

TCEQ DOCKET NO. 2023-0322-IWD

APPLICATION BY § **BEFORE THE TEXAS COMMISSION**
CHAMBERS COUNTY §
IMPROVEMENT DISTRICT NO. 1 § **ON**
FOR TPDES PERMIT NO. §
WQ0005341000 § **ENVIRONMENTAL QUALITY**

**CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1'S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING AND RECONSIDERATION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

Applicant Chambers County Improvement District No. 1 (“CCID1” or “Applicant”) files this Response to Requests for Contested Case Hearing and Reconsideration (“Response”), and in support thereof, would respectfully show the following:

I. Introduction

CCID1¹ has applied to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0005341000 (the “Permit”), which will authorize the construction and operation of a new wastewater treatment plant (“WWTP#2”) for the management of domestic and nonhazardous industrial wastewater generated within CCID1’s service area southeast of the City of Baytown. The state-of-the-art centralized waste treatment facility features odor control and a biological treatment system consisting of headworks, oil-water separation, equalization tanks, pH adjustment, extended aerated activated sludge system, clarification, filtration and chlorine disinfection that is

¹ The Board of Directors of CCID1 adopted a Resolution on December 14, 2022, to change its name to Cedar Port Navigation and Improvement District. On January 23, 2023, CCID1 filed the requisite TCEQ Core Data Form with the Commission for this purpose. For the sake of clarity, we will refer to the applicant only as “CCID1” or “Applicant” throughout this Response.

necessary to meet stringent effluent limitations that are designed to be protective of the receiving waters in Upper Galveston Bay (Segment No. 2421). All sludge will be hauled off-site for disposal. CCID1 has proven itself to be a responsible owner and operator of waste treatment facilities for over a decade. WWTP#2 would complement its existing smaller treatment plant (“WWTP#1”) by providing a larger plant with multiple phases needed to accommodate growth of commercial and industrial businesses in its service area, a design which WWTP#1 lacks.

The approval of the Permit is supported by CCID1’s complete and thorough application and the administrative and technical reviews of the Executive Director (“ED”), who has rendered their final decision that the application meets all statutory and regulatory requirements and should be approved. Despite the ED’s unqualified findings and decision on the application, one environmental advocacy association, Clean Water Action (“CWA”), filed a request for a contested case hearing and reconsideration. CWA’s request for reconsideration must be denied for the reasons set forth in detail in the ED’s Response to Public Comments. As CWA has provided no new data or information to support its thread-bare public comments, there is no reasonable basis on which to grant reconsideration. CWA’s request for a contested case hearing must also be denied because it has not identified in its hearing request one or more members who are affected persons under 30 TEX. ADMIN. CODE, Chapter 55, Subchapter F. Each of its purported members reside over twenty-five miles away from WWTP#2 within inland, urban areas of Houston and their interests in recreating in Galveston Bay that are likewise distant from WWTP#2 will not be harmed by the issuance of the Permit and are in any event common to members of the general public.²

² See Affidavit of Kathleen Alsup, Exhibit 1.

For these reasons, CCID1 respectfully requests that the Commissioners deny the hearing request, deny the request for reconsideration, adopt the Executive Director’s Response to Public Comments, and issue TPDES Permit No. WQ0005341000.

II. Procedural Background

CCID1’s November 18, 2021 permit application (the “Application”) was declared administratively complete on December 22, 2021. CCID1 published Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) in the *Baytown Sun* on January 2, 2022, and in Spanish in *El Perico* on December 26, 2021. The Executive Director’s preliminary decision that the Permit, if issued, would meet all statutory and regulatory requirements, was issued on July 26, 2022. CCID1 published Notice of Application and Preliminary Decision (“NAPD”) in the *Baytown Sun* on August 2, 2022, and in *El Perico* on August 4, 2022. The public comment period ended on September 6, 2022 with comments received from only CWA. The Executive Director issued their Response to Public Comments (“RTC”) on November 21, 2022, responding fully to CWA’s public comments, and rendered their final decision that the permit application met the requirements of applicable law on November 28, 2022.

On December 28, 2022, CWA submitted its request for contested case hearing and request for reconsideration. On March 8, 2023, the TCEQ Chief Clerk announced that all timely filed hearing requests and requests for reconsideration will be considered by the Commissioners on April 12, 2023. CCID1 hereby provides its response in accordance with Commission rules.

III. Clean Water Action’s Request for a Contested Case Hearing Should Be Denied

a. Legal Standard for Requesting a Contested Case Hearing

Under Section 55.201(c) of the TCEQ’s rules, a valid request for a contested case hearing must be (1) made by an affected person; (2) be timely filed; and (3) be based solely on the

requestor's timely comments.³ Each of these three prongs is a mandatory requirement, and the request must fail if there is a failure in meeting any one of them.

Compliance with TCEQ's rules is essential, because the Texas Legislature, in enacting the Texas Water Code, only allows an "affected person" the opportunity to demand that a hearing be held on permit applications.⁴ Additionally, the Texas Legislature has narrowly defined the universe of "affected persons" who may validly demand that a contested case hearing be held by or on behalf of the Commission. Only those persons who have "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing" may be granted a hearing.⁵ "An interest common to members of the general public does not qualify as a personal justiciable interest."⁶

A request by a group or organization is subject to heightened scrutiny. The association's request must only be granted if the following four additional requirements are met:

- 1) comments on the application are timely submitted by the group or association;
- 2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- 3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case."⁷

Moreover, the TCEQ adopted rules specifying the factors that must be considered in determining whether a person is an affected person. Those factors are:

³ 30 TEX. ADMIN. CODE § 55.201(c).

