

**TCEQ DOCKET NO. 2023-0120-MWD**

<b>APPLICATION OF SJWTX, INC. AND</b>	§	
<b>MARY JANE CIELENCKI FOR NEW</b>	§	<b>BEFORE THE</b>
<b>TEXAS POLLUTION DISCHARGE</b>	§	
<b>ELIMINATION SYSTEM PERMIT NO.</b>	§	<b>TEXAS COMMISSION ON</b>
<b>WQ0016052001</b>	§	<b>ENVIRONMENTAL QUALITY</b>

**MARY JANE CIELENCKI’S RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Co-Applicant Mary Jane Cielencki (“Applicant”) and files this Response to Hearing Requests filed by certain individuals and a group purporting to be the Neighbors of Spring Branch (“NOSB”) relating to the issuance of proposed Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0016052001, and would respectfully show the following:

**I. SUMMARY OF RESPONSE**

The Texas Commission on Environmental Quality (“TCEQ” or “Commission”) received hearing requests from multiple individuals and the Neighbors of Spring Branch (“NOSB”) (hereinafter “Requestors”), neither category which may be considered affected persons with standing to contest the draft permit through an evidentiary hearing.<sup>1</sup> As specified in more detail below, multiple individuals filed comments and requests for a public meeting or hearing, not requests for contested case hearings *per se*. This first category of requests was received by TCEQ before the Executive Director (“ED”) issued his Response to Comments (“RTC”) and the Requestors did not generally file hearing requests thereafter. More importantly, **none** of these “early” requests provides a demonstration of the Requestor’s justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application. Additionally, some individuals purporting to be members of NOSB, the second category of hearing requests received in this docket, provided no evidence of the creation or existence of NOSB, their membership therein, the membership or standing of the “token” member, or an explanation of how the group meets the requirements of 30 TAC § 55.205. Accordingly, pursuant to 30 TAC § 55.205(c),

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<sup>1</sup> Title 30 Texas Administrative Code (“TAC”) § 55.201 *et seq.*

Applicant specifically requests that NOSB provide an explanation of how the group meets the requirements of § 55.205.

Even if standing is established by NOSB, none of the five issues raised are relevant and material to the Commission’s decision and all but one are outside the scope of the TCEQ’s jurisdiction in a wastewater permitting hearing. Accordingly, all hearing requests should be denied and the Commission should remand this matter to the ED for issuance of the proposed permit.

## **II. BACKGROUND**

Applicant seeks authorization to discharge treated, domestic wastewater from a small wastewater treatment plant (“WWTP”) that will serve approximately 718 single family homes<sup>2</sup> along with certain commercial areas in a development known as the Simmons Valley Subdivision located in the City of Spring Branch, in Comal County, Texas.<sup>3</sup>

The proposed TPDES permit would allow a daily average flow of 0.06 million gallons per day (“GPD”) in the Interim I phase, 0.15 MGD in Interim II phase and 0.26 MDG in the Final phase from a membrane bioreactor (“MBR”) plant. Proposed effluent limitations are 5 mg/L five-day carbonaceous biochemical oxygen demand (“CBOD<sub>5</sub>”), 5 mg/L total suspended solids (“TSS”), 2 mg/L ammonia-nitrogen (NH<sub>2</sub>-N), 0.5 mg/L total phosphorus (“TP”), 126 colony forming units (“CFU”) of *E. coli* per 100 ml, and 4.0 mg/L minimum dissolved oxygen (“DO”), which is considered advanced treatment.

According to the ED, these limits comply with the Texas Surface Water Quality Standards (“TSWQS”) and the State of Texas Water Quality Management Plan (“WQMP”), and existing water quality will not be impaired by the proposed permit, which was confirmed through a Tier 1 antidegradation review.<sup>4</sup> Treated effluent is proposed to be discharged via pipe into Cypress Creek (with limited aquatic life use (“ALU”)), then to the Guadalupe River above Canyon Lake in

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<sup>2</sup> Each housing unit assume 2.5 persons.

<sup>3</sup> Note, the proposed WWTP is in the extraterritorial jurisdiction of the City of Spring Branch while the subdivision it would serve is partially within the City’s corporate boundaries. Also, several of the Requestors identified in Section IV.A.1. below are located in towns at least 7 and as much 27 miles from the proposed site, which cities are represented in **bold**.

