

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 9, 2022

TO: All interested persons.

RE: SJWTX, Inc. and Mary Jane Cielencki
TPDES Permit No. WQ0016052001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Mammen Family Public Library, Circulation Desk, 131 Bulverde Crossing, Bulverde, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name,

address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
SJWTX, Inc. and Mary Jane Cielencki
TPDES Permit No. WQ0016052001

The Executive Director has made the Response to Public Comment (RTC) for the application by SJWTX, Inc. and Mary Jane Cielencki for TPDES Permit No. WQ0016052001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016052001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Mammen Family Public Library, Circulation Desk, 131 Bulverde Crossing, Bulverde, Texas.

MAILING LIST
for
SJWTX, Inc. and Mary Jane Cielencki
TPDES Permit No. WQ0016052001

FOR THE APPLICANT:

Austin Clements, Process Engineer
Integrated Water Services, Inc.
4001 North Valley Drive
Mead, Colorado 80504

Jamie Miller, Director of Engineering
Integrated Water Services, Inc.
4001 North Valley Drive
Mead, Colorado 80504

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Michael Parr, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Firoj Vahora, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

ABEL , MARY MARGARET
7018 BROKEN ARROW
SPRING BRANCH TX 78070-3900

ACHTERHOF , ERIN BROWN
157 GLADIOLA ST
SPRING BRANCH TX 78070-5259

ADKINS , MIKE
PO BOX 916
BLANCO TX 78606-0916

ALLEN , CATHY
PO BOX 233
SPRING BRANCH TX 78070-0233

ALLEN , MRS DEBRA
3507 TANGLEWOOD TRL
SPRING BRANCH TX 78070-5591

ALLEN , TIM M
859 COYOTE TRL
SPRING BRANCH TX 78070-6335

ARMENDARIZ , AUTUMN
1401 SPRINGWOOD DR
SPRING BRANCH TX 78070-5823

ARTHUR , DAVID & DEBORAH
552 RIVER HAWK
SPRING BRANCH TX 78070-5062

ASHER , NINA
460 FAWN RIVER DR
SPRING BRANCH TX 78070-4038

ATKINSON , BECKY
PO BOX 782
SPRING BRANCH TX 78070-0782

ATKINSON , BECKY P
REBECCA CREEK BED AND BREAKFAST
13084 REBECCA CREEK RD
SPRING BRANCH TX 78070-6320

ATKINSON , SID W
13084 REBECCA CREEK RD
SPRING BRANCH TX 78070-6320

BADDERS , MATT
STE 401S
2632 BROADWAY ST
SAN ANTONIO TX 78215-1137

BAILEY , JESSICA
12802 COAL MINE RISE
SAN ANTONIO TX 78245-3557

BAILEY , JESSICA
957 GOLF COURSE DR E
SPRING BRANCH TX 78070-4429

BANFIELD III , WILLIAM F
2009 MOUNTAIN FRST
SPRING BRANCH TX 78070-7033

BARNETT , LESLIE
1201 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-6299

BEDINGFIELD , JOHN R
161 RIDDLE RD
SPRING BRANCH TX 78070-5436

BERRY , MILBER
251 FAWN LN
SPRING BRANCH TX 78070-5604

BESFER , BRIAN
1645 CROSSBOW DR
CANYON LAKE TX 78133-4198

BESSELMAN , CAROLYN
522 BLACKBIRD DR
SPRING BRANCH TX 78070-5280

BIEDERMANN , THE HONORABLE KYLE STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 73
PO BOX 2910
AUSTIN TX 78768-2910

BIEDERMANN , THE HONORABLE KYLE STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 73
STE 101
616 W MAIN ST
FREDERICKSBURG TX 78624-3132