⁴ See TEX. WATER CODE §§ 5.556(c); 5.115.

⁵ TEX. WATER CODE § 5.115(a); see also 30 TEX. ADMIN. CODE § 55.203(a).

⁶ TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

⁷ 30 TEX. ADMIN. CODE § 55.205(b).

1. whether the interest claimed is one protected by the law under which the application will be considered;
2. distance restrictions or other limitations imposed by law on the affected interest;
3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
5. likely impact of the regulated activity on use of the impacted natural resource by the person;
6. for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
7. for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁸

The Commission may also consider information and analyses in the record in determining whether a person is an affected person, including:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the executive director; and
3. any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.⁹

In considering evidence to apply the above factors to a given request, the Third Court of Appeals explained that “TCEQ enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity . . . will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources.”¹⁰ TCEQ’s application of the factors described above “may include reference to the

⁸ 30 TEX. ADMIN. CODE § 55.203(c).

⁹ 30 TEX. ADMIN. CODE § 55.203(d).

¹⁰ *Sierra Club v. Tex. Comm'n on Env'tl. Quality*, 455 S.W.3d 214, 223–24 (Tex. App.—Austin 2014, pet. denied).

permit application, attached expert reports, the analysis and opinions of professionals on its staff, and any reports, opinions, and data it has before it.”¹¹ In making these determinations, the court was applying the Texas Supreme Court’s 2013 decision in *Texas Commission on Environmental Quality v. City of Waco*, which affirmed TCEQ’s discretion to rely on such information in making an affected person determination.¹²

Moreover, any attempt by CWA to introduce additional members as part of its claim to have affected person status is not allowed. TCEQ rules do not provide a requesting party the opportunity to cure or otherwise correct a deficient request. What TCEQ rules do provide, however, is a set deadline for submitting requests of 30 days after the ED’s decision and RTC.¹³ In meeting this deadline, a request is required to include the name of the purported affected person.¹⁴ This deadline passed on December 28, 2022. The entirety of TCEQ’s rules on the schedule for submitting written responses to hearing requests hinges on the request itself not being later amended, after the deadline, in an attempt to bolster or alter the requester’s arguments. Thus, this Response, insofar as it relates to the affected person status of CWA’s Members, only addresses those listed in the Request: Dakshina Jandhyala, John Chandler, and Kevin Topek.

Lastly, a request for a contested case hearing must include a “specific, written statement explaining in plain language the requestor’s location and distance relative to the proposed facility.”¹⁵

¹¹ See *id.* at 224.

¹² See *Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 420–21 (Tex. 2013).

¹³ 30 TEX. ADMIN. CODE § 55.201(a).

¹⁴ See 30 TEX. ADMIN. CODE § 55.201(d).

¹⁵ 30 TEX. ADMIN. CODE § 55.201(d)(2).

b. Legal Deficiencies in CWA's Request for Contested Case Hearing

CWA's Request fails to show that one or more of its purported members are affected persons. Simply put, the three included members ("Members") of CWA live and reside too far away from the proposed WWTP#2, and speculative concerns about harm to professed recreational interests are insufficient and too far away to confer affected person status.

i. Members are not "Affected Persons" Due to the Considerable Distance of Their Places of Residence from the Proposed Facility

Distance of the requester(s) from the proposed facility is a relevant consideration in determining whether a requester has a personal justiciable interest unique from that of the general public.¹⁶ The Commission has evaluated proximity in numerous cases based on TCEQ's experience in determining whether a requester is impacted in a manner not common to the general public.¹⁷ Further, the Texas Court of Appeals has upheld TCEQ decisions finding no affected person status when the requesters lived more than 3 miles¹⁸ and 1.3 miles¹⁹ away from proposed facilities.

CWA does not give the distance each Member lives from the proposed facility, but rather notes that each of the three Members resides in Houston, Texas. CWA makes no claim that any of its three Members own real property adjacent to, or any legal right to property, nearer to the proposed facility than the addresses provided in Houston. CWA not only fails to include the distances between its Members and the proposed facility, but entirely omits an address for Mr. Topek. Such omissions fall short of the "specific, written statement" required by TCEQ rules for

¹⁶ 30 TEX. ADMIN. CODE § 55.201(d)(2); *see also* *Sierra Club v. Tex. Comm'n on Env'tl. Quality*, 455 S.W.3d 214, 224 (Tex. App.—Austin 2014, pet. denied).

¹⁷ *See, e.g.*, An Order Concerning the Application by Southwestern Electric Power Company for Renewal and Amendment to TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD (Dec. 10, 2012).

¹⁸ *Sierra Club v. Tex. Comm'n on Env'tl. Quality*, 455 S.W.3d 214, 224 (Tex. App.—Austin 2014, pet. denied).

