Melissa Bronikowski
Kevin and Benzha Burke
John and Mary Carter
Daniele Comeau and Michael Redden
Chuck and Bette Dickison
Kerry Green
Lewis Green
David and Theresa Harsch
Walter and Linda Horswill
Lee Lackey
Michael and Angie Martino
Miguel Mujica
Pedro Mujica
Danelle and Don Pribilski
Vi Dima Pima
Paul Rainer
Raymond and Kammie Shay

C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications

submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred¹. The issues raised for this application and the Executive Director's analysis and recommendations follow.

Issue 1. Whether the wastewater treatment facility will cause nuisance odors. (Comment 23)

This issue involves a disputed question of fact and was not withdrawn; however, it is relevant and material to the issuance of the draft permit. This issue was raised by James Paul Long, and Rene Sanchez who the Executive Director recommends the Commission finds are affected persons and Danielle Comeau, who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 2. Whether the proposed discharge will cause erosion or subsidence. (Comment 13)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Colin Allison, Judy Allison, Vic Smart, and Linda Smart, who the Executive Director recommends the Commission find are not affected person.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 3. Whether the discharge from the proposed wastewater treatment facility will cause flooding, or raise the water table. (Comments 13 and 60)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Colin Allison, Judy Allison, William Cooper, Kevin Crane, Cynthia Crane, Kenneth Gardner, Vic Smart, and Linda Smart, who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by Liana Jones and James Paul Jones who the Executive Director recommends are affected persons.

¹ Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 4. Whether the proposed wastewater treatment facility will negatively impact safety. (Comment 10)

This issue involves a disputed question of fact, and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Colin Allison, Judy Allison, Terry Hart, who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by James Paul Long and Rene Sanchez who the Executive Director recommends finding are affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 5. Whether the discharge from the facility will cause an increase in algal growth in the receiving water. This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. However, this issue was not raised by a person the Executive Director recommends the Commission find is an affected person. This issue was raised by Colin and Judy Allison who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 6. Whether the draft permit will cause an increase in pests. (Comment 4)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Colin Allison, Judy Allison, Terry Hart, Paula Hart, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 7. Whether the proposed facility will negatively impact wetlands.
(Comment 16)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. However, this issue was raised by Rick Carter, Renay Carter, Jana Epplin, Tom Glass, and Kenneth Gardner, who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by Liana Jones, James Paul Long, and Renee Sanchez, however they did not demonstrate a personal justiciable interest that is not in common with the general public regarding wetlands on the Applicant's property that is not in common with the general public.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 8. Whether the application is complete and accurate. (Comment 39)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal judiciable interest in the application. This issue was raised by Rick Carter, Liana Jones, Tom Glass, Scott Hill, Karen Hill, Betsy Gardner, and Kenneth Gardner, who the Executive Director recommends the Commission finds are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 9. Whether the discharge will negatively impact the adjacent neighborhood. (Comment 29)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Rick Carter, Lynda Rezzoffi, and Pete Rezzoffi, who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by Liana Jones, James Paul Long, and Rene Sanchez who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission not refer this issue to

SOAH.

Issue 10. Whether the proposed WWTF will comply with all required operational and design requirements. (Comments 32, 33, 34, 41, 44, 45, 46, 47)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Kevin Crane, Cynthia Crane, Tom Glass, Terry Hart, Paula Hart, Betsy Gardner, Kenneth Gardner, who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by James Paul Long and Rene Sanchez, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 11. Whether the proposed WWTF will negatively impact property values. (Comment 10)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Pete Rezzoffi, Karen Rezzoffi, Cynthia Crane, and Kevin Crane who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 12. Whether the proposed WWTF will negatively impact wildlife. (Comment 13)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Kevin and Cynthia Crane who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 13. Whether the Applicant will properly dispose of trash. (Comments 10, and 29)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Jana Epplin who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 14. Whether the proposed WWTF will negatively impact endangered species. (Comment 22)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. This issue was raised by James Paul Long, Rene Sanchez, Vic Smart, and Linda Smart, however they did not demonstrate a personal justiciable interest that is not in common with the general public.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 15. Whether the Applicant will ensure ditches are free from blockages caused by sediment buildup or that debris/trees/plants will not obstruct the flow of the open ditch drainage system. (Comments 29, 43)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Jana Epplin, Terry Hart, Paula Hart, who the Executive Director recommends the Commission finds are not affected persons. This issue was also raised by Liana Jones who the commission find is an affected person.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 16. Whether the proposed discharge will negatively impact Kleb Park. (Comment 38)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Jana Epplin who the Executive Director recommends the Commission find is not an

