

**TCEQ DOCKET NO. 2022-0939-MWD**

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

§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY**

**PROTESTANTS' REPLY TO RESPONSES TO HEARING REQUESTS  
AND REQUESTS FOR RECONSIDERATION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Protestants, Jana Epplin, Karen and Scott Hill, Rick and Renay Carter, Vic and Linda Smart, Kenneth and Betsey Gardner, Terry G. and Paula J. Hart, Liana Jones, Kevin and Cynthia J. Crane, Judy and Colin Allison, James P. Long and Renee L. Sanchez, and Danielle Comeau and Michael Redden (“Protestants”) file this Reply to the Executive Director’s, the Office of Public Interest Counsel (“OPIC”)’s, and the Applicant’s Responses to Hearing Requests and Requests for Reconsideration in the above-styled matter.

On May 26, 2022, Protestants filed hearing requests and comments on FM 2920 Land Company, LTD’s application for TPDES Permit No. WQ0015977001. The hearing requests were timely and complied with 30 TEX. ADMIN. CODE § 55.201(d) by identifying each affected persons’ names, addresses, and telephone numbers; by identifying their personal justiciable interested affected by the application and the requesters’ locations and distance relative to the facility; by requesting a contested case hearing; and by listing material disputed issues of fact that were the basis of the hearing requests. The Protestants are all landowners adjacent and near the FM 2920 Land Company’s property and site of the proposed Wastewater Treatment Facility (“WWTF”) and are all affected persons under the factors found in 30 TEX. ADMIN. CODE § 55.203(c). The listed Protestants have properties located at least a mile from the facility, the discharge route, and the outfall, with some located as close as half

a mile or less. Specifically, four of the Protestant’s properties are directly adjacent to the property line where the WWTF is to be located.

**OPIC recommends the referral of twenty persons and four issues**

The Office of Public Interest Counsel recommended granting the hearing requests of twenty of the Protestants, representing the residents of eleven properties.<sup>1</sup> OPIC, essentially, stated: (1) the Protestants were located within a mile or less of the facility, discharge route, and outfall; (2) the concerns or issues raised by the Protestants are protected by law under this application will be considered; (3) the Protestants are likely to be affected in a way not common to members of the general public; (4) thus, the recommendation to the Commission find the listed Protestants are affected persons. OPIC recommends the referral of four issues for the 180-day contents case. Protestants support OPIC’s recommendation, subject to the additions of Danielle Comeau and Michael Redden as argued below.

**The Executive Director only recommends the referral of two persons and one issue and largely ignores the extensive record of other requesters’ timely comments documented in its own Response to Comments**

In its Responses to the Hearing Requests, the Executive Director identifies only James P. Long and Renee L. Sanchez whose property is “in the general vicinity of the proposed WWTF” who might qualify as affected persons. Exec. Dir. Response at 7. The Executive Director’s position on the remaining Protestants’ affected person status and the position on which issues should be referable to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing must be rejected. The other Protestants timely raised the same or similar issues during the comment period—*i.e.*, whether the discharged wastewater will adversely affect surface water quality; whether nuisance conditions will affect them and their properties; whether the permit will prevent negative effects to human health, animal life, aquatic life, and the environment; and whether the application submitted is

---

<sup>1</sup> Pete and Karen Rezzoff are not currently represented by Irvine & Conner.

accurate and complete—as James P. Long and Renee L. Sanchez, and these are issues of fact or mixed issues of fact and law are relevant and material to a decision on the application. Each Protestant has their own set of concerns that they have raised and demonstrate that they have an interest not common to the members of the general public, including the following issues:

- Jana Epplin – wetlands on her property will be disturbed by the permitted activities; disruption of bald eagles in the area; contamination of well water; and pollution of Kleb Park; and impacts to wildlife. Response to Pub. Comments at Comment 16, 22, 25, and 28.
- Karen Hill and Scott Hill – discharge contaminating water and vegetation sources and sampling for contaminants; whether the Applicant owns the land for the proposed wastewater treatment plant (“WWTP”); concerns regarding the accuracy and completeness of the application; disturbance of wetlands; and concerns regarding impacts to life and organisms in Spring Creek. Response to Pub. Comments at Comment 7, 14, 15, 18, 19, 39, 52, 53, and 55.
- Rick Carter and Renay Carter – facility impacts on wetlands; pollution for the facility impacting the neighborhood; and discrepancies in the application. Response to Pub. Comments at Comment 16, 29, and 39.
- Vic Smart and Linda Smart – water discharge into the habitats of endangered and/or protected species. Response to Pub. Comments at Comment 22.
- Kenneth Gardner and Betsey Gardner – discharge contaminating drinking water and livestock water; contamination of water wells and surrounding dwelling water; concerned about Applicant’s ownership of the property of the proposed facility; accuracy and completeness of application. Response to Pub. Comments at Comment 7, 14, 16, 23, and 25.
- Terry G. Hart and Paula J. Hart – concerns that WWTP’s handling of salts and improper handling can affect the ecosystem; concerns with nuisances, like pests; and contamination of the water supply. Response to Pub. Comments at Comment 2, 4, and 7.
- Liana Jones – process of reducing air, light, and noise pollution; the Applicant’s application is inaccurate; impacts on wetlands by discharge; concern regarding setback requirements to private water wells; concerns WWTP will contribute more contaminants into waterways; and WWTP fails any safeguards and remediation contaminates to the creek. Response to Pub. Comments at Comment 10, 16, 25, 33, 34, and 39.
- Kevin Crane and Cynthia J. Crane – concerns that wildlife will be displaced by the proposed activity. Response to Pub. Comments at Comment 38.
- Judy Allison and Colin Allison – water discharged harming the environment; concerns regarding algae; odor; and poor water quality. Response to Pub. Comments at Comment 7 and 35.