¹⁹ *Collins v. Tex. Nat. Res. Conservation Comm'n*, 94 S.W.3d 876, 883 (Tex. App.—Austin 2002).

describing a requestor's location.²⁰ Without this information, CWA's Request is facially deficient, and should be denied. Nonetheless, CCID1 has found the address on file for Mr. Topek with the Harris County Appraisal Property records, and has used that address, as well as those provided by CWA for Dr. Jandhyala and Mr. Chandler, to calculate the distance between each residence and the proposed facility.²¹

Based on their respective addresses, Dr. Jandhyala and Mr. Topek each is located *over twenty-five miles* away from the proposed facility at inland locations in urban Houston.²² Kathleen Alsup, an experienced environmental consultant and project manager, has provided a sworn affidavit detailing how she calculated the distances between the proposed facility and the addresses provided by CWA.²³ Mr. Chandler, the third Member, is nearly *fifty miles* away, also in Houston.²⁴ Even by a generous estimate, the closest Member to the proposed facility lives more than eight times further away, and more than nineteen times further away than the requesters in *Sierra Club* and *Collins*, each of whom were denied affected person status.²⁵

Moreover, TCEQ's wastewater permit application provides clear guidance on the proximity of persons who may claim that they are likely to be affected by an application. The application instructions require an application to identify and mail notice to those persons who reside within 1 mile downstream of any point of discharge on a river or stream or ½ mile of the

²⁰ See 30 TEX. ADMIN. CODE § 55.201(d)(2).

²¹ See Affidavit of Kathleen Alsup, Exhibit 1.

²² See Residential Map, Exhibit 2.

²³ Affidavit of Kathleen Alsup, Exhibit 1.

²⁴ *Id.*

²⁵ *Sierra Club v. Tex. Comm'n on Env'tl. Quality*, 455 S.W.3d 214, 224 (Tex. App.—Austin 2014, pet. denied); *Collins v. Tex. Nat. Res. Conservation Comm'n*, 94 S.W.3d 876, 883 (Tex. App.—Austin 2002). This estimate assumes that the closest Member resides exactly 25 miles away from the proposed facility, even though each Member lives beyond the 25-mile radius marker. See Residential Map, Exhibit 2.

point of discharge for a discharge into a tidally influenced water body like that here.²⁶ No member of CWA owns property on any water course or tidally influenced water body, much less one that meets this requisite closeness to be possibly affected.²⁷

Thus, given the considerable distance between the closest Member and the proposed facility, and because each Member resides inland, and not on any water course, none of the Members will be adversely affected by the proposed application for WWTP#2 at all, and certainly not in a manner that is not common to the general public.²⁸

ii. *Members' Recreational Interests are Insufficient for Affected Person Status*

An association may request a contested case hearing only if, among other requirements, one or more members of the association would otherwise have standing to request a hearing in their own right.²⁹ When the claimed injury is one of recreational interest, Texas case law makes clear that standing is not conferred without an interest in property affected by the challenged action.³⁰ To be granted affected person status, the contested permit must have more than a “minimal effect on . . . health, safety, use of property, and use of natural resources.”³¹ Further, an injury cannot simply be speculative, but instead must be “concrete, particularized, actual or imminent.”³² Finally, the Commission has found that recreational interests that occur more than

²⁶ See Texas Commission on Environmental Quality, Instructions for Completing the Industrial Wastewater Permit Application, at 34, available at https://www.tceq.texas.gov/permitting/wastewater/industrial/TPDES_industrial_wastewater_steps.html.

²⁷ Notably, none of CWA's Members are included in the Application's mailing list of affected landowners. See New TPDES Wastewater Permit Application for WWTP#2 Chambers County Improvement District No. 1; CN 600741532; RN 104788914, at 32.

²⁸ See TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

²⁹ 30 TEX. ADMIN. CODE § 55.205(a)(1).

³⁰ *Save Our Springs All. v. City of Dripping Springs*, 304 S.W.3d 871, 880 (Tex. App.—Austin 2010).

³¹ *Tex. Comm'n on Env'tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App.—Austin 2014).

³² *Tex. Disposal Sys. Landfill, Inc. v. Tex. Comm'n on Env'tl. Quality*, 259 S.W.3d 361, 363 (Tex. App.—Amarillo 2008) (citing *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304–05 (Tex. 2008)).

four miles downstream from the nearest permitted outfall are “common to members of the general public” and not sufficient to confer affected person status.³³

Here, the Members claimed recreational interests are insufficient to confer affected person status for three reasons: (1) the Members have no property that would be affected by the proposed action; (2) any impact on health, safety, use of property, or use of natural resources caused by the proposed action would be minimal at the point of discharge, and effectively non-existent, and thus speculative, at the areas of the Members’ claimed recreational interests; and (3) Members’ interests are common to members of the general public, in part because of how far away Members’ recreation takes place from the proposed Outfall.

In its Request, CWA does not even assert that any of its three Members has property that will be affected by the granting of the Permit. Even if this is implied, as discussed above, each Member owns and resides on property substantially too far away from the facility and the Outfall for it to be affected. The Third Court of Appeals has held that “[t]here is no Texas authority for the proposition that . . . injury to [a requestor’s] members’ environmental, scientific, and recreational interests generally and without any interest in or connection to the real property involved—is the type of interference with a legally protected interest or injury that confers standing as a matter of state law.”³⁴ In doing so, the *Save Our Springs* court clarified prior case law which environmental groups have attempted to cite for the proposition that a recreational interest need not be accompanied by an injury to real property to confer standing in Texas: “the type of harm that can constitute an injury in fact for purposes of standing in [that prior case] was

³³ An Order Concerning the Application by Southwestern Electric Power Company for Renewal and Amendment to TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD (Dec. 10, 2012).