BIELA , CYNTHIA A
10020 REBECCA CREEK RD
SPRING BRANCH TX 78070-4806

BLEASDELL , GARY
527 HIDDEN SPRINGS DR
SPRING BRANCH TX 78070-5148

BROADAWAY , ANN
STE 100-115
113 STARGRASS
SPRING BRANCH TX 78070-5164

BROADAWAY , MARIA
514 ARTHUR CT
SPRING BRANCH TX 78070-5448

BROWN , MARLIN K
31567 HIGH RIDGE DR
BULVERDE TX 78163-2184

BUTLER , ROBERT C
381 BENT OAK DR
SPRING BRANCH TX 78070-6313

BUZEN , EVITA
386 LANTANA XING
SPRING BRANCH TX 78070-6285

CARDENAS , MR ERIC
5034 KENILWORTH BLVD
SPRING BRANCH TX 78070-7237

CARLSON , DANIEL MARK
148 SERENE ST
SPRING BRANCH TX 78070-5297

CARLSON , MARK
148 SERENE ST
SPRING BRANCH TX 78070-5297

CASTILLO QUINTERO, JAZIEL &
QUINTERO, EDGAR
1313 PALADIN TRL
SPRING BRANCH TX 78070-4957

CLARK , LINDA
PO BOX 8
SPRING BRANCH TX 78070-0008

CLARK , LINDA & MIKE
PO BOX 8
SPRING BRANCH TX 78070-0008

COEN , JULI
PO BOX 921
SPRING BRANCH TX 78070-0921

CORBIN , BARRY
432 WHISTLERS WAY
SPRING BRANCH TX 78070-0089

CRIST , MAJ WAYNE W
522 SAXET TRL
SPRING BRANCH TX 78070-4966

CROWNOVER , MRS JEN
COMAL COUNTY COMMISSIONER PRECINT 4
150 N SEGUIN AVE
NEW BRAUNFELS TX 78130-5146

CROWNOVER , JEN
100 MAIN PLZ
NEW BRAUNFELS TX 78130-5115

CUMMINGS , JEAN
1223 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-6299

DAILY , ISAIAH WILSON
2705 CONNIE DR
CANYON LAKE TX 78133-5266

DAVIDEK , DIRK
APT 851
144 LANDA ST
NEW BRAUNFELS TX 78130-7998

DIAZ , JOSEPH L
226 GAUNTLET
SPRING BRANCH TX 78070-5396

DIAZ , VANESSA M
226 GAUNTLET
SPRING BRANCH TX 78070-5396

DOWLEN , STUART
412 REDLAND DR
SPRING BRANCH TX 78070-6047

DUVALL , DOUGLAS
207 RODNEY LN
CANYON LAKE TX 78133-1903

DUVALL , SHARON
207 RODNEY LN
CANYON LAKE TX 78133-1903

ENOCHS , ANDREW
3059 VIEW RIDGE DR
SPRING BRANCH TX 78070-6806

EVANS , ROBERT L
810 HIDDEN OAKS DR
BULVERDE TX 78163-3036

EVERGRACE , TIFFANY
3600 TANGLEWOOD TRL
SPRING BRANCH TX 78070-5394

FASANO , ANTHONY & LEATINE
216 MELODY MDWS
SPRING BRANCH TX 78070-6525

FELUX , BARBARA
454 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-5880

FILIP , DIANNE
31884 CAST IRON CV
BULVERDE TX 78163-4045

FINLEY , KASI
1162 THUNDER CLOUD
SPRING BRANCH TX 78070-5841

FLORES , RAUL
NO 284
132 BLAZING MEADOW RD
SPRING BRANCH TX 78070-6393

FOLEY , TERRENCE J
576 RIVER WAY
SPRING BRANCH TX 78070-6028

GARCIA , MR & MRS ALEX
2175 FRONTIER
SPRING BRANCH TX 78070-5999

GARCIA , RONALD J
15060 HIGHWAY 46 W
SPRING BRANCH TX 78070-7061

GARCIA , VERONICA
15060 HIGHWAY 46 W
SPRING BRANCH TX 78070-7061

GASS , DUSTIN
901 BRENT SPRINGS RD
SPRING BRANCH TX 78070-4976

GASS , GLORIA
PO BOX 31
SPRING BRANCH TX 78070-0031

GASS , SHELLY
859 BRENT SPRINGS RD
SPRING BRANCH TX 78070-4987

GESCHEIDLE , CHERYL
1340 NIGHTINGALE
SPRING BRANCH TX 78070-4729

GESCHEIDLE , PAUL
1340 NIGHTINGALE
SPRING BRANCH TX 78070-4729

GIRAL-CAANEN , INGRID
PO BOX 677
SPRING BRANCH TX 78070-0677

GLAVY , MR NATHAN M
GREATER EDWARDS AQUIFER ALLIANCE
1809 BLANCO RD
SAN ANTONIO TX 78212-2616

GLAVY , MR NATHAN M
GREATER EDWARDS AQUIFER ALLIANCE
PO BOX 15618
SAN ANTONIO TX 78212-8818

GRAINGER , STEVEN
130 STALLION SPRINGS DR
FISCHER TX 78623-1855

GRIMES , SYLVIA
211 SCOUT LN
SPRING BRANCH TX 78070-3780

GRIMES , WILLIAM
211 SCOUT LN
SPRING BRANCH TX 78070-3780

HARPER , LT COL C B
1441 WHISPERING WATER
SPRING BRANCH TX 78070-5615

HARRISON , NANCY H
PO BOX 923
SPRING BRANCH TX 78070-0923

HENDERSON , MARIAN F
1116 SANTA ROSA CT
CANYON LAKE TX 78133-4797

HENNIS , ANN
ANN HENNIS PC
PO BOX 613
SPRING BRANCH TX 78070-0613

HENNIS , ANN
148 SERENE ST
SPRING BRANCH TX 78070-5297

HEWETT , DEBORAH
PO BOX 916
BLANCO TX 78606-0916

HOENNINGER , A R
1984 CAMPFIRE
SPRING BRANCH TX 78070-6903

HOENNINGER , DONNA
1984 HOENNINGER
SPRING BRANCH TX 78070

HUDSON , BEN
510 TARA DR
SAN ANTONIO TX 78216-3752

HUDSON , MR BEN
STE 115-618
20540 HIGHWAY 46 W
SPRING BRANCH TX 78070-6821

HUGHES , DAVID
2286 WHISPERING WATER
SPRING BRANCH TX 78070-8000

HUSSION-FRANTZ , THOMAS
5469 CHIMNEY ROCK
CANYON LAKE TX 78133-3929

HUTCHISON , KEITH
PO BOX 1032
SPRING BRANCH TX 78070-1032

INSALATA , JENNIFER
702 EMORY DR
FREDERICKSBURG TX 78624-5386

JOHNSON , ALAN
1410 MISTY LN
SPRING BRANCH TX 78070-5869

JONES , ALDEN
26719 RUSTIC BRK
SAN ANTONIO TX 78261-2384

JULIAN , ANDREA
10038 CREEKWOOD PASS
SPRING BRANCH TX 78070-7019

JUNOD , WENDY
1121 WHISPERING WATER
SPRING BRANCH TX 78070-5618

KAHN , DR. CHARLES D
772 PACIFIC PL
SPRING BRANCH TX 78070-4079

KELLY , JEROME
267 STEEPLEBROOK
SPRING BRANCH TX 78070-6044

KNOLL , MRS SANDRA KAY
1167 MYSTIC PKWY
SPRING BRANCH TX 78070-5417

LAINE , MRS COLETTE
NO 284
132 BLAZING MEADOW RD
SPRING BRANCH TX 78070-6393

LAUDERDALE , KAREN & TOM
1422 LEDGEBROOK
SPRING BRANCH TX 78070-4961

LEACH , KELLY
STE 105-114
1141 N LOOP 1604 E
SAN ANTONIO TX 78232-1339

LEMIRE , CELESTE
184 ALGERITA LN
SPRING BRANCH TX 78070-6764

LETTE , EDWARD
1245 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-6299

LETTE , KAREN
1245 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-6299

LLANAS-GARZA , IRMA
5034 APACHE MOON
SPRING BRANCH TX 78070-3902

MANNING , KATRINA D
210 OVERVIEW PL
SPRING BRANCH TX 78070-5523

MARDER , JOEL
6017 CORNWALL DR
SPRING BRANCH TX 78070-7222

MARDER , SUSAN
6017 CORNWALL DR
SPRING BRANCH TX 78070-7222

MARTIN , CATHERINE
2146 COMAL SPGS
CANYON LAKE TX 78133-5986

MAYER , JAMES A MAYOR
CITY OF SPRING BRANCH
PO BOX 1143
SPRING BRANCH TX 78070-1143

MAYNE , GARY & KAREN
1088 FOUR WINDS DR
CANYON LAKE TX 78133-2122

MCDONALD , STAR
27111 BOERNE FRST
BOERNE TX 78006-5226

MERCER , SARAH
106 CIELO VIS
CANYON LAKE TX 78133-4444

MESZLER , JANNINE
300 BLAZING MEADOW RD
SPRING BRANCH TX 78070-6354

MOELLER , DENNIS
209 HIGH POINT CIR
SPRING BRANCH TX 78070-5065

MOHR , LINDA HOLLEY
6013 CORNWALL DR
SPRING BRANCH TX 78070-7222

MONARREZ , ALVARO
103 CASCADA PT
SPRING BRANCH TX 78070-4858

MOTE , THOMAS
PO BOX 1013
SPRING BRANCH TX 78070-1013

MYERS , MARYLIN & MICHAEL
187 CYPRESS SPRINGS DR
SPRING BRANCH TX 78070-4639

MYERS , MICHAEL C
202 SWIFT PL
SPRING BRANCH TX 78070-5063

NEWMAN , REBECCA C
745 PACIFIC PL
SPRING BRANCH TX 78070-4079

NICOLET , AMANDA
28906 FRONT GATE
FAIR OAKS RANCH TX 78015-5126

NOSKER , ARLENE
1052 FABLED WAY
SPRING BRANCH TX 78070-5483

ORNELAS , MICHELLE
463 HAVASU PT
SPRING BRANCH TX 78070-5522

OSULLIVAN , LISA
11023 PORTSMOUTH DR
SPRING BRANCH TX 78070-6419

OUSSET , MARGARET
9020 CREEKWOOD PASS
SPRING BRANCH TX 78070-7018

PARKER , MARTI
31665 TRES LOMAS
BULVERDE TX 78163-4174

PATTERSON , JOHN & JUDY
230 WINDING MEADOW LN
SPRING BRANCH TX 78070-6357

PEACE , ANNALISA
GREATER EDWARDS AQUIFER ALLIANCE
1809 BLANCO RD
SAN ANTONIO TX 78212-2616

PEACE , ANNALISA
GREATER EDWARDS AQUIFER ALLIANCE
PO BOX 15618
SAN ANTONIO TX 78212-8818

PEHELPS , CHRIS & MICHELLE
8195 US HIGHWAY 281 N
SPRING BRANCH TX 78070-0077

PHILLIPS , DANIEL H
520 LANTANA RDG
SPRING BRANCH TX 78070-5692

PHILLIPS , LYNN
25035 LONGBRANCH RUN
SAN ANTONIO TX 78261-2392

PITTMAN , TERRY
325 STEAMBOAT
CANYON LAKE TX 78133-6946

PLATT , TIFFANY
11019 CANTERBURY RD
SPRING BRANCH TX 78070-7211

POOL , CHESTER
117 MILFOIL LN
SPRING BRANCH TX 78070-5599

POWELL , JENNIFER
270 FAWN LN
SPRING BRANCH TX 78070-5603

POWELL , MR OWEN
270 FAWN LN
SPRING BRANCH TX 78070-5603

POWER , CHRYSTINA
88 CALENDULA ST
SPRING BRANCH TX 78070-5269

PRINCE , THERESA
259 STEEPLEBROOK
SPRING BRANCH TX 78070-6044

PROFFITT , JUANITA MARGA
740 CRAIG LN
SPRING BRANCH TX 78070-6316

RENFRO , IRENE M
251 LANDONS WAY
SPRING BRANCH TX 78070-4949

RICHARDSON , KAREN
813 LANDING PT
SPRING BRANCH TX 78070-5445

RIOS , MIKAELA
539 RIVER HAWK
SPRING BRANCH TX 78070-5062

RIVAS , RAYMOND
PERALES ALLMON & ICE PC
1206 SAN ANTONIO ST
AUSTIN TX 78701-1834

RIVERA JR , IVAN
5005 BLUE IVY
BULVERDE TX 78163-2378

RODRIGUEZ , JACKELINE
29650 ANCESTRAL TRL
BULVERDE TX 78163-4308

ROSALES , JOSEPHINE
179 PRAIRIE DAWN
SPRING BRANCH TX 78070-5183

ROSAS , SYLVIA
32912 MONICA VW
BULVERDE TX 78163-1838

ROSE , VICTORIA
SAVE OUR SPRINGS ALLIANCE
STE D401
4701 W GATE BLVD
AUSTIN TX 78745-1479

RUIZ , MR ALEJANDRO
3218 BUCK MEADOW TRL
SPRING BRANCH TX 78070-6390

RUIZ , SILVIA
3218 BUCK MEADOW TRL
SPRING BRANCH TX 78070-6390

RYAN , DAN
1127 AGUAYO DR
CANYON LAKE TX 78133-3025

SANDIFER , JENNIFER
6528 FALCON RDG
SPRING BRANCH TX 78070-6536

SAUNDERS , AMANDA
5237 ASCOT AVE
SPRING BRANCH TX 78070-6427

SAUNDERS , RINDY
5237 ASCOT AVE
SPRING BRANCH TX 78070-6427

SAWICKI , RAYMOND
235 PUZZLE PASS
SPRING BRANCH TX 78070-5536

SHAW , LINDA JEAN
1123 LAKE DR
SPRING BRANCH TX 78070-3880

SHIPMAN , HUBREY G
PO BOX 1267
SPRING BRANCH TX 78070-1267

SILVERFINE , EVA
1309 THE LOW RD
SAN MARCOS TX 78666-1821

SLADE , FRANK G
302 STALLION ESTATES DR
SPRING BRANCH TX 78070-3738

SLOANE , KATHRYN
11006 CANTERBURY RD
SPRING BRANCH TX 78070-2200

SMITH , CAROL & DAVE
424 REDLAND DR
SPRING BRANCH TX 78070-6047

SOLTYS , DR. PETER P
225 GAUNTLET
SPRING BRANCH TX 78070-5396

ST CLAIR , SHARI
8507 TRIPLE CROWN
FAIR OAKS RANCH TX 78015-4618

STERNBERG , GWEN S
120 SIRONA WAY
SPRING BRANCH TX 78070-5252

STOCKWELL , MAX R
PO BOX 1321
SPRING BRANCH TX 78070-1321

STOCKWELL , MEGAN
PO BOX 1321
SPRING BRANCH TX 78070-1321

SWIFT , NILSA
29650 ANCESTRAL TRL
BULVERDE TX 78163-4308

TAYLOR , RUTH & TONY
520 CRAIG LN
SPRING BRANCH TX 78070-6314

TAYLOR , TONY WADE
520 CRAIG LN
SPRING BRANCH TX 78070-6314

THOMAS , SARAH
6018 CREEKWOOD PASS
SPRING BRANCH TX 78070-7100

VALENCIA , LYNSEY
1514 VINTAGE WAY
NEW BRAUNFELS TX 78132-2670

VILLA , DANIELLE
359 RESTLESS WIND
SPRING BRANCH TX 78070

WARREN , WILLIAM HUNTER
APT 313
317 LEXINGTON AVE
SAN ANTONIO TX 78215-1901

WAYNE , WANDA
107 S CONTOUR DR
SPRING BRANCH TX 78070-3887

WELSH , DEE
1408 PHANTOM RIDER TRL
SPRING BRANCH TX 78070-6415

WESSALE , KRISTEN & WILLIAM
360 BENT OAK DR
SPRING BRANCH TX 78070-6312

WESSALE , WILLIAM DON
360 BENT OAK DR
SPRING BRANCH TX 78070-6312

WHITAKER , BERT & JULIE
880 WIESNER RD
SPRING BRANCH TX 78070-7264

WHITE , HEIDI
854 MAYBERRY ML
NEW BRAUNFELS TX 78130-6845

WILLIAMS , SARA
1414 ENSENADA DR
CANYON LAKE TX 78133-4464

WILSON , CYNTHIA
708 SHADY COVE LN
SPRING BRANCH TX 78070-6054

WOGULIS , RONALD
3225 BARTON HILL DR
BULVERDE TX 78163-4615

WOODLIFF , FARA
3159 CAMPESTRES
SPRING BRANCH TX 78070-2218

WOODLIFF SR , MR WAYNE
3159 CAMPESTRES
SPRING BRANCH TX 78070-2218

YOUNG , LARRY
6 MORGANS BLF
SAN ANTONIO TX 78216-8504

ZUROVEC , FRANK J
30551 BARTELS RD
BULVERDE TX 78163-1909

TPDES PERMIT NO. WQ0016052001

APPLICATION BY SJWTX, INC.
AND MARY JANE CIELENCKI
FOR NEW TPDES PERMIT NO.
WQ0016052001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by SJWTX, Inc. and Mary Jane Cielencki (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016052001, and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments.

