

TCEQ DOCKET NO. 2023-0325-MWD

APPLICATION BY	§	BEFORE
HARRIS COUNTY MUNICIPAL	§	THE TEXAS
UTILITY DISTRICT NO. 171 FOR	§	COMMISSION ON
TPDES PERMIT NO. WQ0016052001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by Harris County Municipal Utility District No. 171 (Applicant) for a Major Amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015264001, authorizing an increase in the flow of treated domestic wastewater (effluent) from a daily average flow in Interim Phase I of 0.25 million gallons per day (MGD), to an annual average flow not to exceed 1.0 MGD. From a daily average flow in Interim Phase II of 0.25 MGD, to an annual average flow not to exceed 2.0 MGD. From a daily average flow in Interim Phase III of 0.50 MGD, to an annual average daily flow of 2.9 MGD, and from an annual average flow in the Final Phase of 1.0 MGD, to an annual average flow of 3.0 MGD. Christopher and Donnisha Spicer, James Donnelly, and Gregory Johnston all filed timely requests (Requests) for a Contested Case Hearing (Hearing).

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map

III. DESCRIPTION OF THE FACILITY, DISCHARGE ROUTE, AND THE EXECUTIVE DIRECTOR’S TECHNICAL REVIEW

The Applicant’s Wastewater Treatment Facility, the Nash FM 529 Facility (529 facility) serves the Applicant’s service area, is located approximately 3,000 feet southwest of the intersection of Beckendorf Road and Peek Road, in Harris County, Texas 77493, and is an activated sludge process plant operated in the extended aeration mode. Treatment units in Interim Phase I include a bar screen, five aeration basins, three final clarifiers, five sludge digesters, five chlorine contact basins, and a dechlorination basin. Treatment units in Interim Phase II phase includes a bar screen, seven aeration basins, three final clarifiers, six sludge digesters, five chlorine contact basins, and a dechlorination basin. Treatment units in the Interim III phase will include a bar screen, eight aeration basins, four final clarifiers, eight sludge digesters, and six chlorine contact basins, and a dechlorination basin. Treatment units in the Final phase will include a bar screen, five aeration basins, two final clarifiers, four sludge digesters, two chlorine contact basins, and a dechlorination basin. The facility is operating in the Interim I phase. The route of the proposed discharge is to a detention basin, then to Harris County Flood Control District (HCFCD) ditch U101-00-00 (South Mayde Creek), then to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin.

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) section (§) 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 (detention basin), according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS) and the TCEQ's *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010* (IPs).

The unclassified receiving water uses, the designated uses, and the dissolved oxygen criterion for the receiving waters of the discharge route, according to Appendix A of 30 TAC § 307.10 (TSWQS), is limited aquatic life use and 3.0 mg/L Dissolved Oxygen (DO) for the detention basin; minimal aquatic life use and 2.0 mg/L DO for the South Mayde Creek HCFCD ditch; and primary contact recreation, limited aquatic life use, and 3.0 mg/L DO for Buffalo Bayou Above Tidal in Segment No. 1014. Through his Technical Review, the ED provides 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 the goal of the Technical Review to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ's IPs.

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 a "Continuously Stirred Tank Reactor" (CSTR) model.

The first component of the ED's Technical Review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. 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 Major Amendment applications for discharges, the Standards Team performs an antidegradation analysis of the proposed discharge per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs. 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.

Correspondingly, the Tier 1 review determined 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 the detention basin, an unclassified waterbody, had a limited aquatic life use, with 3.0 mg/L Dissolved Oxygen (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 the detention basin, an unclassified waterbody, has only a limited aquatic life use, a Tier 2 antidegradation review was not performed.

The second component of the ED's Technical Review involved WQD staff on the Modeling Team performing water quality modeling using CSTR model. CSTRs are widely used in WWTFs to reduce the organic matter and microorganism present in sludge by anaerobic digestion. CSTRs are used in ponds, impoundments, reservoirs, or portions of larger open water bodies when the geometry of the water body makes the use of other models questionable, because CSTRs have effective mixing and perform under steady state with uniform properties. CSTRs are most commonly used in industrial processing, primarily in homogeneous liquid-phase flow reactions where constant agitation is required and involve a reaction tank in which reagents, reactants and often solvents flow into the reactor while the product of the reaction concurrently exits the tank. In this manner, the tank reactor is considered to be a valuable tool for continuous chemical processing.