³⁴ *Save Our Springs All.*, 304 S.W.3d at 882.

coupled with the determination that the [] member’s ‘riparian ownership alone sufficiently distinguishes [his] injury from that of the public at large.’”³⁵

This strong statement from the Texas courts bears greatly on the Commission’s affected person determination – without an attached property interest, a generalized recreational interest standing alone is insufficient to confer standing.

Further, any adverse impact on Members’ professed recreational interests and use of natural resources is speculative given the record before the Commission. Members identify interests such as fishing, kayaking, oyster harvesting, wading, boogie boarding, and boating, all at locations at least ten miles from the point of discharge, and some at distances greater than fifty miles from the point of discharge. For example, Dr. Jandhyala most recently kayaked and fished in the waters in Kemah, Texas, which is over ten miles away from the proposed outfall, while Mr. Topek’s fishing, wading, and boogie boarding at Surfside Beach is more than fifty miles from the proposed outfall.³⁶ Other professed interests include recreating at Crystal Beach (over twenty miles away) and Terramar Beach (over twenty-five miles away).³⁷ Lastly, CWA makes vague references to recreation in Galveston Bay, which itself covers 384,000 acres.³⁸ Given that the record shows that the effluent from WWTP#2 will be protective of contact recreation, high aquatic life use, and oyster waters at the point of discharge, it will likewise be protective at the distant locations identified by CWA. TCEQ has determined that these “existing water quality uses *will not be impaired* by this permitting action” and that “existing use” in Upper Galveston Bay “*will be maintained and protected*”.³⁹ Thus, the very recreational interests claimed by Members are not

³⁵ *Id.* at 879 (quoting *Texas Rivers Protection Ass’n v. Tex. Nat. Res. Conservation Comm’n*, 910 S.W.2d 147, 151 (Tex. App—Austin 1995)).

³⁶ Affidavit of Kathleen Alsup, Exhibit 1; Recreational Map, Exhibit 3.

³⁷ Affidavit of Kathleen Alsup, Exhibit 1; Recreational Map, Exhibit 3.

³⁸ Galveston Bay Estuary Program, *Galveston Bay 101*, Texas Commission on Environmental Quality, last visited Mar. 17, 2023, <https://gbep.texas.gov/galveston-bay-101/>.

³⁹ Executive Director’s Response to Public Comment at 2 (emphasis added).

impaired at all by the Permit, even at the point of discharge into Segment No. 2421. As the Commission has detailed in prior proceedings involving the discharge of pollutants into a watercourse, as any pollutant is washed downstream, it will be assimilated and diluted into the waterbody, lowering even further any impacts on downstream uses as compared to those at the discharge point.⁴⁰ Thus, any alleged impact on the Members' recreational interests is speculative at best, which simply is "not enough."⁴¹

Lastly, Members' recreational interests, which are not impaired to begin with, are also common to the general public, and thus cannot be the basis for affected person status. In *Application of Southwestern Electric Power Company for Renewal and Major Amendment of TPDES Permit No. WQ0002496000*, TCEQ denied hearing requests submitted by Sierra Club and Public Citizen on a TPDES permit based on a recommendation by the State Office of Administrative Hearings that the requestors failed to prove that at least one of their members was an affected person entitled to party status because the requestors' claimed recreational interests were "indistinguishable from those common to the general public and fail to demonstrate a personal justiciable interest as required to establish affected person status."⁴² Specifically, TCEQ found that two members did not qualify for party status.⁴³ The first member, Richard LeTourneau, at his closest point to the power plant, "recreate[d] . . . approximately 10 miles from the nearest

⁴⁰ See *Tex. Comm'n on Env'tl. Quality v. City of Waco*, 413 S.W.3d 409, 418 (Tex. 2013) (citing the Commission's factual determination that "any phosphorus or pollutants the dairy did contribute would be 'assimilated' or 'diluted' as they washed downstream so as to have no ultimate impact on [downstream uses]").

⁴¹ *Tex. Disposal Sys. Landfill v. Tex. Comm'n on Env'tl. Quality*, 259 S.W.3d 361, 363 (Tex. App.—Amarillo 2008); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992) (holding that an injury that may be felt "some day" is "simply not enough").

⁴² See An Order Concerning the Application by Southwestern Electric Power Company for Renewal and Amendment to TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD (Dec. 10, 2012); Proposal for Decision, Application of Southwestern Electric Power Company for Renewal and Major Amendment of TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD, 2012 WL 3775912 at *9 (Aug. 21, 2012).