<sup>4</sup> Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision at 2 (April 13, 2022) (“Technical Summary”).

Segment No. 1806 of the Guadalupe River Basin. The Executive Director’s analysis identified no endangered species concerns. While Segment No. 1806 is currently listed on the 2020 Section 303(d) list for bacteria, that constituent of concern is easily and adequately addressed by the WWTP’s disinfection and the draft permit’s *E. coli* limit. Additionally, the majority of the treated effluent will be beneficially reused by the Applicant for landscape irrigation from a state-of-the-art reuse system as authorized by 30 TAC ch. 210. Thus, in all technical respects, the proposed discharge complies with all Commission rules and policy.

In short, **none** of the Requestors is an affected person with a justiciable interest in this case. As such, the Commission need not get into the relevance or materiality of the issues Requestors raise. All requests should be **denied** for lack of standing, and the Commission should issue the permit as recommended by the ED.

### III. AUTHORITY

Before the Commission may get to the “what” of a request for hearing, it must consider “who” is making it. To be granted, an “affected person” with a personal justiciable interest demonstrating a non-speculative injury resulting from the granting of the permit must make the request for hearing.

Section 55.203 provides as follows:

- (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 §55.103 of this title (relating to Definitions), 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) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
  - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
- (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.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.<sup>5</sup>

Section 55.201 further establishes the standards for processing requests for reconsideration and requests for hearing.<sup>6</sup>

- (d) A hearing request must substantially comply with the following:
- (4) for applications filed:
    - (B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor 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 the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law;<sup>7</sup>

Finally, 30 TAC § 55.205 provides:

- (a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

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<sup>5</sup> 30 TAC § 55.203.

<sup>6</sup> 30 TAC § 55.201.

<sup>7</sup> 30 TAC § 55.201(d)(4)(B).

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
  - (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
  - (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may not be granted unless all the following requirements are met:
- (1) comments on the application are timely submitted by the group or association;
  - (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
  - (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
  - (4) neither the claim asserted nor the relief requested requires the participation of individual members in the case.
- (c) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) or (b) of this section. The request and reply shall be filed according to the procedure in § 55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing).<sup>8</sup>

Significantly, none of the Requestors specified any of the ED's responses that the Requestor disputes, the factual basis of the dispute, nor listed any disputed issues of law as required by 30 TAC § 55.201(d)(B).

#### **IV. RESPONSE TO HEARING REQUESTS**

##### **A. Individual and Group Standing**

There are two basic categories of individuals for the Commission to consider in this docket:

- 1) those that requested a contested case hearing prior to or during the public meeting<sup>9</sup> in writing but filed nothing thereafter and did not include affected person information in any request,<sup>10</sup> and
- 2) individuals who requested a contested case hearing as part of NOSB and attempted to include

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<sup>8</sup> 30 TAC § 55.205.

<sup>9</sup> A public meeting was held on August 11, 2022 at the request of State Representative Kyle Biedermann.

<sup>10</sup> This response does not address the multiple public comments received or requests for public meeting where those comments were filed without an accompanying request for contested case and statement specifying justiciable interest.

affected person information relative to the alleged group or association. These two categories of interested persons are depicted on the attached **Exhibit A** landowner map, incorporated herein to depict geographic location to the proposed WWTP.

### 1) **Individual Requests for Contested Case Hearing Without Affected Person Information**

Multiple requests for a hearing<sup>11</sup> were received before the 12/9/22 deadline where the Requestor filed no information about their specific justiciable interest or the request fails for other infirmities. The following individuals **failed** to show that they are affected persons whose request should be referred to the State Office of Administrative Hearings (“SOAH”):