In this context, the CSTR model is a standard analytical tool used for dissolved oxygen analyses at the TCEQ for the type of receiving waters in this case, and procedures for its use in the analysis of discharge applications have been established and are readily available.

The proposed permit's water quality-related effluent limits, established by WQD staff's CSTR modeling results, 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 model results, the following effluent limits are predicted to be necessary to maintain the DO levels above the criterion stipulated by the Standards Implementation Team for the detention basin (3.0 mg/L DO):

Interim I phase	(1.0 MGD):	10 mg/L CBOD ₅ , 2 mg/L NH ₃ -N, and 6 mg/L DO
Interim II phase	(2.0 MGD):	10 mg/L CBOD ₅ , 2 mg/L NH ₃ -N, and 6 mg/L DO
Interim III phase	(2.9 MGD):	7.0 mg/L CBOD ₅ , 2 mg/L NH ₃ -N, and 6 mg/L DO
Final Phase	(3.0 MGD):	5.0 mg/L CBOD ₅ , 2 mg/L NH ₃ -N, and 4 mg/L DO

Coefficients and kinetics used in the model are a combination of site-specific, standardized default, and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

In all phases of the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per week by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Additionally, in all phases of the proposed permit, the effluent must contain a chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and must be monitored daily by grab sample at each chlorine contact chamber. The Applicant must dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual and must monitor chlorine residual daily by grab sample after the dechlorination process. An equivalent method of disinfection may be substituted only with prior approval of the Segment No. 1014 is not currently listed on the State's inventory of impaired and threatened waters (the 2020 Clean Water Act § 303(d) list).

Eighteen Total Maximum Daily Loads for Bacteria in Buffalo and Whiteoak Bayous and Tributaries Segments 1013, 1013A, 1013C, 1014, 1014A, 1014B, 1014E, 1014H, 1014K, 1014L, 1014M, 1014N, 1014O, 1017, 1017A, 1017B, 1017D, and 1017E (TMDL Project No. 22) has been approved for Segment No. 1014. The TMDL project *Fourteen Total Maximum Daily Loads for Nickel in the Houston Ship Channel System* (TMDL Project No.1) has been withdrawn and is no longer applicable.

The proposed permit's pretreatment requirements are based on TPDES regulations contained in 30 TAC Chapter 305, which references 40 Code of Federal Regulations (CFR) Part 403, "General Pretreatment Regulations for Existing and New Sources of Pollution" [rev. *Federal Register/ Vol. 70/ No. 198/ Friday, October 14, 2005/ Rules and Regulations, pages 60134-60798*]. The permit includes specific requirements that establish responsibilities of local government, industry, and the public to implement the standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate the sewage sludge. This permit has appropriate pretreatment language for a facility of this size and complexity.

The discharge from the proposed permit is not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. 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 watersheds of critical concern or high priority 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. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

IV. PROCEDURAL HISTORY

The TCEQ received the application on August 25, 2021, and declared it administratively complete on November 18, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Harris County, Texas in English in the *Houston Chronicle* on December 4, 2021, and in Spanish in *Houston Chronicle dba La Voz* on December 8, 2021. The ED completed the technical review of the application on March 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the 529 facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Chambers County, Texas in English in the *Houston Chronicle* on August 6, 2022, and in Spanish in *Houston Chronicle dba La Voz* on August 10, 2022. The public comment period ended on September 9, 2022, the ED's Response to Public Comment (RTC) was

filed on November 29, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 4, 2023. 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.

V. 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/>
- 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 by sending an email to the following address: complaint@TCEQ.texas.gov

Commission records for the 529 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 at Navasota Public Library located at 1411 East Washington Avenue, Navasota, Texas 77868, 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 529 facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 12) in Houston, TX at (713) 767-3500 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the seventh bullet point in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the 529 facility is out of compliance with TCEQ rules, enforcement actions may arise.