⁴³ An Order Concerning the Application by Southwestern Electric Power Company for Renewal and Amendment to TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD (Dec. 10, 2012).

outfall.”⁴⁴ The second member, Thomas Rosborough, owned two pieces of property near the power plant: a river property Mr. Rosborough used for recreation which was “located approximately four miles south” of the power plant, and a ranch property “located a few miles west of the river property.”⁴⁵ The waterbodies on which these members recreated were “used daily by the general public for the same recreational uses as those engaged in by [the members]” and thus were common to the general public.⁴⁶

Much like the finding in the *Southern Electric Power Company* proceeding, CWA’s Members’ interests in recreating in and near Galveston Bay are common to the general public. First, over five million people live in the five counties that surround Galveston Bay.⁴⁷ Beyond locals, *millions* of people visit the Galveston Bay watershed every year “to take advantage of its fishing and ecotourism opportunities.”⁴⁸ CWA’s Members are just three of these millions of individuals who utilize Galveston Bay for recreation. This is exponentially more than the “thousand or more people [who] use the Sabine River for recreation annually,” which was a large enough number to warrant a finding that the interest was common to the general public in the *Southwestern Electric* case.⁴⁹ By sheer volume alone, CWA’s Members’ asserted interest is far too common to the general public to be the basis for conferring affected person status.

CWA’s Members’ asserted recreational interests are not enough to sustain a finding of affected person status. The recreation is not accompanied by an injury to real property, the claimed

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ THE GALVESTON BAY PLAN, 2ND EDITION: THE COMPREHENSIVE CONSERVATION AND MANAGEMENT PLAN FOR THE GALVESTON BAY ECOSYSTEM 12.

⁴⁸ *Id.* at 100.

⁴⁹ An Order Concerning the Application by Southwestern Electric Power Company for Renewal and Amendment to TPDES Permit No. WQ0002496000, TCEQ Docket No. 2011-2199-IWD (Dec. 10, 2012).

recreational interests are explicitly noted to not be impaired by the Draft Permit, and the claimed recreational interests are common to members of the general public.

Therefore, because CWA has failed to show that any of its Members have affected person status, CWA has not met the requirements to be granted a contested case hearing, and its request should be denied.

IV. Clean Water Action's Request for Reconsideration Should Be Denied

CWA's request for reconsideration of the Executive Director's decision should also be denied. As its request for reconsideration, CWA simply reiterates the concerns that CWA submitted as comments on this Application on September 6, 2022. In fact, in many instances CWA simply copy-pasted its comments from September 6, without adding additional facts, legal arguments, or support for its positions. TCEQ's rules require that a request for reconsideration "give reasons why the decision should be reconsidered."⁵⁰ CWA has not done this.

Every single issue raised by CWA in its Request was adequately and fully addressed in the Executive Director's November 21, 2022 Response to Public Comments, by the terms of the Draft Permit, by the Application itself, or by some combination of these three. None of the issues raised by CWA should cause the Commission to reconsider CCID1's Draft Permit.

a. The proposed discharge will not adversely impact water quality.

CWA first claims that the Draft Permit "has not been demonstrated to contain conditions that will ensure preservation of" the designated uses for the Segment of the Bay where Applicant will discharge its effluent. More specifically, CWA claims there is no indication that the Total

⁵⁰ 30 TEX. ADMIN. CODE § 55.201(e).

Maximum Daily Load (“TMDL”) was considered, and that no demonstration was made to show the Permit is compliant with Tier 2 review requirements.⁵¹ These claims are demonstrably untrue.

The ED’s Response to Comments notes the WWTP#2 is located in an area covered by the waste load allocations requirement of the TMDL, and that the proposed limits in the Permit for *Enterococci* “are consistent with the requirements of the TMDL.”⁵² Additionally, a Tier 2 antidegradation review was conducted in accordance with the requirements of TCEQ regulations.⁵³ For a Tier 2 review, it must be shown that “[n]o activities subject to regulatory action that would cause degradation of waters that exceed fishable/swimmable quality are allowed unless it can be shown to the commission’s satisfaction that the lowering of water quality is necessary for important economic or social development.”⁵⁴ TCEQ’s Tier 2 reviews showed that no significant degradation was expected in Upper Galveston Bay, and that existing uses will be maintained and protected.⁵⁵ Because there is no degradation, economic or social development considerations are irrelevant.

b. The proposed discharge has been demonstrated to be consistent with the Coastal Management Program.

CWA also claims that the Permit is not consistent with the Texas Coastal Management Program (“TCMP”), and that issuance of the Permit would interfere with the nearby coastal zone for recreational purposes. On the contrary, the Executive Director explicitly listed the goals of the TCMP, such as protecting the coastal natural resource areas and allowing for economic development, and determined that issuing the Permit was in line with those goals.⁵⁶ The terms and

⁵¹ Request for Contested Case Hearing and Request for Reconsideration on Application by Chambers County Improvement District No. 1 for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005341000 at 2, 3.

⁵² Executive Director’s Response to Public Comment at 8.

⁵³ See 30 TEX. ADMIN CODE § 307.5(b)(2).

⁵⁴ *Id.*

⁵⁵ Executive Director’s Response to Public Comment at 2.

⁵⁶ Executive Director’s Response to Public Comment at 14–15.

the Permit would provide the necessary protection for the coastal area, and a driving purpose of WWTP#2 is to be able to provide necessary treatment for the anticipated economic and business growth in the area.

Further, as demonstrated above, impacts the issuance of this Permit will have on recreational interests are non-existent.

c. The Draft Permit has been demonstrated to contain adequate monitoring requirements.