affected person.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 17. Whether the Applicant owns or leases the property where the WWTF is proposed to be located. (RTC Comment 14)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. However, this issue was raised by Tom Glass, and Kenneth Gardner who the Executive Director recommends the Commission find are not affected persons. This issue was also raised by James Paul Long and Renee Sanchez however they did not demonstrate a personal justiciable interest that is not in common with the general public regarding the Applicant's ownership of the property where the WWTF is proposed to be located.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 18. Whether the discharge route is properly characterized. (Comment 43)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. However, this issue was raised by Tom Glass and Betsy Gardener who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 19. Whether the proposed WWTF will negatively impact neighboring water supplies, including water for livestock. (Comments 7, 25, 29, and 55)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. This issue was raised by Terry Hart and Paula Hart, Kenneth Gardner and Betsy Gardner who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 20. Whether the neighbors will have access to reports generated by the WWTF. (Comment 34)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Terry Heart, Paula Hart, Betsy Gardner, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 21. Whether the proposed subdivision should be required to use on-site sewage disposal systems. (Comment 9)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Terry Hart and Paula Hart who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 23. Whether the proposed discharge will negatively impact aquatic life. (Comments 7, 55)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. This issue was raised by Scott Hill and Karen Hill who the Executive Director recommends are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 23. Whether the Applicant should be allowed to discharge to Spring Creek. (Comment 12)

This issue involves a question of law, thus is not an issue the Commission may refer to SOAH. 30 TAC § 50.115(c)(1) provides that an issue must involve a disputed question of fact or a mixed question of law and fact. The Texas Water Code § 26.027(a) provides the “commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.” This issue was

raised by Pete Rezzoffi and Karen Rezzoffi, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 23. Whether the air quality will be negatively impacted by the WWTF. (Comments 36, 49)

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant and material to the issuance of the draft permit. This issue was raised by Betsy Gardner and Kenneth Gardner who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

Issue 24. Whether the proposed facility will be operated by a qualified operator. (Comment 47)

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. This issue was raised by Betsy Gardner who the Executive Director recommends are not affected persons.

The Executive Director recommends the Commission not refer this issue to SOAH.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find James Paul Long and Rene Sanchez are affected persons and grant their hearing requests.

2. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
3. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
4. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
5. If referred to SOAH, refer the following issue as raised by an affected person identified by the Executive Director:

Issue 1. Whether the proposed wastewater treatment facility will cause nuisance odors.

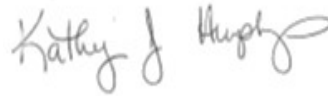
Respectfully submitted,

Texas Commission on Environmental
Quality

Toby Baker
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

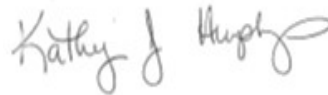


Kathy Humphreys
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24046858
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3417

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on August 15, 2022 the “Executive Director’s Response to Hearing Requests” for FM 2920 Land Company, Ltd. for new TPDES Permit WQ0015977001 was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the mailing list provided by the Office of the Chief Clerk via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Kathy Humphreys

MAILING LIST
FM 2920 LAND COMPANY, LTD.
DOCKET NO. 2022-0939-MWD; PERMIT NO. WQ0015977001

FOR THE APPLICANT:
via electronic mail:

Jeff Mickler, Authorized Representative
FM 2920 Land Company, Ltd.
2000 West Parkwood Avenue
Friendswood, Texas 77546
Tel: (281) 286-6666
jeff.mickler@jacobwhitecc.com

Phi Nguyen, P.E.
Senior Project Manager
Ward, Getz & Associates
2500 Tanglewilde Street, Suite 120
Houston, Texas 77063
Tel: (713) 489-9568
pnguyen@wga-llp.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0600
Fax: (512) 239-0606
kathy.humphreys@tceq.texas.gov

Deba Dutta, P.E., Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 3087
Austin, Texas 78711
Tel: (512) 239-4608
Fax: (512) 239-4430
deba.dutta@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711 Tel:
(512) 239-3300
Fax: (512) 239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S) / INTERESTED PERSON(S):

See attached list.