1. Mike and Linda Clark                    8195 US Hwy 281, Spring Branch, TX 78070  
The Clarks and Phelps (below) filed the same pre-printed form with the same address requesting a contested case hearing but provided no justiciable interest and identified no relevant and material issues.
2. Chris and Michelle Phelps            8195 US Hwy 281, Spring Branch, TX 78070  
See Clark request above
3. Marlin Brown                              31567 High Ridge Dr., **Bulverde**, TX 78163  
Mr. Brown requested a contested case hearing at the 8/11/22 public meeting but provided no information about his justiciable interest.
4. Kasi Finley                                 1162 Thunder Cloud, Spring Branch, TX 78070  
Ms. Finley requested a contested case hearing at the 8/11/22 public meeting but provided no information about her justiciable interest.
5. Edward and Karen Lette                1245 Phantom Rider Trl, Spring Branch, TX 78070  
Mr. Lett requested a contested case hearing at the 8/11/22 public meeting but provided no information about their justiciable interest. Mr. Lette made another filing after the deadline on 1/22/23 without requesting a hearing or providing any information on their justiciable interest.
6. Susan Marder                              6017 Cornwall Dr., Spring Branch, TX 78070  
Ms. Marder requested a hearing on 8/12/22 but provided no information about her justiciable interest.

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<sup>11</sup> In some cases, the request was for a “contested case hearing,” in others it was for a “public hearing” or just a “hearing.” Applicant has attempted to address any filing that included the word “hearing.”

7. Julie Coen  
PO Box 291, Spring Branch, TX 78070  
Ms. Coen requested a contested case hearing at the 8/11/22 public meeting but provided no information about her justiciable interest.
8. Lisa O’Sullivan  
11023 Portsmouth Dr., Spring Branch, TX 78070  
Ms. O’Sullivan made two filings on 8/13/22, one in which she requested a contested case hearing, but provided no information about her justiciable interest in either filing.
9. Josephine Rosales  
179 Prairie Dawn, Spring Branch, TX 78070  
Ms. Rosales requested a contested case hearing on 8/13/22 but provided no information about her justiciable interest.
10. Eric Cardenas  
5034 Kenilworth Blvd., Spring Branch, TX 78070  
Mr. Cardenas filed a form letter requesting a hearing on 8/13/22 but provided no information about his justiciable interest.
11. Amanda Saunders  
5237 Ascot Ave, Spring Branch, TX 78070  
Ms. Saunders requested a hearing on 8/13/22 but provided no information about her justiciable interest. Rindy Saunders, at the same address, filed a comment on 8/13/22 also, but did not request a hearing nor provide information about their justiciable interest.
12. Catherine Martin  
2146 Comal Springs, **Canyon Lake**, TX 78133  
Ms. Martin requested a hearing on 8/15/22 but provided no information about her justiciable interest.
13. Owen Powell  
270 Fawn Ln., Spring Branch, TX 78070  
Mr. Powell requests a contested case hearing and states that he “identifies” as an affected person but provided no information about his justiciable interest.
14. Nathan Segovia  
Mr. Segovia requested a “hearing” not a “contested case hearing,” provided no address and no justiciable interest.
15. Robert Evans  
810 Hidden Oaks Dr., **Bulverde**, TX 78163  
Mr. Evans requested a contested case hearing early in the process on 2/26/22, but provided no justiciable interest nor identified any relevant and material issues.
16. Juanita Profitt  
740 Craig Ln., Spring Branch, TX 78070  
Ms. Profitt “demanded a hearing” but did not request a “contested case hearing” nor identify any justiciable interest.
17. Ingrid Giral-Caanen  
530 Windy Hill Dr., Spring Branch, TX 78070  
Ms. Giral-Caanen filed public comment on 5/24/22 and at the 8/11/22 public meeting but did not request a contested case hearing either time, nor did she provide any information about her justiciable interest at any time. She asked for a