CWA claims that there has been no demonstration that sufficient monitoring of separate treated waste streams exists and that the biomonitoring requirements in the Draft Permit are inadequate. These claims too are facially inaccurate.

The ED has stated that conventional, metal, and organic parameters are required to be monitored once per week under the Draft Permit, in line with federal regulations.⁵⁷ Any concern about the “uncertainty” around the exact nature of the waste streams WWTP#2 will accept are also addressed by the ED: “This facility is not in operation and has yet to discharge. . . . [After operations have begun] an amendment may be initiated by WQD staff to include additional effluent limitations or monitoring requirements.”⁵⁸

Because, according to CWA, the utilized species for biomonitoring are “not sufficiently sensitive to reflect the native aquatic environment” the requirements are inadequate.⁵⁹ However, the Draft Permit includes testing for the mysid shrimp and the inland silverside, which are both EPA-approved species for this purpose.⁶⁰

⁵⁷ Executive Director’s Response to Public Comment at 15.

⁵⁸ Executive Director’s Response to Public Comment at 8.

⁵⁹ Request for Contested Case Hearing and Request for Reconsideration on Application by Chambers County Improvement District No. 1 for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005351000 at 3.

⁶⁰ Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision at 8; Executive Director’s Response to Public Comment at 16.

d. WWTP#2 has no need for a cooling water intake structure.

CWA claims that the Executive Director failed to fully respond to CWA's concerns that the Draft Permit does not include adequate requirements related to cooling intake structures. However, the Executive Director plainly addressed this concern, stating that "there is no mention of use of water from any source that would require a cooling water intake structure."⁶¹ It would make little sense for the ED to further elaborate on cooling equipment that will not be used by WWTP#2 because it is not needed. CCID1 provides the water supply to the occupants within its service boundary, and none of these occupants will be using water requiring an intake structure. This is a non-issue from the start.

e. The Draft Permit has been shown to include adequate odor prevention measures.

Lastly, CWA claims that the Draft Permit will not adequately prevent odor. In its comment on this topic, CWA took issue that "the equalization basins are not required to be aerated."⁶² However, as the ED notes, the Application includes ample aeration technology. Specifically, the design of WWTP#2 "will feature multiple aeration tanks in each phase so any single tank can be removed from service for maintenance without losing process integrity."⁶³ The Application likewise specifically addresses odor treatment.⁶⁴ As with all of the issues CWA claims to exist, this request fails to demonstrate any reason that the Commission should reconsider the ED's decision.

⁶¹ Executive Director's Response to Public Comment at 16.

⁶² *Id.*

⁶³ New TPDES Wastewater Permit Application for WWTP#2, Attachment 2-a – Treatment System Component Design.

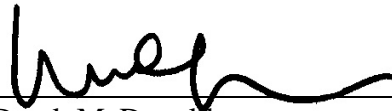
⁶⁴ *Id.*

V. Conclusion and Prayer

For the foregoing reasons, CCID1 respectfully requests that the Commission deny the request for contested case hearing, deny the request for reconsideration, approve the Executive Director's Response to Public Comment, and issue TPDES Permit No. WQ0005341000 as recommended by the Executive Director.

Dated: March 20, 2023

Respectfully Submitted,



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Baker Botts L.L.P.
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Suite 1300
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512.322.2500 (phone)
512.322.2501 (fax)

ATTORNEY FOR CHAMBERS COUNTY
IMPROVEMENT DISTRICT NO. 1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Chambers County Improvement District No. 1's Response to Requests for Contested Case Hearing and Reconsideration has been served on the following counsel/persons by regular U.S. Mail, electronic mail, or with the Chief Clerk, by electronic service on this 20th day of March, 2023.

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

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**FOR ALTERNATIVE DISPUTE
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FOR THE CHIEF CLERK:

via eFilings:

<https://www14.tceq.texas.gov/epic/eFiling/>
Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
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REQUESTER(S):

via electronic mail and U.S. mail:

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A handwritten signature in black ink, appearing to read "Derek R. McDonald", is written above a solid horizontal line.

Derek R. McDonald

TCEQ DOCKET NO. 2023-0322-IWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
CHAMBERS COUNTY	§	
IMPROVEMENT DISTRICT NO. 1	§	ON
FOR TPDES PERMIT NO.	§	
WQ0005341000	§	ENVIRONMENTAL QUALITY

**CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1'S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 1

TCEQ DOCKET NO. 2023-0322-IWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
CHAMBERS COUNTY	§	
IMPROVEMENT DISTRICT NO. 1	§	ON
FOR TPDES PERMIT NO.	§	
WQ0005341000	§	ENVIRONMENTAL QUALITY