REQUESTER(S)

Dana R Boehm
22012 Pine Tree Ln
Hockley, TX 77447-8770

William L Cooper Jr
22011 Pine Tree Ln
Hockley, TX 77447-8754

Tom Glass
22915 Three Pines Dr
Hockley, TX 77447-7073

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

Lynda Karen & Pete Rezzoffi
20818 Pine Oak Ln
Hockley, TX 77447-8705

PUBLIC OFFICIALS - INTERESTED PERSON(S)

The Honorable Tom Oliverson
State Representative, Texas House of
Representatives District 130
12345 Jones Rd
Ste 221
Houston, TX 77070-4855

The Honorable Tom Oliverson
State Representative, Texas House of
Representatives District 130
Po Box 2910
Austin, TX 78768-2910

INTERESTED PERSON(S)

Colin Ann Allison
22727 Three Pines Dr
Hockley, TX 77447-7055

Judith Allison
22727 Three Pines Dr
Hockley, TX 77447-7055

Rick C Carter
22603 Three Pines Dr
Hockley, TX 77447-7082

Danielle Comeau
22314 Three Pines Dr
Hockley, TX 77447-7020

Cindy Crane
22811 Three Pines Dr
Hockley, TX 77447-7024

Cynthia & Kevin Crane
22811 Three Pines Dr
Hockley, TX 77447-7024

Kevin C Endsley
22623 Three Pines Dr
Hockley, TX 77447-7082

Jana M Epplin
22015 Three Pines Dr
Hockley, TX 77447-9369

Betsy Gardner
22510 Three Pines Dr
Hockley, TX 77447-7078

Kenneth Gardner
24501 Hufsmith Kohrville Rd Ste 600
Hockley, TX 77447

Kenny Gardner
22510 Three Pines Dr
Hockley, TX 77447-7078

Susan M L Gray
22353 Mueschke Rd
Tomball, TX 77377-3442

Kerry Green
22623 Three Pines Dr
Hockley, TX 77447-7082

Terry G Hart
22219 Three Pines Dr
Hockley, TX 77447-7045

Karen Hill
22914 Three Pines Dr
Hockley, TX 77447-7074

Karen & Scott Hill
22914 Three Pines Dr
Hockley, TX 77447-7074

Scott Hill
22914 Three Pines Dr
Hockley, TX 77447-7074

Liana Jones
22718 Three Pines Dr
Hockley, TX 77447-7055

James Paul Long
22315 Three Pines Dr
Hockley, TX 77447-7023

Wayne Joseph Matherne
20603 New Kentucky Vlg
Hockley, TX 77447-8785

Pamela Messina
Messina Interests Llc
22351 Mueschke Rd
Tomball, TX 77377-3442

Ross J Messina
22351 Mueschke Rd
Tomball, TX 77377-3442

Sean Mickler
2000 W Parkwood Ave
Friendswood, TX 77546-8909

James O'Meara
20815 Rose Ln
Hockley, TX 77447-4232

Melanie W Renazco
The Law Office Of Melanie W Renazco
24215 Kingsland Blvd
Katy, TX 77494-2976

Karen Rezzoffi
20818 Pine Oak Ln
Hockley, TX 77447-8705

Vic T Smart
22427 Three Pines Dr
Hockley, TX 77447-7080

Mark Stahlin
22830 Three Pines Dr
Hockley, TX 77447-7021

Doris Walpole
22037 Pine Tree Ln
Hockley, TX 77447-8754

FM 2920 Land Co.