- James Long and Renee Sanchez – concerns over the Applicant’s ownership of the property; concerns over the completeness and accuracy of the application; impacts on wetlands; impacts to endangered species; concerns over odors emitting from the plant; concerns over bacteria; Response to Pub. Comments at Comment 14, 16, 18, 19, 22, 33, and 39.

Three of these above Protestants—Liana Jones, and Karen and Scott Hill—own properties directly adjacent to the property lines of the Applicant where the WWTF is proposed to be located. The Executive Director’s maps incorrectly plot the location of Liana Jones (#14 on the map). Exec. Dir. Response, two landowner maps. The correct location is 22718 Three Pines Drive, Hockley, 77447, which is directly adjacent to the Applicant’s property line. The Applicant’s map shows the correct location for Ms. Jones’ property (#19). Applicant Resp., at Attachment A, Landowner Map.

Each of these eighteen Protestants have raised these and other issues in written form or orally during the public comment period thus fully complying with TCEQ rules governing requests for a contested case hearing. Only recommending James P. Long and Renee L. Sanchez as affected persons and their hearing requests is a particularly unreasonable position for the Executive Director to take, given that all the Protestants are similarly situated: they all live less than a mile from the WWTF, the discharge route, and outfall. Each of these Protestants timely submitted comments raising issues protected by law and not common with the general public. A reasonable relationship exists between the concerns raised and the proposed facility. Additionally, OPIC recommended that the Commission find the Protestants are affected persons and grant the hearing requests. The Protestants have personal justiciable interests related to legal rights, duties, privileges, powers, or economic interests affected by the application not common to members of the general public. Thus, the eighteen Protestants are affected persons.

**Without explanation, both OPIC and the Executive Director ignore the requests of Danielle Comeau and Michael Redden, who reside directly adjacent to the Applicant's property line and who submitted timely comments**

Furthermore, for reasons not explained, the Executive Director and OPIC have not recommended Danielle Comeau and Michael Redden as affected persons. Ms. Comeau and Mr. Redden should also be classified as affected persons and their requests for a contested case be granted. Danielle Comeau and Michael Redden submitted timely comments as documented by the Executive Director in its Response to Comments. Much like many of the other Protestants, the comments raised concerns regarding impacts to wetlands, impacts to endangered species, and concerns over odors emitting from the WWTP. Response to Pub. Comment, at Comment 16, 22, and 23. The issues raised by Ms. Comeau, on behalf of her and Mr. Redden, are personal justiciable interests related to legal rights, duties, privileges, powers, or economic interests by the application and not common to members of the general public. Ms. Comeau and Mr. Redden live directly adjacent to the Applicant's property line—at 22314 Three Pines Dr., Hockley, 77447, less than half a mile from the facility, the discharge route and the outfall. The Applicant's map shows the correct location for Ms. Comeau and Mr. Redden's property (#10). Applicant Resp., at Attachment A, Landowner Map. For reasons not explained, the Executive Director completely failed to plot this property on its own maps. Due to the close proximity and the issue raised Ms. Comeau and Mr. Redden are affected persons and their requests should be granted.

**Conclusion**

For these reasons, we respectfully urge that the Commission find the Protestants are affected people and grant the requests of all of the Protestants—Jana Epplin, Karen and Scott Hill, Rick and Renay Carter, Vic and Linda Smart, Kenneth and Betsey Gardner, Terry G. and Paula J. Hart, Liana Jones, Kevin and Cynthia J. Crane, Judy and Colin Allison, James P. Long and Renee L. Sanchez, and

Danielle Comeau and Michael Redden—on all issues timely raised. Further, Protestants support OPIC’s recommendation for a 180-day hearing due to the large number of parties potentially involved.

Sincerely,

Irvine & Conner, PLLC

/s/ Charles W. Irvine

Charles W. Irvine

Janet Campos

Irvine & Conner, PLLC

4709 Austin Street

Houston, TX 77004

713-533-1704

charles@irvineconner.com

**CERTIFICATE OF SERVICE**

I hereby certify that on August, 29, 2022, a copy of Protestants Jana Epplin, Karen and Scott Hill, Rick and Renay Carter, Vic and Linda Smart, Kenny and Betsey Gardner, Terry G. and Paula J. Hart, Liana Jones, Kevin and Cynthia J. Crane, Judy and Colin Allison, James P. Long and Renee L. Sanchez, and Danielle Comeau and Michael Redden Reply to Appellant's Responses to Hearing Requests was filed with the Chief Clerk of the TCEQ, and a copy was served to the Executive Director, the public interest counsel, and the applicant, pursuant to 30 TEX. ADMIN. CODE § 55.26(f).

/s/ Charles W. Irvine  
Charles W. Irvine

Kathy Humphreys  
Staff Attorney, Environmental Law Division  
P.O. Box 13087, MC 173  
Austin, Texas 78711  
kathy.humphreys@tceq.texas.gov  
***Counsel for the Executive Director***

Jennifer Jamison  
Assistant Public Interest Counsel  
P.O. Box 13087, MC 103  
Austin, Texas 78711  
jennifer.jamison@tceq.texas.gov  
***Counsel for OPIC***

Peter T. Gregg  
State Bar No. 00784174  
910 West Ave., No. 3  
Austin, Texas 78701  
Phone: 512-522-0702  
Fax: 512-727-6070  
pgregg@gregglawpc.com  
***Counsel for Applicant***

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  
***Counsel for ADR***

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/>  
***For the Chief Clerk***