VI. EVALUATION OF HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission’s consideration of hearing requests (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public

comment and the commission's consideration of Requests. This application was declared administratively complete on March 23, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709

A. LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS

“The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests”¹

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

B. HEARING REQUEST REQUIREMENTS

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;

¹ 30 TAC § 55.209(d).

² *Id.* at § 55.209(e).

³ 30 TAC § 55.201(c).

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.⁴

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁵
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and

⁴ *Id.* at § 55.201(d).

⁵ 30 TAC § 55.203(a)-(c).

- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁶

D. REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.”⁷ “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.”⁸

VII. ANALYSIS OF THE HEARING REQUESTS

For this permit application the relevant public comment period ended on September 9, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 4, 2023. The ED’s analyses determined whether the Requests followed TCEQ rules, if the requestors qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

A. WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).

1. **Christopher and Donnisha Spicer (the Spicers)** filed timely, written Requests that provided the requisite contact information, raised issues that form the basis of their Requests in timely comments not withdrawn before the RTC was filed, and requested a hearing.

The Spicers’ Requests complied with 30 TAC §§ 55.201(c), and (d) because they effectively identified a personal justiciable interest in a written explanation plainly describing why the Spicers believe they will be affected by the application in a way not common to the public. The Spicers’ Requests stated they live in proximity to the 529 facility and raised issues related to odors, increased pests, the quality of the proposed discharge and its impacts to the Spicers’ health and safety, their water wells, their crops, and their farm animals that drink from their stock pond.

The ED recommends finding that the Requests of the Spicers substantially complied with 30 TAC §§ 55.201(c) and (d).

2. **James Donnelly** filed timely, written Requests that provided the requisite contact information, raised issues that form the basis of his Requests in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Donnelly’s Requests complied with 30 TAC §§ 55.201(c), and (d) because they effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Donnelly believes he will be affected by the application

⁶ *Id.* at § 55.203(d).

⁷ 30 TAC § 50.115(b).

⁸ *Id.* at § 55.203(d).

in a way not common to the public. Mr. Donnelly's Requests stated he lives in proximity to the 529 facility and raised issues related to foul odors.

The ED recommends finding that the Requests of James Donnelly substantially complied with 30 TAC §§ 55.201(c) and (d).

3. **Gregory Johnston** filed a timely, written Request that provided the requisite contact information, raised issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Johnston's Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Johnston believes he will be affected by the application in a way not common to the public. Mr. Johnston's Request stated he lives in proximity to the 529 facility and raised issues related to foul odors.

The ED recommends finding that the Request of Gregory Johnston substantially complied with 30 TAC §§ 55.201(c) and (d).

B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203.

1. **Christopher and Donnisha Spicer (the Spicers)** filed Requests that effectively identified a personal, justiciable interest affected by the application.

The Spicers' Requests stated that the 529 facility is in proximity to their home, which according to the GIS map prepared by the ED's staff is only 0.61 linear miles from the 529 facility and its discharge point. This increases the likelihood that the Spicers will be affected in a way not common to the general public. The Spicers Request raised relevant issues to a decision on the application, including whether the 529 facility and its discharge will adversely affect the Spicers' health and safety, their water wells, their crops, and their farm animals that drink from their stock pond.

The Spicers' proximity, which was explained briefly and specifically, in plain language in their Requests, and their concerns related to odors, possible adverse effects on human health, surface and groundwater quality and their animals from the 529 facility and its discharge, are issues related to the interests of the requestors, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood the Spicers may be personally affected in a way not common to the general public.

The ED recommends that the Commission find that Christopher and Donnisha Spicer are Affected Persons under 30 TAC § 55.203.

2. **James Donnelly** filed Requests that effectively identified a personal, justiciable interest affected by the application.

Mr. Donnelly's Requests stated that the 529 facility is in proximity to his home, which according to the GIS map prepared by the ED's staff is only 0.65 linear miles from the 529 facility and its discharge point. This increases the likelihood that Mr. Donnelly will be affected in a way not common to the general public. Mr. Donnelly's Requests raised relevant issues to a decision on the application, including whether the 529 facility and its discharge will continue to cause foul odors.