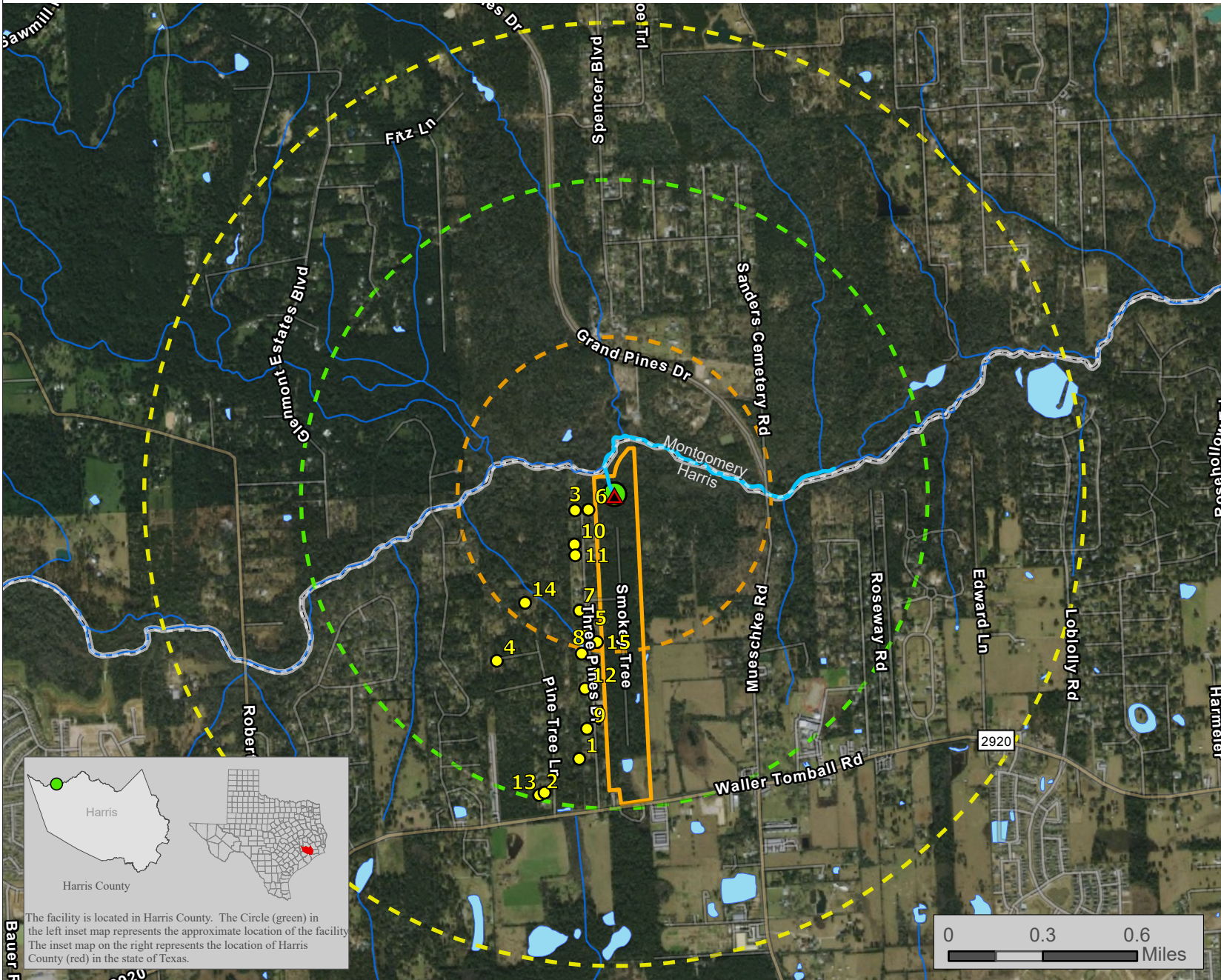
TPDES Permit No. WQ0015977001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Protecting Texas by
Reducing and
Preventing Pollution

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 8/10/2022
CRF 0071204
Cartographer: cschrade

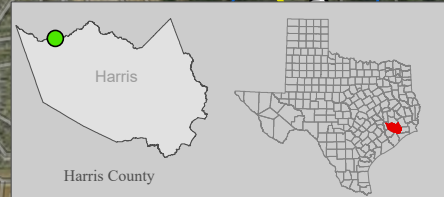


- Requestors
- Facility
- ▲ Outfall
- 1 mi Discharge Route
- - - 0.5 mi Radius
- - - 1 mi Radius
- - - 1.5 mi Radius
- Applicant Property Boundary
- County Boundary

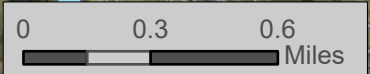
- Requestors:
- 1) Dana Boehm
 - 2) William Cooper
 - 3) Tom Glass
 - 4) Lynda and Pete Rezzoffi
 - 5) Jana Epplin
 - 6) Karen Hill and Scott Hill
 - 7) Rick Carter and Renay Carter
 - 8) Vic Smart and Linda Smart
 - 9) Terry G. Hart and Paula J. Hart
 - 10) Kevin Crane and Cynthia J. Crane
 - 11) Judy Allison and Colin Allison
 - 12) James P. Long and Renee L. Sanchez
 - 13) Deborah Cooper and William Cooper
 - 14) Liana Jones
 - 15) Betsy and Kenny Gardner

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Harris County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Harris County (red) in the state of Texas.