AFFIDAVIT OF KATHLEEN ALSUP

STATE OF TEXAS	§
COUNTY OF BRAZOS	§

Before me, the undersigned Notary Public in and for the State of Texas, personally appeared Kathleen Alsup, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Kathleen Alsup. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts in this affidavit are within my personal knowledge and are true and correct.
2. I am a Project Manager with RSJ Consulting. My experience includes more than 40 years of work in environmental services, including experience with all types of media environmental permitting. I have a Bachelor of Science in environmental science from Lamar University.
3. I have prepared this affidavit in support of Applicant Chambers County Improvement District No. 1's ("CCID1") Response to Clean Water Action's ("CWA") Requests for Contested Case Hearing and Reconsideration (the "Request") related to TPDES Permit No. WQ0005341000, which authorizes the discharge from a new wastewater treatment plant ("WWTP#2") in Chambers County, Texas. I have reviewed the Response and the statements of fact in that Response pertaining to CCID1's application for TPDES Permit No. WQ0005341000 are true and correct.
4. As part of my work with CCID1, I am very familiar with the location of WWTP#2 and the surrounding areas. Prior to the preparation of this affidavit, I have visited the area numerous times, I have prepared and reviewed plans for WWTP#2, I have observed the nearest structures to WWTP#2, I prepared the application for TPDES Permit No. WQ0005341000, and I have reviewed numerous maps and satellite images of this location.
5. WWTP#2 will be constructed and operated to service wastewater from on-site industrial processes. CCID1 holds TPDES Permit No. WQ0014661001 for an existing wastewater treatment plant ("WWTP#1") which currently provides for up to 0.98 MGD discharge of treated wastewaters generated within CCID1's service boundary. WWTP#2 will provide

the wastewater treatment services needed for the anticipated business and industrial growth within CCID1's service boundary.

6. I obtained the residential addresses of Dr. Dakshina Jandhyala and Mr. John Chandler from the Request. The residential address for Mr. Kevin Topek was not provided in CWA's Request, only that he lived in Houston, so I obtained the residential address of Mr. Topek from the Harris County Appraisal Property records. I obtained the locations of the Members' recreational interests from CWA's Request.
7. The map at Exhibit 2 shows the residential addresses identified by CWA for Dakshina Jandhyala and John Chandler, and the residential address for Kevin Topek I obtained from the Harris County Appraisal Property records, the three of whom CWA has identified as its members (the "Members"). The background imagery of the map was obtained from Google Earth. I plotted the addresses for each of CWA's identified members. From the proposed outfall for WWTP#2, I imposed circles, each being a specified radius around WWTP#2's outfall. As this map demonstrates, each member identified by CWA resides more than 25 miles away from the outfall at WWTP#2. More specifically, using Google Earth's distance measurement tool, I measured Dr. Jandhyala's residence as 29 miles from the outfall, Mr. Topek's residence as 28 miles from the outfall, and Mr. Chandler's residence as 46 miles from the outfall. Google Earth is an accurate and reliable tool frequently used by environmental professional such as me to identify locations and distances. The information depicted on Exhibit 2 is accurate and reliable as of January 26, 2023.
8. The map at Exhibit 3 shows the recreational interests identified by CWA for its members. The background imagery of the map was obtained from Google Earth. I plotted the recreational interests in the area identified by CWA as those areas at which its members recreate. From the proposed outfall for WWTP#2, I imposed circles, each being a specified radius around WWTP#2's outfall. As this map demonstrates, each identified recreational interest of a CWA Member is at least 10 miles away from the outfall at WWTP#2. The information depicted on Exhibit 3 is accurate and reliable as of January 26, 2023.

Kathleen Alsap

Sworn and subscribed before me by KATHLEEN ALSAP on this 17 day of March, 2023.