The Office of the Chief Clerk received timely comments from Texas State Representative Kyle Biedermann, Isaiah Daily, Irma Llanas-Garza, Catherine Martin, Rebecca Newman, Maria Broadway, Ronald Wogulis, Jennifer Insalata, C.B. Harper, Amanda Saunders, Rindy Saunders, Eric Cardenas, Josephine Rosales, Lisa O'Sullivan, Susan Marder, Gwen Sternberg, Mary Abel, Michelle Ornelas, Linda Mohr, Cynthia Wilson, Wayne Woodliff, Fara Woodliff, Michael Meyers, Milber Berry, Nilsa Swift, Irene Renfro, Andrew Enochs, Juli Coen, Becky and Sid W. Atkinson, Bert and Julie Whitaker, Tiffany Platt, Karen Richardson, William Wessale, Margaret Ousset, Wendy Junod, Jennifer Sandifer, Cynthia Biela, Ann Hennis, A.R. Hoenninger, Thomas Hussion-Frantz, Megan Stockwell, Veronica Garcia, Ingrid Giral-Caanen, Ben Hudson, Erin Atcherhof, Barbara Felux, Joseph Diaz, Vanessa Diaz, Jennifer Insalata, Sandra Knoll, Arlene Nosker, Katrina Manning, John Bedingfield, Peter Soltys, Charles Kahn, Mark Carlson, Sarah Mercer, Ann Broadway, Jennifer Powell, Rebecca Newman, Maria Broadway, Victoria Rose, Raymond Sawiki, Daniel Phillips, Amanda Nicolet, Irene Renfro, Shari St Clair, Debra Allen, Lynsey Valencia, Owen Powell, Sara Williams, Frank Slade, Heidi White, Marian Henderson, Nathan Glavy, Analisa Peace, William Warren, Tony Taylor, Eva Silverfine, Alejandro Ruiz, Star McDonald, Dirk Davidek, Frank Zurovec, Colette Laine, Cathy Allen, Robert Butler, James Mayer, Jen Crownover, Sarah Thomas, Nathan Segovia, Thomas Mote, Linda Shaw, Juanita Proffitt, Danielle Villa, Hubrey Shipman, Alex Ruiz, Colette Lane, Raul Flores, Marlin Brown, Ed Lette, Karen Lette, Keith Hutchison, Paul Gescheidle, Linda Clark, Sharon Duval, Alden Jones.

This Response is intended to address all timely public comments received, whether withdrawn or not. However, if anyone would like more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ web site at <http://www.tceq.texas.gov>.

BACKGROUND

The Applicant applied for TPDES Permit No. WQ0016052001 (**proposed permit**), which authorizes the discharge of treated domestic effluent, otherwise known as wastewater (**proposed discharge**), at a daily average flow limit of 60,000 or 0.06 million gallons per day (MGD) in the Interim Phase I, at a daily average flow limit of 0.15 MGD in the Interim Phase II, and a Final Phase flow limit of 0.26 MGD from the

Simmons Valley Wastewater Treatment Facility (**proposed facility**). The proposed permit authorizes sludge generated at the proposed facility to be disposed of at any TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

DESCRIPTION OF PROPOSED FACILITY/DISCHARGE ROUTE

If this permit is issued, the proposed facility will be located 0.25 miles northwest of the intersection of Rebecca Clark Road and U.S. Highway 281 North, in Comal County, Texas, serve the Simmons Valley Subdivision, and will be a Membrane Bioreactor (MBR) facility. Treatment units throughout the three phases of the proposed permit include an ultra-violet (UV) disinfection chamber, a sludge press, multiple equalization and sludge holding tanks, and multiple MBR and Pre-Aeration skids. The route of the proposed discharge is via pipe to Cypress Creek, then to the Guadalupe River Above Canyon Lake (Segment No. 1806 of the Guadalupe River Basin).

TECHNICAL REVIEW

The TCEQ has primary authority over water quality in Texas and also federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies (“**water in the state**”). The Texas Water Code (TWC) § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the TWC and TCEQ rules. Specifically, the ED’s review evaluates impacts from the proposed discharge on the receiving waters in the route for the proposed discharge, starting at the discharge point (via pipe to Cypress Creek).

The designated uses for Segment No. 1806, as listed at 30 TAC § 307.10, Appendix A (Texas Surface Water Quality Standards (TSWQS)) are primary contact recreation, public water supply, aquifer protection, and exceptional aquatic life use. The ED must provide the proper effluent limitations (limits) to protect these uses.

The Technical Review process for surface water quality is conducted by staff in the ED’s Water Quality Division, (**WQD staff**) on the Standards Implementation Team (**Standards Team**), and WQD staff in the Water Quality Assessment Section (**Modeling Team**).

With a goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process WQD Staff reviewed the application according to the TSWQS and TCEQ’s *Implementation procedures for the Texas Surface Water Quality Standards-June 2010 (IPs)*. WQD staff performed multiple analyses during the Technical Review of the proposed permit, including but not limited to a review of the receiving waters of the route for the proposed discharge route by the Standards Team, and Water Quality Modeling runs by the Modeling Team using an “uncalibrated QUAL-TX” model.

Reviewing the receiving waters of the discharge route, along with other available information, allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge’s possible impact and assign the corresponding Minimum Dissolved Oxygen (**DO**) criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ’s IPs. For every new discharge, the Standards Team performs an antidegradation analysis of the proposed discharge. As with all determinations, reviews, or analyses related to the Technical review of the proposed

permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

Segment No. 1806 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria from the confluence of Honey Creek in Comal County upstream to the confluence of Big Joshua Creek in Kendall County (AU 1806_08). The proposed facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment. In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limit of 126 CFU or MPN of *E. coli* per 100 ml has been added to the proposed permit.

One Total Maximum Daily Load for Bacteria in the Guadalupe River Above Canyon Lake for Segment No. 1806 (TMDL Project No. 65) has been approved for the segment. The TMDL was adopted by TCEQ on July 25, 2007, and it was approved by the U.S. Environmental Protection Agency (EPA) on September 25, 2007. Field investigations identified that excessive bacteria concentrations are confined to two small assessment areas within the City of Kerrville. The TMDL does not call for reduced bacteria limits for wastewater treatment facilities, so current or future facilities that discharge to the affected area are subject to the standard bacteria limits described in the Bacteria Rule.

The proposed permit's water quality-related limits, established by WQD staff's modeling results using an uncalibrated QUAL-TX model, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH₃-N) are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on the Modeling Team's results, effluent limits for all flow phases of 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 4.0 mg/L DO, based on a 30-day average, is predicted to ensure that DO levels will be maintained above the criterion established by the Standards Team for Cypress Creek (3.0 mg/L DO). Coefficients and kinetics used in the model are a combination of site specific, standardized default, and estimated values.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-10, *eff.* 7/22/2010) and the EPA-approved portions of the TSWQS (*eff.* 3/6/2014).

No priority watershed of critical concern has been identified in Segment 1806. However, the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs Riffle Beetle (*Heterelmis comalensis*), and the fountain darter (*Etheostoma fonticula*) can occur in Comal County. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES); September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in critical concern or high priority watersheds, as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to

subsequent updates or amendments to the biological opinion. EPA review is not required for the determination of the presence of endangered or threatened species.

PROCEDURAL HISTORY

The TCEQ received the application on October 7, 2021, and declared it administratively complete on December 14, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Comal County, Texas in the *Herald Zeitung* on January 9, 2022. The ED completed the technical review of the application on April 13, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) and Notice of Public Meeting in Comal County, Texas in the *Herald Zeitung* on May 31, 2022, and July 6, 2022 (respectively). The public comment period ended on August 11, 2022, at the close of the public meeting. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

ACCESS TO RULES, LAWS AND RECORDS

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>

Commission records for the Proposed facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the circulation desk of the Mammen Family Public Library located at 131 Bulverde Crossing, Bulverde, Texas 78163, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

If you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit, the TCEQ rules, or to address potential permit violations, you may contact the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186. In addition, environmental or citizen complaints may be filed electronically at: <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>

(select “use our online form”) or through sending an email to the following address: cmplaint@TCEQ.state.tx.us.

If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENTS AND RESPONSES

COMMENT 1:

Ann Hennis, Barbara Felux, Heidi White, Cathy Allen, Debra Allen, Isaiah Daily, Katrina Manning, Linda Shaw, Erin Atcherhof, William Warren, Heidi White, Joseph and Vanessa Diaz, Sandra Knoll, Jennifer Insalata, Ronald Wogulis, Thomas Hussion-Frantz, Megan Stockwell, Shari St. Clair, Lynsey Valencia, John Bedingfield, Rebecca Newman, Marian Henderson, Mary Abel, Rindy Saunders, Amanda Saunders, Wayne Woodliff, Fara Woodliff, Michael Meyers, Nilsa Swift, Cynthia Wilson, Juli Coen, Margaret Ousset, Wendy Junod, Jennifer Sandifer, Ingrid Giral-Caanen, Ben Hudson, Arlene Nosker, Raymond Sawiki, Sara Williams, Charles Kahn, Keith Hutchison, Mark Carlson, Sarah Mercer, Jennifer Powell, Owen Powell, Frank Slade, Eva Silverfine, Star McDonald, Frank Zurovec, Robert Butler, Sarah Thomas, Nathan Segovia, Sharon Duvall, Thomas Mote, Paul Gescheidle, Danielle Villa, Milber Berry, Raul Flores, Sid and Becky Atkinson, Bert and Julie Whitaker, Ed and Karen Lette, Tony and Ruth Taylor, and Andrew Enochs all commented in opposition to the proposed permit, the proposed facility, and the proposed facility’s location, while expressing opposition to Lennar Homes’ proposed development.

RESPONSE 1:

The ED acknowledges the comments in opposition to the proposed permit, the proposed facility, and the proposed facility’s location.

The issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights, and nothing in the proposed permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property. In addition, the scope of TCEQ’s regulatory jurisdiction does not limit the ability of nearby landowners to seek relief from a court in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property.

The Applicant has a duty to comply with all conditions of the proposed permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

If the proposed facility, proposed discharge, or the Applicant create any nuisance conditions, the TCEQ may be contacted by the methods described above, in the last paragraph on page 4 to investigate if potential permit violations occurred.

However, TCEQ’s permitting authority does not include the ability to mandate a different location for the facility if the location in the application complies with 30

TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to “Unsuitable Site Characteristics” for a discharge facility. The Applicant is the entity that proposes the location of the facility, the discharge point, and the route for the proposed discharge, rather than the ED.

Instead, the ED may only evaluate a location for the proposed facility according to the Location Standards in the TCEQ regulations and the effect(s) of the discharge on the uses of the receiving streams starting at the discharge point.

If an Applicant were to revise its application with a different location and discharge route for a treatment facility, the ED would reevaluate the new location and discharge route to make sure that the permit contains proper limits and conditions for the revised discharge route and location, which may require notice to additional landowners because of the new facility location and discharge route.