- contested case hearing only on 12/10/22, after the deadline to receive hearing requests which was still absent of any information about her justiciable interest.
18. Linda Holley Mohr 6013 Cornwall Dr., Spring Branch, TX 78070  
Ms. Mohr filed a hearing request on 8/12/22 but provided no information about her justiciable interest.
19. Marilyn and Michael Myers 187 Cypress Springs Dr., Spring Branch, TX 78070  
Although the TCEQ database lists the Myers' 8/11/22 filing as a "Request for Reconsideration/Rehearing English" (it asks that the TCEQ "reconsider any additional large developments") there is no request for a "contested case" or "public hearing," and no information about justiciable interest provided.
20. Marian Henderson 1116 Santa Rosa Ct., **Canyon Lake**, TX 78133  
Although the TCEQ database lists Ms. Henderson's 8/9/22 filing as a "Request for Reconsideration/Rehearing English" (it asks that the TCEQ "reconsider allowing this permit"), there is no request for a "contested case" or "public hearing," and no information about justiciable interest provided.
21. Eva Silverfine 1309 The Low Rd., **San Marcos**, TX 78666  
Ms. Silverfine requested a "public hearing," not a contested case hearing and provided no information about her justiciable interest.
22. Alejandro Ruiz 3218 Buck Meadow Trl, Spring Branch, TX 78070  
Mr. Ruiz requested a "public hearing," not a contested case hearing and provided no information about his or Silvia Ruiz's justiciable interest.
23. Star McDonald 27111 Boerne First, **Boerne**, TX 78006  
Ms. McDonald requested a "public hearing," not a contested case hearing and provided no information about her justiciable interest.
24. Dirk Davidek 144 Landa St., Apt. 851, **New Braunfels**, TX 78130  
Mr. Davidek "called for" a "public hearing," not a contested case hearing and provided no information about his justiciable interest.
25. Colette Laine 132 Blazing Meadow Rd., Spring Branch, TX 78070  
Ms. Laine called for" a "public hearing," not a contested case hearing and provided no information about her justiciable interest.
26. Ben Hudson 510 Tara Dr., **San Antonio**, TX 78216  
Mr. Hudson requested a "public hearing" only on 2/20/22



but provided no further information on his justiciable interest.

27. Jessica Bailey

957 Golf Course Dr., Spring Branch, TX 78070  
Ms. Bailey called for” a “public hearing,” not a contested case hearing but provided no information about her justiciable interest.

28. James Mayer, Mayor

PO Box 1143, Spring Branch, TX 78070  
On behalf of the City of Spring Branch, Mayor Mayer *reserved* the right to request a contested case hearing on 1/21/22 but did not actually request such a hearing. Mayor Mayer made another filing on 5/23/21 which only requested a public meeting. At no point did Mayor Mayer assert standing on behalf of a governmental entity, the City of Spring Branch.

Each of these Requestors falls short of the threshold to obtain standing to be referred to SOAH for a contested case hearing because they did not demonstrate that they were affected persons with a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application and each has not demonstrated that their interest is different than members of the general public in accordance with the factors in 30 TAC § 55.203. Other than providing names and addresses, these requests did not address the requisite standing factors in § 55.203(c) and (d).

## 2) **Group Request for Contested Case Hearing With Deficient Affected Person Information**

Four individuals who purport to be members of NOSB made timely filings requesting a contested case hearing on behalf of the association or group. The four letters are identical form letters, all stating that their standing depends on Ms. Annette Gass’ affected person status. However, as explained more fully below, Ms. Gass has not requested a hearing nor otherwise stated she was even a member of NOSB. The following individuals **failed** to show that they are affected persons or member of a group or association whose request should be referred to SOAH:

1. Annette Gass

12471 US Hwy 281 N, Spring Branch, TX 78070<sup>12</sup>  
Land immediately adjacent and downstream of the proposed site is owned by Ms. Annette Gass. However, Ms. Gass has **not requested a contested case hearing** in this docket on her own behalf or on behalf of NOSB, has not demonstrated

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<sup>12</sup> The Office of Chief Clerk did not include Ms. Annette Gass on its mailing list for this docket.

her individual justiciable interest, nor identified any relevant and material issues. As explained more fully below, Ms. Gass is not an affected person in this proceeding.