FM 2920 Land Co.

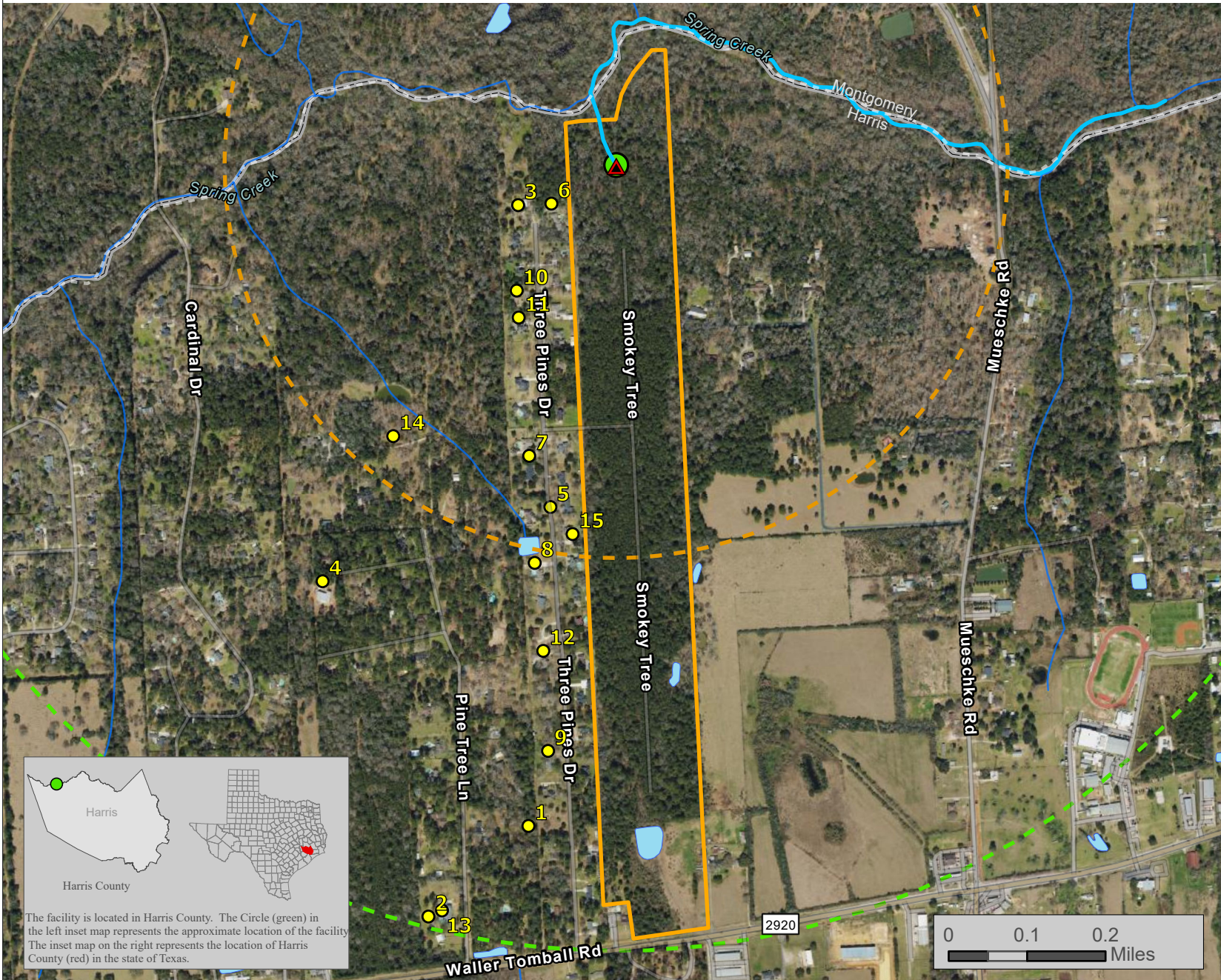
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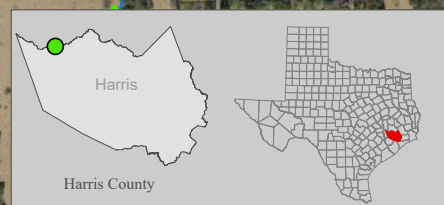


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