COMMENT 2:

Alden Jones, Ann Hennis, Arlene Nosker, Amanda Nicolet, Alex Ruiz, Alejandro Ruiz, Raymond Sawiki, Barbara Felux, Jennifer Powell, Charles Kahn, Erin Atcherhof, Juli Coen, Erin Atcherhof, William Warren, Heidi White, Debra Allen, Daniel Phillips, Joseph and Vanessa Diaz, John Bedingfield, Irma Llanas-Garza, Maria Broadaway, Nathan Segovia, Susan Marder, Robert Butler, Rindy Saunders, Cynthia Wilson, Michael Meyers, Irene Renfro, Wayne Woodliff, Wendy Junod, Fara Woodliff, Nilsa Swift, C.B. Harper, Sarah Thomas, Jennifer Sandifer, A.R. Hoenninger, Ingrid Giral-Caanen, Peter Soltys, Owen Powell, Frank Slade, Nathan Glavy, Analisa Peace, GEAA, Eva Silverfine, Star McDonald, Dirk Davidek, Frank Zurovec, Hubrey Shipman, Marlin Brown, Colette Laine, Marian Henderson, Thomas Mote, Juanita Proffitt, Danielle Villa, Wendy Junod, Milber Berry, Paul Gescheidle, Bert and Julie Whitaker, Sid and Becky Atkinson, Chris and Michelle Phelps, Mike and Linda Clark, and Tony and Ruth Taylor, all commented expressing concern over the possible adverse impacts from the proposed facility on human health, water quality within the discharge route, terrestrial wildlife, domestic animals, and livestock. GEAA and Sarah Mercer commented, questioning why there is no phosphorus limit in the proposed permit. Sarah Mercer commented, questioning why a Tier 2 review was not performed and whether there should be any further studies on toxicity limits, according to 30 TAC Section 307 for acute and chronic toxic criteria to protect aquatic wildlife and human health.

RESPONSE 2

The health concerns of area residents, as well as those of the public, are considered in reviewing an application for a domestic wastewater discharge permit. The TCEQ takes the concerns and comments expressed by the public, relating to human health, water quality, and protecting the State’s rivers and lakes, into consideration in deciding whether to issue a wastewater discharge permit.

Chapter 26 of the TWC and TCEQ’s water quality are written for the protection of public health, aquatic life, and the environment. Accordingly, the stated policy of both the Water Code and the TSWQS is:

to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve

*the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.*¹

The proposed permit also requires the Applicant to “take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health.

WQD staff evaluated the application as an authorization to discharge treated wastewater into water in the State. Thus, the quality of the discharge and method of achieving that quality must follow the Federal Clean Water Act, TWC, and the TSWQS.

The TSWQS is a primary mechanism for the TCEQ to protect human health, surface and groundwater quality, aquatic life, the environment, and specifically, the designated uses of the receiving waters. The TSWQS require that discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals, not degrade receiving waters, and not result in situations that impair existing, attainable, or designated uses. Likewise, the TPDES program mandates that discharges of treated effluent into water in the state from facilities regulated by TPDES permits meet the requirements of the TSWQS.

As specified in the methodologies from the TCEQ IPs, TPDES permits issued by the TCEQ must maintain water in the state to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. Relatedly, minor municipal facilities, such as the proposed facility, typically do not have industrial contributors, and therefore, do not have toxins in their effluent. In addition, permits must prevent adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The design of the proposed permit ensures these water quality standards will be supported.

WQD Staff drafted the proposed permit with provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of human health, aquatic life, livestock, domestic animals, and the environment. Likewise, the proposed permit’s effluent limits will protect the uses and quality of the waterbodies in the route of the proposed discharge for the benefit of the aquatic life and terrestrial wildlife that depend on it. WQD Staff determined that the proposed permit complies with the TSWQS, ensuring that the effluent discharged is protective of human health.

This is because the methodology outlined in the TCEQ IPs is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health.

Protecting the water quality of the creeks and waterbodies of the discharge route are the assigned aquatic life uses themselves, which govern what uses and criteria will apply to protect Segment No. 1806 of the Guadalupe River Basin and the creeks upstream of Segment No. 1806, their uses and the aquatic life that dwell in them, as well as consumption by terrestrial wildlife. The proposed facility is a minor municipal facility that will discharge first via pipe to Cypress Creek, which is unclassified and has a “limited aquatic life” use, and then to the Guadalupe River Above Canyon Lake in Segment No. 1806 of the Guadalupe River Basin. Waterbodies

¹ Texas Water Code § 26.003 and 30 TAC § 307.1.

that support exceptional and high aquatic life uses have associated criteria that protect both the aquatic life that live in the waterbodies and terrestrial wildlife that use the waterbodies as a source of water or food. As such, the proposed discharge must meet a high DO criterion to support an aquatic community with exceptional and high-existing aquatic life uses.

Following the WQD's mission, WQD Staff drafted the proposed permit to preclude significant degradation of water quality in the waterbodies in the route of the proposed discharge by including effluent limits and monitoring requirements designed to ensure protection of the waterbodies according to the TCEQ rules and procedures.

To achieve the goal of supporting a level of water quality sufficient to protect existing uses of waterbodies, the proposed permit contains several water quality-specific parameters or requirements that limit the potential impact of the discharge on the receiving waters of the discharge route.

Correspondingly, an Antidegradation Review of the receiving waters was performed by the Standards Team according to the TSWQS and the TCEQ's IPs, with the Tier 1 review determining that existing water quality uses will not be impaired by the proposed discharge. The Tier 1 review also determined that within the stream reach assessed, no water bodies with exceptional, high, or intermediate aquatic life uses were present, negating the need for a Tier 2 review. Similarly, downstream of the proposed discharge, no significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses and existing uses will be maintained and protected. However, because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) (TSWQS) and determined that for Cypress Creek, an unclassified waterbody, uses are limited aquatic life use with a corresponding DO criteria of 3.0 mg/L DO. The second tier of TCEQ's antidegradation policy generally applies to water bodies that have existing, designated, or presumed uses of intermediate, high, or exceptional aquatic life waters. Because Cypress Creek, an unclassified waterbody, has only a limited aquatic life use, a Tier 2 antidegradation review was not performed.

Alternatively, the proposed permit's effluent limits were developed by WQD Staff on the Modeling Team to maintain and protect the existing uses of the receiving waters (primary contact recreation, public water supply, and high aquatic life), which were identified by WQD Staff on the Standards Team. The Standards Team determined the uses of each waterbody in the discharge route and set the minimum dissolved oxygen criteria that must be met to ensure that the aquatic life uses of the waterbodies are maintained. For the proposed discharge route, Cypress Creek has limited aquatic life use with a corresponding 3.0 mg/L minimum DO criterion while the Guadalupe River above Canyon Lake (Segment No. 1806) has an exceptional aquatic life use with a corresponding 6.0 mg/L minimum DO criterion.

The proposed permit requires the Applicant to "take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health."

Additional protection of human health comes from the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires disinfection of domestic wastewater into water in the state in a manner conducive to the protection of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light,

or 3) an equivalent method of disinfection with prior approval from the ED. Whichever form is used, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Therefore, in accordance with the TCEQ rules (30 TAC § 309.3(g)(1)), the proposed permit requires the treated effluent to be disinfected prior to discharge in a manner conducive to protect both the public health and aquatic life.

For the proposed facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms. Chlorine is one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.² The effluent from the proposed facility, disinfected with chlorine, must contain a chlorine residual of at least 1.0 mg/L. The permit limit for maximum total chlorine residual is 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow), which must be monitored five times per week by grab sample.³

Related to phosphorus, a key nutrient necessary for algae growth and often in limited supply in freshwater systems, consistent with TCEQ's IPs (June 2010), a nutrient screening was performed for the proposed discharge and indicated that site-specific conditions in the receiving waters may be conducive to algal growth. Specifically, the nutrient screening indicated that the low phosphorus levels in Hill Country waterways, minimal dilution, the high level of clarity of the water column, and lack of shade along the banks, required that the proposed permit contain a total phosphorus limit of 0.5 mg/L to preclude the excessive accumulation of algae. The likelihood of the proposed discharge stimulating excessive growth of algae or other aquatic vegetation is reduced significantly by restricting the amount of phosphorus in the treated wastewater.

WQD staff developed and designed the proposed permit to be protective of the uses of all water bodies that could be potentially affected by the proposed discharge. Similarly, the discharge is prohibited from causing significant degradation of water quality in any water bodies that exceed fishable/swimmable quality, such as Segment No. 1806. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in or on the water. Additionally, the Texas Parks and Wildlife Department is the state agency that oversees and protects wildlife and their habitat. It can be contacted by calling 1-800-792-1112 or by mail at 4200 Smith School Road, Austin, Texas 78744. The TPWD received notice of the application and has not expressed any opposition to the proposed permit.

The ED has determined the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of human health, water quality, and the environment.

COMMENT 3:

Sarah Mercer commented, questioning what values were evaluated in the DO modeling and the apparent discrepancy between the TSWQS listing a minimum of 6.0 mg/L DO for Segment No. 1806 and the Fact Sheet showing 4.0 mg/L DO limit.

² U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

³ SJWTX, Inc. and Mary Jane Cielonki Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; *see also* 30 TEX. ADMIN. CODE § 309.3(g)(2)

RESPONSE 3:

DO concentrations are critical for the health of waterbodies and the protection of aquatic life. To ensure protective discharge limits in the proposed permit, DO modeling analyses are performed for TPDES permit applications to evaluate the potential instream DO impacts of discharges into surface waters by WQD staff on the Modeling Team. All discharge scenarios are different and are modeled as part of Technical Review, with the dissolved oxygen-related components included to evaluate the potential overall impact on instream DO levels. Instream DO levels are affected by various factors, including potential direct DO impacts by oxygen-demanding constituents in the proposed discharge, such as Five-day Carbonaceous Biological Oxygen Demand (CBOD₅), Ammonia-nitrogen (NH₃-N), and DO, which are the specific discharge limits determined by DO modeling analyses.

Oxygen-demanding constituents often have a larger and more prolonged downstream impact on DO levels in a water body than does the DO concentration of the discharge itself, which tends to have more of a localized impact. This highlights that the difference between a DO criterion and a DO limit is that the DO criteria applies to the waterbodies themselves, whereas DO limits are minimum concentration limits applicable to the proposed discharge and the discharge point, and are included in an individual permit to ensure that instream DO levels in the waterbodies downstream of the proposed discharge will meet the DO criteria applicable to those waterbodies. Consequently, a 4.0 mg/L minimum DO limit may play a greater role in the impact of the overall DO-related “effluent set” on instream DO levels in the immediate receiving water (e.g., a creek with a 3 mg/L DO criterion) than it does in the impact on instream DO levels in waterbodies further downstream (e.g., a classified water body with a 6 mg/L DO criterion).

In order to ensure that the DO modeling analyses and corresponding discharge limits are conservative and protective under all conditions, the proposed discharge was evaluated under what are expected to be the most unfavorable of environmental conditions, specifically hot and dry summertime conditions. These hot and dry conditions are identified in the Critical Conditions review during the Technical Review of the proposed permit, and can be derived from a Receiving Water Assessment (RWA) performed by TCEQ staff to collect data on the physical, chemical, and biological components of a receiving water. RWA are often performed during the “critical period” of the year—July 1 to September 30—when minimum stream flows, maximum temperatures, and minimum DO concentrations typically occur in Texas.⁴ The effluent parameters of a proposed permit must be protective of the receiving water, even during such “critical period” conditions. RWAs are not required as part of the application review process for a wastewater discharge.