2. Robert and Angela Butler 381 Bent Oak Dr., Spring Branch, TX 78070  
The Butlers filed a form hearing request claiming Ms. Gass as the affected person on behalf of the NOSB group or association. As explained more fully below, the Butlers' hearing request fails because there is no evidence that Ms. Gass is a member of NOSB, she did not request a hearing on her own behalf or on behalf of NOSB and the group's purpose is not related to domestic wastewater discharges but other media outside the scope of this proceeding.
3. William and Kristen Wessale 360 Bent Oak Dr., Spring Branch, TX 78070  
A hearing request identical to the Butlers was filed in the name of Wessale under Robert Butler's email address. There is no separate hearing request by the Wessales. The Wessales' request fails for the same reasons as the Butlers.
4. Sid and Becky Atkinson 13084 Rebecca Creek Rd., Spring Branch, TX 78070  
A hearing request identical to the Butlers and Wessales was filed in the name of Atkinson under William Wessale's and Rita Acker's email addresses, three different times on 12/8/22. There is no indication in the TCEQ database that the Atkinsons filed their own request. Any purported request by the Atkinsons fails for the same reasons as the Butlers and Wessales.
5. Tony and Ruth Taylor 520 Craig Ln., Spring Branch, TX 78070  
A hearing request identical to the Butlers, Wessales and Atkinsons was filed in the name of Taylor under Rita Acker's email address. There is no indication in the TCEQ database that the Taylors filed their own request. Any purported request by the Taylors fails for the same reasons as the Butlers, Wessales, and Atkinsons.
6. Rita Acker 12133 US Hwy 281 N, Spring Branch, TX 78070.<sup>13</sup>  
Ms. Acker filed public comment and a number of form requests on behalf of the members of NOSB but does not state that she is a member of NOSB herself and she did not file a request for contested case hearing for herself. Moreover, none of the NOSB form letters states that Ms. Acker is a member of the association. Rather NOSB list only these members: Gass, Butler, Wessale, Atkinson and Taylor.

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<sup>13</sup> Although several filings were made under Rita Acker's email address, the Office of Chief Clerk does not include Ms. Acker's address on its mailing list for this docket.

As explained above, Ms. Gass did not file a request for hearing on her own behalf or as a member of NOSB – she made no filing whatsoever. Rather, five other requests were electronically filed under her name by Becky Atkinson, William Wessale, Robert Butler, and two by her daughter Rita Acker. None of the five electronically filed requests under the name “Annette Gass” state that the filer has been given authority by her to do so, including her daughter. However, each of these hearing requests states that Annette Gass has been “deemed an affected party” and that she is a member of the NOSB, but **none** of the letters attach any supporting documentation providing evidence of such.

Likewise, **none** of the alleged members of NOSB (Buter, Wessale, Atkinson, Taylor) request standing on their own individual behalf, but only as members of NOSB, depending on Annette Gass as the token member who would otherwise have standing to request a hearing in their own right per 30 TAC § 55.205. Because Ms. Gass did not request a contested case hearing, nor is there any evidence that she is a member of NOSB, nor empowered anyone to act on her behalf, NOSB lacks associational standing in this matter.

Under 30 TAC § 55.205, the interests NOSB seeks to protect must be germane to the organization’s purpose. Each of the NOSB members state that NOSB was formed in 2013 as a “community-oriented organization” dedicated to preserving the environmental quality of the Spring Branch *area*. NOSB states no interest specific to the water quality of Cypress Creek or the Guadalupe River. Instead, NOSB enumerates general interests in clean air, protection of water *sources*, and the protection of wildlife and their habitats. None of these stated concerns are germane to the proposed wastewater discharge permit. The proposed TPDES permit does not raise air quality, groundwater, or wildlife habitat concerns, and each of these areas are regulated under separate law, not chapter 26 of the Texas Water Code. Thus, even assuming NOSB properly asserted standing based on Ms. Gass’ membership and location, the purposes of the group are not related to the issues raised by the pending wastewater permit application. NOSB cannot be considered a group or association whose request may be granted under 30 TAC § 55.205.

## **B. Relevant and Material Issues**

Multiple hearing requestors have articulated concerns with the proposed discharge permit; however, none of those concerns were asserted by affected persons. However, if the Commission

concludes that NOSB has standing through Annette Gass, the issues raised are limited to the following: 1) ingestion by Ms. Gass' cattle of prescription medications, viruses, and household chemicals, 2) odors, 3) skirting of rules relative to the location of the discharge route, 4) Robert Butler's public information act requests, and 4) Comal County Order No. 468 relating to waste disposal. None of these issues is relevant and material to the issuance of the subject permit application.