Sean Degenhart

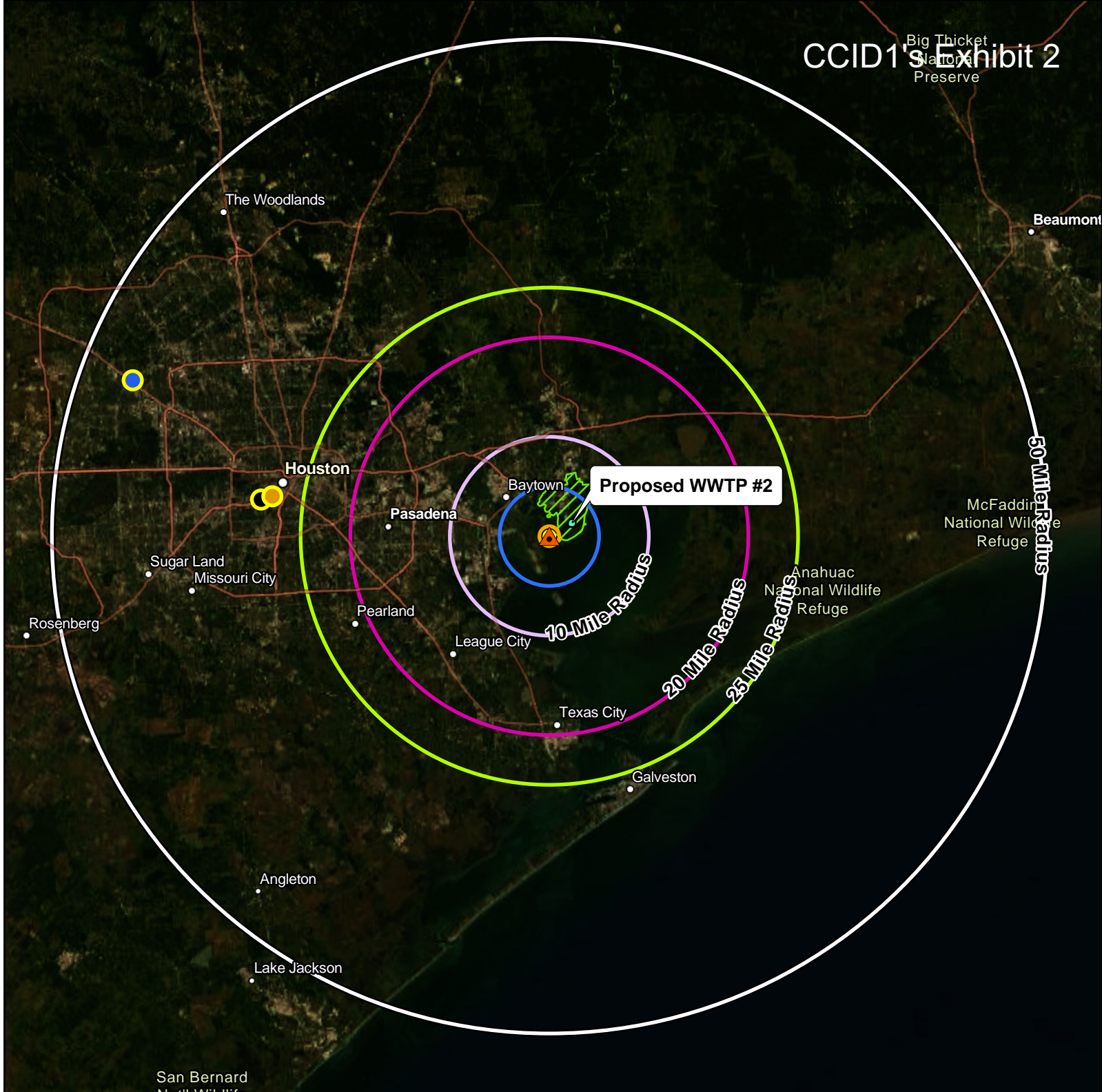
Notary Public in and for the State of Texas
My commission expires: 04/17/2025

TCEQ DOCKET NO. 2023-0322-IWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
CHAMBERS COUNTY	§	
IMPROVEMENT DISTRICT NO. 1	§	ON
FOR TPDES PERMIT NO.	§	
WQ0005341000	§	ENVIRONMENTAL QUALITY

**CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1'S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 2






Legend


 CPNID Service Boundary


 Proposed WWTP # 2 Outfall


 Proposed WWTP # 2

Affected Parties Address

-  Dakshina "Mbody" Jandhyala, PhD (1909 Branard St, Houston, TX 77098)
-  Kevin Topek (708 Kipling St, Houston, TX 77006)
-  John "Trey" Chandler (15840 FM 529, Houston, TX 77095)


 1/2 Mile Radius

 1 Mile Radius

 5 Mile Radius

 10 Mile Radius

 20 Mile Radius

 25 Mile Radius

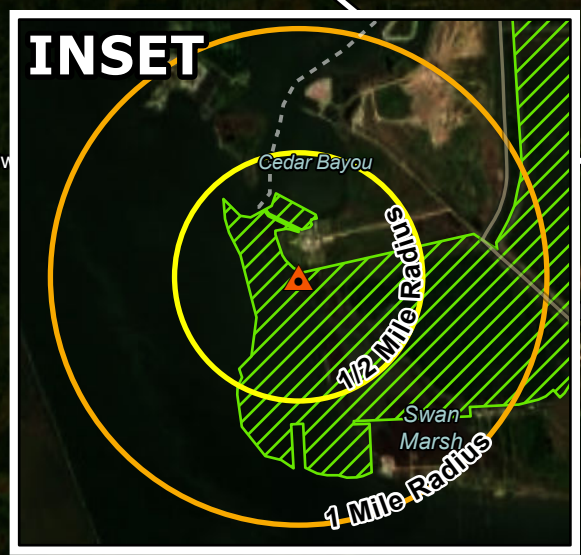
 50 Mile Radius

TCEQ DOCKET NO. 2023-0322-IWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
CHAMBERS COUNTY	§	
IMPROVEMENT DISTRICT NO. 1	§	ON
FOR TPDES PERMIT NO.	§	
WQ0005341000	§	ENVIRONMENTAL QUALITY

**CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1'S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 3



Legend

- CPNID Service Boundary
- Proposed WWTP #2 Outfall
- Proposed WWTP #2
- 1/2 Mile Radius
- 1 Mile Radius
- 5 Mile Radius
- 10 Mile Radius
- 20 Mile Radius
- 25 Mile Radius
- 50 Mile Radius

1 - Dakshina "Moody" Jandhyala, PhD: In addition to general allegations, states specifically that most recently he kayaked and fished in the waters in the Kemah, Texas area.

2 - Kevin Topek: In addition to general allegations, states that he consumes oysters from the waters of Galveston Bay from the coast of Bacliff, Texas, and also harvests healthy oyster shells; uses the waters of Galveston Bay for fishing, wading, and boogie boarding on Crystal Beach, Terramar Beach, and Surfside Beach.

3 John "Trey" Chandler: Only general allegations that he has fished in the waters of Galveston Bay.

0 3.5 7 Miles
1" = 7 Miles
1:443,800