Cypress Creek was determined to be an intermittent stream with perennial pools with a limited aquatic life use and was modeled with a presumption of zero background streamflow (i.e. treated effluent was given no dilution), with the only flow present in Cypress Creek at the point of discharge from the proposed discharge. Each proposed flow phase was modeled at its full proposed volume (interim I phase = 0.06 MGD, interim II phase = 0.15 MGD, & final phase = 0.26 MGD) and effluent limit concentrations of 5 mg/L CBOD₅, 2 mg/L NH₃-N, and 4.0 mg/L DO). This combination of conditions is a conservative, worst-case scenario that is unlikely to occur.

⁴ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods*, TCEQ RG-415, August 2012

As such, the Modeling Team will determine and recommend an appropriate “effluent set” that includes individual discharge limits for CBOD₅, NH₃-N, and minimum effluent DO that are intended to ensure that instream DO levels will consistently be protected and maintained above the DO criteria assigned to the waterbodies with the route for the proposed discharge.

Based on the DO modeling analyses, the effluent set in the proposed permit in all phases, based on a 30-day average, are 5 mg/L BOD₅, 5 mg/L TSS, 2.0 mg/L NH₃-N, 0.5 mg/l total phosphorus, 126 colony forming units or most probable number of *E. coli* per 100 ml; with the effluent containing a minimum DO of 4.0 mg/L, which must be monitored once per week by grab sample. These limits are consistent with the requirements of the Edwards Aquifer Rules in 30 TAC Chapter 213.

COMMENT 4:

Sara Mercer commented, asking whether the DO modeling included the requirements that apply to the Guadalupe River past the confluence of Cypress Creek and Canyon Lake and whether stormwater or the cumulative effect of future requests for permits were factored in the DO modeling.

RESPONSE 4:

The DO model included the entire length of Cypress Creek from the point of discharge up to its confluence with the Segment No. 1806. In particular, the proposed discharge was modeled far enough downstream to include the bottom of the predicted “DO sag,” or the point where the lowest downstream DO concentrations were predicted to occur because of the oxygen-demanding constituents present in the proposed discharge. Modeling results indicated that even at the lowest predicted downstream DO concentration for each flow phase, 5.21 mg/L DO in Interim Phase I (0.06 MGD), 4.67 mg/L DO in Interim Phase II (0.15 MGD), and 4.31 mg/L DO in the Final Phase (0.26 MGD) DO levels would still be above the concentration required to demonstrate that the DO criterion for Cypress Creek (3.0 mg/L) will be met and maintained. Modeling results also indicated effluent concentrations would return to ambient concentration levels (i.e., 1.30 mg/L CBOD₅, 0.05 mg/L NH₃-N, and 6.0 mg/L DO) *prior* to the confluence of Cypress Creek and Segment No. 1806. Because the modeling results indicated that the proposed discharge’s effluent concentrations were already at ambient levels prior to entering the Guadalupe River, no impact to the instream DO levels of either the Guadalupe River above Canyon Lake (Segment 1806) or Canyon Lake (Segment 1805) is anticipated as a result of the proposed discharge.

Stormwater was not factored into the DO modeling analyses. As mentioned previously, zero base flow was assigned to Cypress Creek. This zero-base flow assignment is considered conservative as it affords no dilution for the proposed discharge to mix with.

Currently, there are no other discharges into Cypress Creek or any of its tributaries either upstream or downstream of the discharge point. If TCEQ receives future applications that propose to discharge in the same area, the potential combined and cumulative surface water impacts will be considered during future DO modeling.

COMMENT 5:

Sarah Mercer raised the question of why there are discrepancies between the information from the Fact Sheet for the proposed permit and the information provided

by the TSWQS and listed by the application. Specifically, the TSWQS' Appendix A provides a pH value range of 6.5 to 9.0 standard units (S.U.), but the Fact Sheet's pH value range is 6.0 to 9.0 S.U. Likewise, during Interim Phase I, the application lists a 2-hour peak flow of 0.24 MGD, equal to 200 gpm, but the Fact Sheet's 2-hour peak flow is 167 gallons per minute (gpm) for Interim Phase I. Similarly, during Interim Phase II, the application lists 2-hour peak flow of 0.6 MGD, equal to 500 gpm, but the Fact Sheet's 2-hour peak flow is 417 gpm for Interim Phase II.

RESPONSE 5:

The values or limits in the proposed permit are controlling and not the limits of values in the application. However, in response to Ms. Mercer's comment, the 2-hour peak flow limits for the Interim Phases I and II were re-calculated, and determined to be correct. The limits are calculated by converting the number from its MGD-decimal value to its normal form (0.24 MGD ~ 240,000), then dividing that number by 24 hours, then again by 60 minutes, and then converting the number back into its MGD-decimal value. The mathematical equation would be $0.24 \text{ MGD} = 240,000 \div 24 = 10,000 \div 60 = 1,66.67$, rounded up to 167 gpm for the Interim Phase I and $0.6 \text{ MGD} = 600,000 \div 24 = 25,000 \div 60 = 416.67$, rounded up to 417gpm for Interim Phase II.

In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 S.U. reasonably assures instream compliance with the TSWQS for pH when the authorized discharge is from a minor facility, such as the proposed facility, even when the numeric criteria for pH for the receiving segment is 6.5 S.U. to 9.0 S.U., found at 30 TAC § 307.10(1). This technology-based approach reasonably assures instream compliance with TSWQS criteria due to the relatively smaller discharge volumes authorized by these permits. This conservative assumption is based on TCEQ sampling conducted throughout the state which indicates that instream buffering quickly restores pH levels to ambient conditions. Similarly, this approach has been historically applied within EPA issued NPDES general permits where technology-based pH limits were established to be protective of water quality criteria

COMMENT 6:

Alex Ruiz, Daniel Phillips, Barbara Felux, Gwen Sternberg, C.B. Harper, Margaret Ousset, A.R. Hoenninger, Veronica Garcia, William Warren, Raymond Sawiki, Sarah Mercer, Colette Laine, Owen Powell, Thomas Mote, Juanita Proffitt, Hubrey Shipman, and Sarah Mercer all commented, expressing concern that the proposed discharge is not safe to drink and on the impacts from the proposed discharge on the public water supply in Canyon Lake and nearby drinking water wells.

Ms. Mercer commented that because Segment No. 1806 is classified as Public Water Supply and subject to TCEQ's rules for public drinking water (30 TAC Chapter 290), Ms. Mercer asked whether there will be testing of radioactivity associated with dissolved minerals to ensure no exceedances of levels established by drinking water standards specified in TCEQ rule, why there are no requirements for chlorides, sulfates, total dissolved solids, chlorophyll, or temperature in the proposed permit, and what the effects will be to the public water supply in Canyon Lake will be.

RESPONSE 6:

The drinking water standards of the federal, Safe Drinking Water Act, and the TCEQ's rules found at 30 TAC Chapter 290 (Public Drinking Water) are inapplicable to discharges of domestic wastewater, such as the proposed discharge. This means that

the applicable drinking water standards do not require the proposed discharge to be treated to potable standards before it is discharged to Waters in the State.

Because the proposed discharge is not regulated by drinking water standards, the proposed permit does not test for radioactivity, and does not screen the levels of chlorides, sulfates, and total dissolved solids, as those constituents are only screened in discharges of 1.0 MGD and greater, and the proposed facility and discharge are classified as minor.

COMMENT 7:

Alex Ruiz, Barbara Felux, Gwen Sternberg, C.B. Harper, Margaret Ousset, A.R. Hoenninger, Veronica Garcia, William Warren, Raymond Sawiki, Colette Laine, Owen Powell, Thomas Mote, Juanita Proffitt, Hubrey Shipman, Ann Hennis, Linda Mohr, Daniel Phillips, Vanessa Diaz, Rindy Saunders, Cynthia Wilson, Nilsa Swift, Juli Coen, Jennifer Sandifer, A.R. Hoenninger, Ingrid Giral-Caenen, Debra Allen, Charles Kahn, Frank Slade, Dirk Davidek, Robert Butler, Catherine Martin, Eric Cardenas, Susan Marder, Irene Renfro, Cynthia Biela, Jennifer Powell, Sarah Mercer, and Tony and Ruth Taylor all commented, expressing concern about impacts to drinking water wells and depletion of the area's water supplies that come from aquifers, including the Edwards Aquifer.

RESPONSE 7:

The Executive Director's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state, which includes both navigable and non-navigable water bodies. The Texas Water Code defines "water" or "water in the state" to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.⁵

Groundwater availability (related to draw down and dry wells) is not under the authority of the TCEQ to consider when evaluating a discharge permit application. Groundwater availability may be under the jurisdiction of a Groundwater Conservation District (GCD). For information on GCDs, please call the ED's Water Availability Division (WSD) at (512) 239-4600. Areas that are not within a GCD are subject to the rule of capture. For more information on groundwater supplies, please contact the Texas Water Development Board at (512) 463-7847.

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater is not degraded. This goal of non-degradation does not mean zero-contaminant discharge."⁶ Chapter 26 of the Texas Water Code further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies must be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard (TWC § 26.401(c)(2)).

⁵ Texas Water Code § 26.001(5).

⁶ Texas Water Code § 26.401(b)

WQD staff determined that the proposed permit fully complies with the TSWQS, ensuring that the proposed discharge is protective of human health, water quality, aquatic life, and the environment. Further, the WQD has made the determination that if the surface water quality is protected, groundwater quality in the vicinity will not be impacted by the discharge. Thus, the limits of the proposed permit intended to maintain the existing uses and preclude degradation of the surface waters, protect against degradation of groundwater.

Further, 30 TAC § 309.13(c) states that a treatment unit at the proposed facility may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. For public water sources, the provisions of § 309.13(c) bolster the safeguards from TCEQ's Groundwater Rule (GWR) that protect drinking water quality against disease-causing microorganisms.

However, the Ground Water Rule does not address private wells because they are not under the jurisdiction of the Safe Drinking Water Act and thus are not subject to TCEQ regulation. TCEQ does recommend that well owners periodically test their water for microbial and chemical contaminants and properly maintain their well. It is the responsibility of the private well owner to take steps to have his or her water quality tested at least annually for possible constituents of concern, or more often if the well is thought to have a surface water connection.

For further details about the information discussed in this paragraph, please see the Ground Water Links section below. For more information on total coliform and *E.coli* compliance related to the Revised Total Coliform Rule and the GWR, please see TCEQ's guidance, *Coliform Monitoring, Analyzing, and Reporting Guide* (RG-421). If your well tests positive for fecal coliform bacteria, please see Texas A&M AgriLife Extension's guidance, *What to Do About Coliform Bacteria in Well Water*, or TCEQ's guidance, *Disinfecting Your Private Well*. For more information about testing private water wells, please see the National Ground Water Association's *Water Testing*. For more information on groundwater contamination or reporting groundwater contamination, please see the Texas Groundwater Protection Committee's (TGPC) webpages, *Ground Water Contamination and Reporting Contamination*.

The TGPC may be contacted through email at tgpc@tceq.texas.gov, through the TGPC website, or at (512) 239-4600. However, for groundwater emergencies, please contact the TCEQ Regional Office (Region 13) in San Antonio, Tx at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186.