### **1) Prescription Medications, Viruses and Household Chemicals**

TCEQ frequently refers cases to SOAH on the issue of whether the draft permit is protective of water quality including the protection of terrestrial wildlife. This issue is not what NOSB has asserted. In fact, NOSB does not link its concerns about the potential for cattle to ingest prescription drugs, viruses, or household chemicals to any alleged deficiencies in the draft permit. NOSB's interest regarding prescription drugs, viruses, and household chemicals is not protected under the law (chapter 26 of the Texas Water Code) or the rules adopted thereunder (including the TSWQS) under which the application will be considered.<sup>14</sup> The TCEQ does not prohibit the discharge of prescription drugs, viruses, or household chemicals into the sewer collection system that is treated at an authorized WWTP; rather, the TCEQ regulates the quality of the effluent that is discharged from the WWTP. NOSB's concerns are outside the scope of TCEQ's jurisdiction.

### **2) Odors**

The Draft Permit complies with applicable requirements to abate and control nuisance odors in accordance with 30 TAC § 309.13(e) by virtue of Applicant's proposed 150-foot buffer zone, and the facility is not authorized to discharge "solids." Also, the prevailing wind direction is from the southeast from Ms. Gass toward the WWTP, not from the WWTP toward Ms. Gass. At best, this is an interest common to members of the general public. This issue is not a relevant and material disputed issue of fact or law. Future nuisance conditions, should they arise, can be addressed through TCEQ enforcement and civil suits.

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<sup>14</sup> 30 TAC § 55.203(c)(1).

### **3) “Skirting Rules”**

Conveying wastewater by pipe to different parts of the proposed site is not uncommon, but is a site-development action typical of a planned residential subdivision. Nor is it “skirting the rules,” since TCEQ has no rules prohibiting the location of the WWTP nor its physical outfall location except as it pertains to floodplains and buffer zones with which the application complies.<sup>15</sup> Moreover, locating the discharge point on the north side of the site is not an interest protected under the law under which the application will be considered.<sup>16</sup> Other than the aforementioned siting requirements related to floodplains and buffer zones, TCEQ does not impose land use restrictions on where an applicant may place its outfall generally.

### **4) Open Records Requests**

Concerns about the timeliness or adequacy of TCEQ’s reply to Open Records requests is not an interest protected under the law under which the Commission is considering this application.<sup>17</sup> NOSB’s concerns are properly addressed under chapter 552 of the Texas Government Code through the Office of the Attorney General, not by the Commission under chapter 26 of the Texas Water Code.

### **5) Comal County Order No. 468**

Comal County Order No. 468, effective October 21, 2021, is a partial solid waste disposal prohibition (i.e., landfill siting prohibition) and does not pertain to the discharge of treated domestic wastewater effluent. By its own terms, Order No. 468 was adopted under the authority of chapter 363 of the Texas Health and Safety Code, which vests some but not exclusive or primary solid waste authority in counties. TCEQ also has primary authority over wastewater discharges. Most importantly, Applicant does not propose to dispose of solid waste, municipal or industrial solid waste, or sludge. All sludge generated by the proposed WWTP will be hauled off-site by an authorized transporter and disposed or beneficially reused at an authorized facility. NOSB’s

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<sup>15</sup> 30 TAC § 309.13 relating to unsuitable site characteristics.

<sup>16</sup> 30 TAC § 55.203(c)(1).

<sup>17</sup> 30 TAC § 55.203(c)(1).

concerns relative to Comal County Order No. 468 is not an interest protected under the law under which the application will be considered.

**V. CONCLUSION**

For the aforementioned reasons, no individual Requestor has standing as an affected person, and NOSB's request cannot be granted because it does not meet the standing criteria for groups or associations. Additionally, the issues raised by NOSB are not relevant and material to a wastewater permit proceeding. Nonetheless, if the Commission refers the Application to hearing, it should be referred immediately without mediation for a hearing duration not to exceed 180 days.

**VI. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Co-Applicant Mary Jane Cielencki respectfully prays that the Commission deny all hearing requests and issue the TPDES permit as recommended by the ED.

Respectfully submitted,

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By: \_\_\_\_\_  
Helen S. Gilbert

**ATTORNEY FOR MARY JANE CIELENCKI**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 30th day of January 2023:

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See Attached Mailing List for Requestors



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By: Helen S. Gilbert

**MAILING LIST**  
**MARY JANE CIELENCKI AND SJWTX, INC.**  
**TCEQ DOCKET NO. 2023-0120-MWD**

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*\*also served by electronic mail*



# Exhibit A