Related to protection of the Edwards Aquifer (the Edwards), the TCEQ's Edwards Aquifer Protection Program (EAPP) regulates facilities that discharge treated wastewater or conduct other regulated activities over the three zones of the Edwards (Recharge, Contributing, Transition). Before commencing construction of facilities over the Edwards, an applicant must receive approval of its application for an Edwards Aquifer Protection Plan. In this case, approval of a Contributing Zone Plan (CZP) is required because TCEQ Regional Staff (Region 13) in the EAPP notified WQD staff that the application's Location Map identified the proposed facility's location and route for the proposed discharge as within the Edwards' Contributing Zone. A CZP is similar in nature to a Water Pollution Abatement Plan required for the same facilities located over the Edwards' Recharge Zone. Correspondingly, WQD staff then conveyed to the Applicant its responsibility to contact and work with TCEQ Regional Staff (Region 11 or 13) in the EAPP to ensure compliance with the Edwards's rules in 30 TAC Chapter 213.

The Applicant has since informed WQD staff that it is aware of the need for a CZP, which will be submitted to the EAPP by the Applicant's land development engineer. The Applicant informed WQD staff that submittal for approval of both the final design of the treatment system (Membrane Bioreactor) and the CZP will be done concurrently.

For more information about the protection of the Edwards Aquifer and the various Protection Plans, please visit the EAPP's website below or contact the TCEQ Regional Offices in San Antonio at (210) 490-3096 (Region 13), in Austin at (512) 339-2929 (Region 11), or the statewide toll-free number at 1-888-777-3186.

Ground Water Links

Coliform Monitoring, Analyzing, and Reporting Guide (RG-421)

<https://www.tceq.texas.gov/downloads/drinking-water/microbial/rg-421.pdf>

National Ground Water Association's webpage *Water Testing*

<http://wellowner.org/water-quality/water-testing/>

What to Do About Coliform Bacteria in Well Water

<https://twon.tamu.edu/wp-content/uploads/sites/3/2021/06/what-to-do-about-coliform-in-well-water.pdf>

Disinfecting Your Private Well

<https://www.tceq.texas.gov/publications/gi/gi-432.html>

Texas Groundwater Protection Committee (TGPC)

<https://tgpc.texas.gov/>

TGPC's *Groundwater Contamination and Reporting Contamination* webpages

<https://tgpc.texas.gov/groundwater-contamination/>

<https://tgpc.texas.gov/groundwater-contamination/#3>

Edwards Aquifer Protection Program

<https://www.tceq.texas.gov/permitting/eapp>.

COMMENT 8:

Alden Jones, Arlene Nosker, Erin Atcherhof, Tony Taylor, William Warren, Marian Henderson, A.R. Hoenninger, Irene Renfro, Wendy Junod, Erin Atcherhof, Heidi White, Sarah Mercer, Maria Broadaway, Charles Kahn, Thomas Mote, Jennifer Powell, Milber Berry and Bert and Julie Whitaker, Wayne and Fara Woodliff, and Sid and Becky Atkinson all commented, expressing concerns about adverse impacts to recreation in the waterbodies of the route of the proposed discharge.

RESPONSE 8:

The ability of the public to recreate in the waters of Texas is given significant consideration in the review of an application for, and the decision to issue a wastewater discharge permit. All waters in the state, whether intermittent or perennial, are considered as having primary contact recreational use, which includes activities that are presumed to involve a significant risk of ingestion of water. Unless otherwise specified in the TSWQS, these activities include wading by children, swimming, water skiing, diving, tubing, surfing, hand-fishing (as defined by Texas Parks and Wildlife Code, § 66.115), and whitewater activities like kayaking, canoeing, and rafting.

The Tier 1 Antidegradation review conducted by WQD Staff during the application's processing, indicates that the existing uses of the receiving streams, including primary contact recreation, will be maintained and protected from discharges made in compliance with the proposed permit. Also protecting the recreational users of Cypress Creek and its primary contact recreation use, is the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires that disinfection of domestic wastewater must be protective of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval from the ED. For the CLWT facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms; however, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Chlorine is the one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.⁷ The effluent from the CLWT facility, disinfected with chlorine, must contain a chlorine residual of at least 1.0 mg/l and the permit limit for maximum total chlorine residual is 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and must be monitored five times per week by grab sample.⁸

Development of the proposed permit was according to 30 TAC Chapter 307 (TSWQS) and the TCEQ IPs to be protective of water quality and maintain the recreational uses of both Cypress Creek and Segment No. 1806, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements.

COMMENT 9:

Maria Broadaway, Nilisa Swift, Raymond Sawiki, Amanda Nicolet, Alejandro Ruiz, Colette Laine, Heidi White, GEAA, Andrew Enochs, Frank Slade, Rebecca Newman, Ingrid Giral-Caenen, Michelle Ornelas, Fara Woodliff, Juli Coen, Tiffany Platt, Nathan Glavy, Thomas Hussion-Frantz, William Wessale, Wendy Junod, and Sid and Becky Atkinson all expressed concerns, generally, about the design of the proposed facility.

Ms. Junod commented, asking if the proposed facility will be an open tank design. Mr. Wessale commented, asking where he can find the design of the proposed facility, did a civil Professional Engineer (P.E.) design, or approve of the proposed facility's design, what the maximum number of people or homes the proposed facility has been designed to accommodate, and if additional homes beyond the stated number in the application are built, what is the process to revise the license for the proposed facility. Mr. Enochs asked who enforces the limits in the proposed permit.

RESPONSE 9:

The quality of the proposed discharge must meet the goals, standards, and requirements of the Federal Clean Water Act, TWC, and the TSWQS. Equally important, the manner and method of achieving that quality must adhere to the same goals, standards, and requirements.

⁷ U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

⁸ SJWTX, Inc. and Mary Jane Cielencki Draft Permit, Effluent Limitations and Monitoring Requirements, p.2; see also 30 TEX. ADMIN. CODE § 309.3(g)(2)

Sampling, analysis, and reporting for compliance with provisions of the proposed permit must be performed by the Applicant according to the Monitoring and Reporting Requirements section and the Definitions and Standard Permit Conditions section of the proposed permit, which is from the rules found at 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, data from Discharge Monitoring Reports (DMRs) must be submitted each month to the Compliance Monitoring Team of the Enforcement Division. DMRs can also be reviewed onsite by the investigators from the Enforcement Division at the TCEQ Regional Office (Region 13) in San Antonio, TX.

These and other requirements in the proposed permit have historically been effective at keeping applicants informed as to conditions at the facility related to meeting the effluent limits, and avoiding treatment system problems.

Further, the proposed facility must be designed according to the TCEQ rules, found at 30 TAC Chapter 217 (Design Criteria for Domestic Wastewater Systems). The TCEQ's domestic wastewater systems' design criteria identifies types of treatment technologies that achieve the same treatment levels in the proposed permit.

Before the Applicant can begin construction of the proposed facility, the Chapter 217 rules require the Applicant, after the permit is issued, to submit engineering plans and specifications for review and approval by a licensed P.E. in the WQD's Plans and Specifications Review Team (P&S Review Team).

Similarly, Other Requirement No. 6 of the proposed permit requires the Applicant to submit a summary transmittal letter according to the requirements in 30 TAC § 217.6(d). If requested by the P&S Review Team, the Applicant must submit plans, specs, and a final engineering design report which complies with 30 TAC Chapter 217, (Design Criteria for Domestic Wastewater Systems). The Applicant must clearly show how the treatment system will meet the permitted effluent limitations required on Pages 2, 2a, and 2b of the proposed permit. The P&S Review Team's evaluation ensures that the plant design can adequately treat the proposed discharge according to the limits in the proposed permit. Once the plans and specifications are approved by the P&S Review Team, the Applicant will be required to build the proposed facility according to that approval.

The Applicant has not designated the treatment units that will have open-tops. The Specs and Review Team will also determine if a treatment technology or unit needs to be enclosed.

TCEQ has not received verification that the proposed facility was designed by a P.E.; however, correspondence with the Applicant indicates that it was. Though the Applicant has not submitted engineering plans and specifications for the proposed facility yet, information provided by the Applicant indicates the treatment system will be a Membrane Bioreactor system, which if properly designed and implemented, is capable of a very high level of performance and can produce effluent that has low levels of CBOD₅, ammonia-nitrogen, and TSS. The system also will utilize an anoxic zone to help reduce nutrients in the discharge. Treatment technologies utilized by the proposed permit and specific to the three phases include one equalization tank, one sludge holding tank, one MBR skid, and one ultra-violet (UV) chamber in Interim Phase I; one equalization tank, one sludge holding tank, two MBR skids, one Pre-Aeration (PA) skid, one sludge press and one UV chamber in Interim Phase II; and two equalization tanks, one sludge holding tank, four MBR skids, two PA skids, one sludge press and one UV chamber in the Final Phase.

The Applicant included Conceptual Layout Drawings as attachments to Domestic Technical Report 1.0 of the application. These drawings provide a general concept as to how the treatment systems and site will be laid out. Copies of the drawings, including a full and complete copy of the application, including a description of the treatment system, flow diagrams, measurements of the treatment units, and design calculations for all three phases of the proposed permit are available for viewing and copying at the TCEQ's Office of the Chief Clerk at the main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor and at the Circulation Desk of the Mammen Family Public Library, located in Bulverde, Texas at 131 Bulverde Crossing. At this point in the permitting process, the actual engineering design drawings or schematics would need to be acquired from the Applicant.

In the Final phase of the proposed permit, when the authorized flow is 260,000 gallons per day, there is sufficient flow for 718 houses, which is based on the TCEQ rules, found at 30 TAC § 217.32(a)(3). These rules provide design flows and loadings of influent for wastewater facilities. If the Applicant decides to increase the flow at the proposed facility due to increased development or accepting wastewater from other producers, it must submit an application for a Major Amendment to its permit.

COMMENT 10:

Nathan Glavy, Maria Broadaway, Nilsa Swift, Raymond Sawiki, Amanda Nicolet, Alejandro Ruiz, Colette Laine, Heidi White, GEAA, Andrew Enochs, Frank Slade, Rebecca Newman, Ingrid Giral-Caanen, Michelle Ornelas, Fara Woodliff, Juli Coen, Tiffany Platt, Thomas Hussion-Frantz, William Wessale, Wendy Junod, and Sid and Becky Atkinson all commented, expressing concerns about spills or malfunctions at the proposed facility and the qualifications of the operator at the proposed facility.

Mr. Wessale also commented that the application specifies a Class C operator's license, and asked for the criteria of plant complexity, technology, and daily effluent flow for plants requiring a Class A, B, and C Operator's licenses.

RESPONSE 10:

Spills are not expected to occur at this facility if it is maintained and operated in accordance with TCEQ rules and the provisions in the proposed permit. If spills occur at the facility, it would be an unauthorized discharge in violation of the proposed permit for which an enforcement action can be brought by TCEQ against the Applicant.

As such, Permit Condition 2(g) prohibits unauthorized discharge of wastewater or any other waste. The Applicant is required at all times to ensure that the proposed facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. Consequently, spills should not occur. Nearby residents are protected by the fact that the Applicant can only discharge according to the limits, monitoring requirements, and other conditions listed in the proposed permit. The proposed permit also requires the Applicant to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.

With respect to operation of the proposed facility, the proposed permit has safeguards intended to minimize the occurrence of operational mishaps. For example, Operational Requirement No. 1 requires the Applicant to ensure that the proposed facility and all its systems of collection, treatment, and disposal are always used and maintained properly. Operational Requirement No. 4 makes the Applicant

responsible for installing, prior to plant start-up, and subsequently maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater. Operational Requirement No. 8(b), requires that the proposed facility's plans and specifications must be approved by the P&S Review Team, and failure to secure approval before commencing construction or making a discharge is a violation of the permit and each day is an additional violation until approval has been secured. The P&S Review Team ensures that the plant design can adequately treat the proposed discharge according to the limits in the proposed permit.⁹ The proposed permit also requires the Applicant to report any unauthorized discharge to TCEQ within 24 hours.¹⁰

According to 30 TAC § 305.125(9), any noncompliance which may endanger human health or safety or the environment shall be reported by the Applicant to the TCEQ. Except as allowed by 30 TAC § 305.132, the report of noncompliance must be provided orally or by facsimile transmission to the Regional Office (Region 13) within 24 hours of becoming aware of the noncompliance. A written submission of the report of noncompliance information must also be provided by the Applicant to the Regional Office (Region 13) *and* the Compliance Monitoring Team of the Enforcement Division within five working days of becoming aware of the noncompliance.

The written submission must contain a description of the noncompliance and its cause; the potential danger to human health or safety or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

All of these permit provisions are designed to help prevent unauthorized discharges of raw sewage.

Related to the category of the proposed facility and the required class of operator to run the proposed facility, the permit application does not specify either. The requirements for designating the minimum class of operator for the proposed facility are located in the TCEQ rules, found at 30 TAC § 30.350(e), and historically have been effective to ensure proper operation of wastewater facilities of various flow limits and designs. Thus, the Applicant may employ a Class B or Class A Operator for the proposed facility, but the proposed permit requires the Applicant to have at least a Class C operator, as the Class of operator needed, is dependent on the Category of the facility.

- A minimum Class C through A operator licenses satisfy the needs for a pond system preceded by primary treatment units for all discharge flow limits for a Pond System;
- A Class C operator license satisfies the needs for an activated sludge system operated in the extended aeration mode and oxidation systems with flow limits up to 1,000,000 gallons per day;

⁹ SJWTX, Inc. and Mary Jane Cielencki Draft Permit, Other Requirements, Item 6, p.34, *see also* 30 TEX. ADMIN. CODE § 217.6(d).

¹⁰ SJWTX, Inc. and Mary Jane Cielencki Draft Permit, Monitoring and Reporting Requirements, Item 7, p. 7.

- a Class B operator license satisfies the needs for an activated sludge system operated in the extended aeration mode and oxidation systems with flow limits up to 10,000,000 gallons per day;
- a Class A operator license satisfies the needs for an activated sludge system operated in the extended aeration mode and oxidation systems with flow limits above 10,000,000 gallons per day;
- a Class C operator license satisfies the needs for an activated sludge system operated in modes other than extended aeration with flow limits up to 1,000,000 gallons per day;
- a Class B operator license satisfies the needs for an activated sludge system operated in modes other than extended aeration with flow limits up to 10,000,000 gallons per day;
- a Class A operator license satisfies the needs for an activated sludge system operated in modes other than extended aeration with flow limits above 10,000,000 gallons per day;
- a Class C operator license satisfies the needs for trickling filter, rotating biological contactor, or other fixed film processes with flow limits up to 2,000,000 gallons per day;
- a Class B operator license satisfies the needs for trickling filter, rotating biological contactor, or other fixed film processes with flow limits up to 10,000,000 gallons per day; and
- a Class A operator license satisfies the needs for trickling filter, rotating biological contactor, or other fixed film processes with flow limits above 10,000,000 gallons per day.
- The rules at 30 TAC §35.350(f) require that a wastewater treatment facility requiring nutrient reduction shall require a wastewater operator with at least a Class C wastewater license.

The proposed facility has an authorized flow limit of no greater than 260,000 gallons per day and falls within the Class C operator requirements for all levels of technology, which meets the requirement of 30 TAC §35.350(f).

COMMENT 11:

Ann Hennis, Susan Marder, Irene Renfro, Mark Carlson, Nathan Glavy, Analisa Peace, GEAA, Eva Silverfine, Star McDonald, Collette Laine, Raul Flores, Linda Mohr, Alden Jones, Heidi White, Irma Llanas-Garza, Maria Broadaway, Gwen Sternberg, Frank Slade, Milber Berry, Collette Laine, Ed Lette, Keith Hutchison, Owen and Jennifer Powell, Chris and Michelle Phelps, and Mike and Linda Clark all commented that the proposed permit is not needed as the option to use septic systems is available or other reuse options. Many individuals requested that the proposed discharge is piped to Rebecca Creek Golf Course that is near the location of the proposed facility if the Applicant does not enlarge the subdivision plots to accommodate septic systems.

RESPONSE 11:

If the Applicant decides to utilize individual septic tanks to serve the proposed residential area, it will be subject to 30 TAC Chapter 285, relating to “On-site Sewage

Facilities (OSSF).”¹¹ However, the wastewater strength, or organic loading, of CBOD₅ and NH₃-N in untreated sewage from a residential subdivision is estimated to be 250-400 mg/l and 15 - 75 mg/l, respectively.¹² The proposed permit, for example, requires that the treated effluent shall not exceed 5 mg/l CBOD₅ with 2.0 mg/l NH₃-N.¹³ Therefore, the proposed facility will be required to achieve a more than 90%-95% reduction in CBOD₅ concentration in the treated effluent prior to discharge. In comparison, a well-maintained septic tank treats sewage to approximately 100 mg/l BOD₅ prior to discharging into the underground drain field or soil absorption field.

TWC § 26.027, authorizes the TCEQ to issue permits for discharges into waters in the state but does not give TCEQ the authority to mandate the method of disposal of treated effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309.

Instead, WQD staff evaluate applications for TPDES permits based on the information provided in the application. The sole responsibility of proposing the manner of treatment and disposal of the effluent is the Applicant’s. WQD staff can only recommend issuance or denial of an application based on the application’s compliance with the TWC and TCEQ regulations after reviewing the proposed wastewater treatment technologies and the effect(s) of the proposed discharge on the uses of the receiving waterbodies.

The proposed discharge may be disposed of via land application with a Texas Land Application Permit (TLAP) which authorizes the disposal of treated effluent by means of surface irrigation, subsurface irrigation, or evaporation. The effluent must be treated to the pollutant concentrations prescribed in 30 TAC § 309.4. However, a TLAP is a separate TCEQ authorization with its own application, regulatory requirements, and Technical Review.

A Chapter 210 reuse authorization is also a separate authorization from the TPDES permit. The TCEQ’s rules applicable to the beneficial reuse of reclaimed wastewater, found in 30 TAC Chapter 210, require that for the Applicant to obtain a beneficial reuse authorization, the Applicant must first have a TPDES permit or a no-discharge TLAP permit, which is a state permit for disposal of wastewater.¹⁴ TCEQ’s rules provide that use of reclaimed water may only be authorized for “on a demand” use, which prevents treated water from being provided during times it cannot be beneficially used and allows the reclaimed water user to refuse delivery of reclaimed water at any time.¹⁵ Subsequently, the reclaimed water producer must have a guaranteed method of effluent disposal via either a TPDES or TLAP permit. The TCEQ does not have the authority to require the Applicant to obtain a Chapter 210 reuse authorization. The Applicant may also choose to reuse any volume or up to 100% of the permitted volume, based on demand and need. TCEQ regulates reuse through a 210 authorization up to the amount of flow authorized in a TPDES permit. However, any of the options for the Applicant to use a different method for disposal of wastewater referenced above, would need to be made directly to and negotiated with

¹¹ 30 TEX. ADMIN. CODE § 285.4

¹² 30 TEX. ADMIN. CODE § 217.32(a)(3)

¹³ SJWTX, Inc. and Mary Jane Cielencki Draft Permit, Effluent Limitations and Monitoring Requirements, p. 2.

¹⁴ 30 TEX. ADMIN. CODE § 210.5(a)

¹⁵ 30 TEX. ADMIN. CODE § 210.7

the Applicant and be a decision for the Applicant to make and would be separate from the permitting process for this TPDES permit.

COMMENT 12:

Alden Jones, Catherine Martin, A.R. Hoenninger, Bed Hudson, Peter Soltys, James Mayer, Sarah Mercer, Jen Crownover, Megan Stockwell, Paul Gescheidle, Nilsa Swift, and Sid and Becky Atkinson all commented, expressing skepticism of the Applicant and the TCEQ related to the public notices for and with the transparency of the permitting process. Ms. Swift commented that there is a nefarious motive in having the public meeting on last day of comment period.

RESPONSE 12:

Notice provisions for Applicants and the TCEQ are found in 30 TAC Chapter 39 (Public Notice). When the ED determines that an application is administratively complete, the Chief Clerk mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.¹⁶ Not later than 30 days after the ED determines that the application is administratively complete, the Applicant must publish the NORI in the newspaper that has the largest circulation within the county or municipality in which the facility is located.¹⁷ The Applicant must also make a copy of the administratively complete application available for public viewing in the county in which the facility is located.¹⁸ Finally, the Applicant, using county deed records, must identify all landowners adjacent to the proposed facility and discharge and submit the list to the TCEQ Chief Clerk's office so it can mail timely copies of the public notices for the application to the adjacent landowners.

After completing the technical review of an application, the ED files the preliminary determination and the proposed permit with the Chief Clerk.¹⁹ The Chief Clerk must mail the preliminary decision, along with the Notice of Application and Preliminary Decision (NAPD), to the Applicant, who must then publish the NAPD in the same newspaper as the NORI.²⁰ The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.²¹

The NAPD must set a deadline for filing public comments with the Chief Clerk that is no earlier than 30 days after its publication in a newspaper.²² If the ED holds a public meeting on the application after the 30 day period, then the public comment period is automatically extended to the end of the public meeting.²³ The ED may hold a public meeting at any time in the county where the facility is located if there is evidence of substantial public interest or if a legislator representing the general area where the facility will be located requests a meeting.²⁴ As the public comment period has ended, the ED must file this Response to Public Comments, addressing all timely,

¹⁶ 30 TAC § 39.418(a).

¹⁷ 30 TAC § 39.405(f).

¹⁸ 30 TAC § 39.405(g).

¹⁹ 30 TAC § 39.419(a).

²⁰ 30 TAC § 39.419(b).

²¹ 30 TAC § 39.413.

²² 30 TAC § 39.551(c)(3).

²³ 30 TAC § 55.152(b).

²⁴ 30 TAC § 55.154(c).

relevant and material, or significant public comments submitted during the comment period, regardless of whether the comments were withdrawn.²⁵

The notices are not intended to provide a full description of the application, but rather to provide instructions on where to obtain additional information, such as more comprehensive description of the information in the application. Documents associated with the application are made public at the locations below to allow the public to review them and determine if they have additional comments or questions.

In this case, the TCEQ received the application for a new permit on October 7, 2021, and the TCEQ Application Review and Processing Team performed an administrative review of the application which includes verifying that the landowners map and landowners list was prepared according to TCEQ policies and regulations. The Applicant provided the required landowners list and map to TCEQ, and the NORI and NAPD were mailed out to each person and address on the list. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on January 9, 2022 in the *Herald Zeitung* newspaper. The application was determined technically complete on April 13, 2022, and the Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on May 31, 2022, in the *Herald Zeitung* newspaper. The Applicant also published the Notice of Public Meeting for the proposed permit in English on July 6, 2022, in the *Herald Zeitung* newspaper. The comment period for this application opened on January 9, 2022, with the publishing of the NORI and closed on August 11, 2022, at the close of the public meeting. As required by 30 TAC § 55.152 of the TCEQ's rules, the comment period was automatically extended to the close of the public meeting. If no public meeting had been held the comment period would have closed 30 days after the last publication date of the NAPD.

The Copies of the NORI, NAPD, and Notice of Hearing were mailed out to each person on the landowners list. Additionally, a copy of the permit application (including location maps) and the NAPD notice with a URL link to the TCEQ on-line location map (showing the location of the facility) are available for viewing and copying at the TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk) and at Mammen Family Public Library, Circulation Desk, 131 Bulverde Crossing, Bulverde, Texas. Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

COMMENT 13:

Linda Mohr, Juli Coen, A.R. Hoenninger, Marlin Brown, Peter Soltys, Sarah Mercer, and Tony and Ruth Taylor all commented that an Environmental Impact Statement must be performed before the proposed permit is issued.

RESPONSE 13:

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements

²⁵ 30 TAC § 55.156.

which include an Environmental Assessment and either a Finding of No Significant Impact or Environmental Impact Statement. However, these requirements pertain to a proposed federal action. An environmental impact statement and compliance with NEPA are not required as part of the TPDES permitting process.

COMMENT 14:

Andrew Enochs commented questioning the identity of the Applicant, and if the Applicant, its subsidiaries, owners, or other companies owned by those owners, donated to political campaigns. Mr. Enochs asked if any of the parties have agreed to any community projects, whether and which politicians or representatives are running those projects, if there are financial beneficiaries from the proposed facility, if septic companies can discharge into the proposed facility and whether the Applicant is insured for that and the maximum expected loss in case the of a catastrophe.

RESPONSE 14:

SJWTX, Inc. doing business as Canyon Lake Water Service Company is the Applicant for the proposed permit and is registered with the Secretary of State's Office to do business in the State of Texas.

Disclosures concerning community projects, relationships with elected officials, political affiliations, the financial matters related to the proposed facility, the dollar amount of insurance covered and losses that could be incurred by the Applicant, is not information required to be provided in the application for a TPDES permit.

The Applicant has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

It is possible site inspections to be delayed because circumstances beyond the control of TCEQ (e.g., natural that required TCEQ's attention elsewhere). However, TCEQ continues to strive to meet goals and benchmarks for compliance inspections of wastewater treatment facilities with available staff.

COMMENT 15:

Heidi White, Frank Slade, Rebecca Newman, Ingrid Giral-Caanen, Michelle Ornelas, Fara Woodliff, Juli Coen, Tiffany Platt, Thomas Hussion-Frantz, Jennifer Sandifer, Wendy Junod, and William Wessale all commented expressing concerns, about the dangers of industrial chemicals, pesticides, insecticides, prescriptions drugs, and illegal drugs possibly being present in the proposed discharge.

RESPONSE 15:

One group of Contaminants of Emerging Concern in water currently under investigation by the EPA, as well medical schools across the country, is Pharmaceutical and Personal Care Products (PPCPs). Examples of pharmaceuticals in water bodies are chemicals from prescription drugs such as antibiotics, analgesics, antidepressants, blood thinners, heart medications, pain killers, and over-the-counter medications. Examples of personal care products in water bodies are skin lotions, sunscreens, chemicals in cosmetics and fragrances, and detergents from shampoos and other soap.

While research is ongoing, there has not been any link or direct evidence of adverse human health effects from PPCPs in the environment. Additionally, the science on PPCPs is currently evolving, and while the EPA and other agencies continue to study the presence of PPCPs, there is currently no clear regulatory regime available to address the treatment necessary to remove PPCPs in domestic wastewater.

Similarly, wastewater treatment facilities are not currently designed to remove PPCPs from water. Nor are the water treatment facilities that treat the water to Drinking Water standards. Yet a certain amount of pharmaceutical contamination is removed when water gets treated for other purposes. For example, some research shows that conventional treatment methods result in a 90% decrease in the amount of ibuprofen and naproxen in the wastewater discharges. While some aspects of wastewater treatment may remove pharmaceuticals from the water, but the result is often increases to concentrations in sewage sludge, which may be used as fertilizer, so the pharmaceuticals are still getting into the environment.

Still, PPCP removal during municipal wastewater treatment has been documented in scientific literature.²⁶ Drinking-water treatment may also get rid of some pharmaceutical contamination as chlorine is used to kill bacteria and other pathogens, but it also seems to degrade or remove acetaminophen, codeine, and the antibiotic sulfathiazole. However, standard removal efficiencies have not been established for either type of facility, and neither the TCEQ, nor the EPA, has promulgated rules placing limits on PPCPs, nor rules on the treatment of PPCPs in domestic wastewater.

Until the availability of technologies required to remove PPCPs from the nation's waters, the EPA has taken a four-pronged approach that involves public education, stepped-up monitoring of water supplies, partnerships with health care facilities and agribusinesses to reduce waste, and eventually, perhaps, new regulations. As an introductory step toward possible regulation, the EPA has added 10 pharmaceutical compounds, one antibiotic and nine hormones, to its watch list of potentially harmful contaminants that warrant greater investigation.

Neither the TCEQ nor the EPA has rules on the treatment of illegal drugs in domestic wastewater. TCEQ encourages anyone who has knowledge of illegal activities such as illegal drug manufacturing or the presence of drug cartels in the area to contact the local law enforcement authorities and report the activity immediately.

At this time, TCEQ requires testing only for certain pesticides and other chemicals when a permit application is submitted for a major discharger (facilities with an authorized annual average flow limit of 1,000,000 gallons per day or more), or if water quality-based effluent limits for a pesticide(s)/insecticide(s) has been placed in a major discharger's permit due to a failed screening of that constituent(s) from analytical data submitted with the application.

The TCEQ does not anticipate that there will be any industrial wastewater, insecticides, and banned chemicals not allowed to be disposed of and routed to a water treatment plant; therefore, hazardous liquids and chemicals are not expected to be discharged into the collection system and enter the treatment system of the proposed facility. Additionally, Minor municipal facilities with conventional domestic sewage do not typically contain toxic compounds in measurable quantities that might

²⁶ *Treating Contaminants of Emerging Concern: A Literature Review Database*, EPA-8220-R-10-002, August 2010

result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing wastewater.

COMMENT 16:

Ann Hennis, Wendy Junod, and Hubrey Shipman commented, expressing concerns about foul odors from the proposed facility.

RESPONSE 16:

Instances of foul odors from a discharge of treated wastewater can exist when there are insufficient levels of dissolved oxygen (DO) present in the effluent; and therefore, all wastewater treatment facilities (WWTF) have the potential to generate odors. To prevent odors from occurring, the number of oxygen-demanding constituents must be controlled. The proposed effluent limits, specifically the minimum dissolved oxygen limit, restrict the amount of oxygen-demanding constituents and are set at levels to significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters. Additionally, nuisance-odor controls have been incorporated into the proposed permit.

To control and abate odors, the TCEQ rules require domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides options for applicants to satisfy the nuisance odor abatement and control requirements. The options are: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant; or 3) providing nuisance odor control.

According to the application, the proposed facility intends to comply with the requirement to abate and control nuisance odors by locating the treatment units at least 150 feet from the nearest property line and by ownership of the buffer zone. These requirements and legal restrictions are incorporated in the proposed permit. Therefore, nuisance odors are not expected to occur because of the permitted activities at the proposed facility if the Applicant operates the proposed facility in compliance with TCEQ's rules and the terms and conditions of the proposed permit.

COMMENT 17:

Cathy Allen, Debra Allen, Wayne Woodliff, William Wessale, Irene Renfro, Hubrey Shipman, Sarah Mercer, Wendy Junod, Colette Laine, Charles Kahn, Frank Slade, Ed Lette, Thomas Mote, and Tony and Ruth Taylor, among many others, commented, expressing concerns related to property values, noise, traffic, the negatives of urban growth and development, adverse economic impacts to tourism, border crime, road maintenance, political motivations, and air quality.

RESPONSE 17:

The ED acknowledges the significance of these concerns, however, while the ED encourages the participation of all citizens in the environmental permitting process, there are certain concerns of citizens that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute. The Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into the state's waters and to protect the water quality of the state's rivers, lakes, and coastal waters. As discussed above, the proposed permit protects water

quality according to the TCEQ rules and the Texas Water Code. However, the ED, through his Water Quality Division, has no jurisdiction to address fluctuations in property values, traffic or road maintenance, noise from the proposed facility, negative impacts from urban development and growth, border crime, or political motivations in the wastewater permitting process. The ED's jurisdiction is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's waterbodies.

Alternatively, nothing in the proposed permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property.

Nor does the proposed permit limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to the TCEQ Regional Office (Region 11) in Austin, TX at (512) 339-2929, or by calling the statewide toll-free number at 1-888-777-3186. Complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records).

The issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. In addition, the scope of TCEQ's regulatory jurisdiction does not, nor does the proposed permit, limit the ability of nearby landowners to seek relief from a court or use common law remedies in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred.

Related to air quality, the TCEQ is the agency responsible for enforcing air pollution laws. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health and the environment will be protected. According to the TCEQ rules in 30 TAC § 106.532, wastewater facilities have undergone this review, and their air emissions are permitted by rule provided the facility performs only the functions listed in the rule. The Applicant indicated in its application that the treatment process of the proposed facility would use the Membrane Bioreactor process, which does not make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code's Texas Clean Air Act § 382.057 and § 382.05196, and is therefore permitted by rule.

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Michael T. Parr II, Staff Attorney
Environmental Law Division
State Bar No. 24062936
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239 0611
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 27, 2022, the Executive Director's Response to Public Comment for Permit No. WQ0016107001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936