Mr. Donnelly's proximity, which was explained briefly and specifically, in plain language in his Requests, and his concerns related to more foul odors from the 529 facility is an issue related to the interests of the requestor, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood Mr. Donnelly will be personally affected in a way not common to the general public.

The ED recommends that the Commission find that James Donnelly is an Affected Person under 30 TAC § 55.203.

- 3. Gregory Johnston** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Mr. Johnston's Request stated that the 529 facility is in proximity to his home, which according to the GIS map prepared by the ED's staff is only 0.57 linear miles from the 529 facility and its discharge point. This increases the likelihood that Mr. Johnston will be affected in a way not common to the general public. Mr. Donnelly's Requests raised relevant issues to a decision on the application, including whether the 529 facility and its discharge will continue to cause foul odors.

Mr. Johnston's proximity, which was explained briefly and specifically, in plain language in his Requests, and his concerns related to more foul odors from the 529 facility is an issue related to the interests of the requestor, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood Mr. Johnston will be personally affected in a way not common to the general public.

The ED recommends that the Commission find that Gregory Johnston is an Affected Person under 30 TAC §§ 55.203.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

The Spicers', Mr. Donnelly's, and Mr. Johnston's Requests raised the issues below.

1. Whether the draft permit will protect human health and the environment.

(RTC Response No. 1) These are issues of fact. If it can be shown that these issues are factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes these issues are relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer these issues.

2. Whether the draft permit will protect surface and groundwater quality.

(RTC Response No. 1) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

3. Whether the draft permit will protect animal life.

(RTC Response No. 1) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

4. Whether the draft permit's nuisance odor controls comply with TCEQ rules.

(RTC Response No. 3) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

5. Whether flooding in South Mayde Creek will worsen due to the greater volume of discharge from the 529 facility.

(RTC Response No. 2) This is an issue of fact; however, the TCEQ has no statutory authority to consider flooding in the wastewater permitting process.

The ED concludes this issue is not relevant and material, and if this case is referred to SOAH, the ED recommends the Commission not refer this issue.

6. Whether the draft permit will prevent noise from becoming nuisance to nearby landowners.

(RTC Response No. 7) This is an issue of fact; however, the TCEQ has no statutory authority to consider noise in the wastewater permitting process.

The ED concludes this issue is not relevant and material, and if this case is referred to SOAH, the ED recommends the Commission not refer this issue.

IX. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

X. REQUESTS FOR RECONSIDERATION

The Spicers filed a timely Request for Reconsideration (RFR). However, the RFR failed to raise any new information for the ED to analyze. Therefore, the ED recommends denying the RFR.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Christopher and Donnisha Spicer, James Donnelly, and Gregory Johnston are affected persons under 30 TAC §§ 55.203.
2. Grant the Requests of Christopher and Donnisha Spicer, James Donnelly, and Gregory Johnston.
3. Should the Commission decide to refer this case to SOAH:

- a. refer the case to Alternative Dispute Resolution for a reasonable time; and
- b. refer the identified issues above in section VII. 1.- 4. to SOAH for a contested case hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

XII. CERTIFICATE OF SERVICE

I certify that on March 20, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0015264001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



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

MAILING LIST
Harris County Municipal Utility District No. 171
TCEQ Docket No. 2023-0325-MWD; TPDES Permit No. WQ0015264001

FOR THE APPLICANT

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via eFilings:

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Austin, Texas 78711

**REQUESTER(S)/INTERESTED
PERSON(S)**

See attached list.

REQUESTER(S)

James Donnelly
23918 Stockdick School Rd
Katy, TX 77493-6317

Gregory Johnston
23850 Stockdick School Rd
Katy, TX 77493-6318

Christopher & Donnisha Spicer
23910 Stockdick School Rd
Katy, TX 77493-6317

INTERESTED PERSON(S)

Philip Evan Morris
23934 Stockdick School Rd
Katy, TX 77493-6317

Attachment A

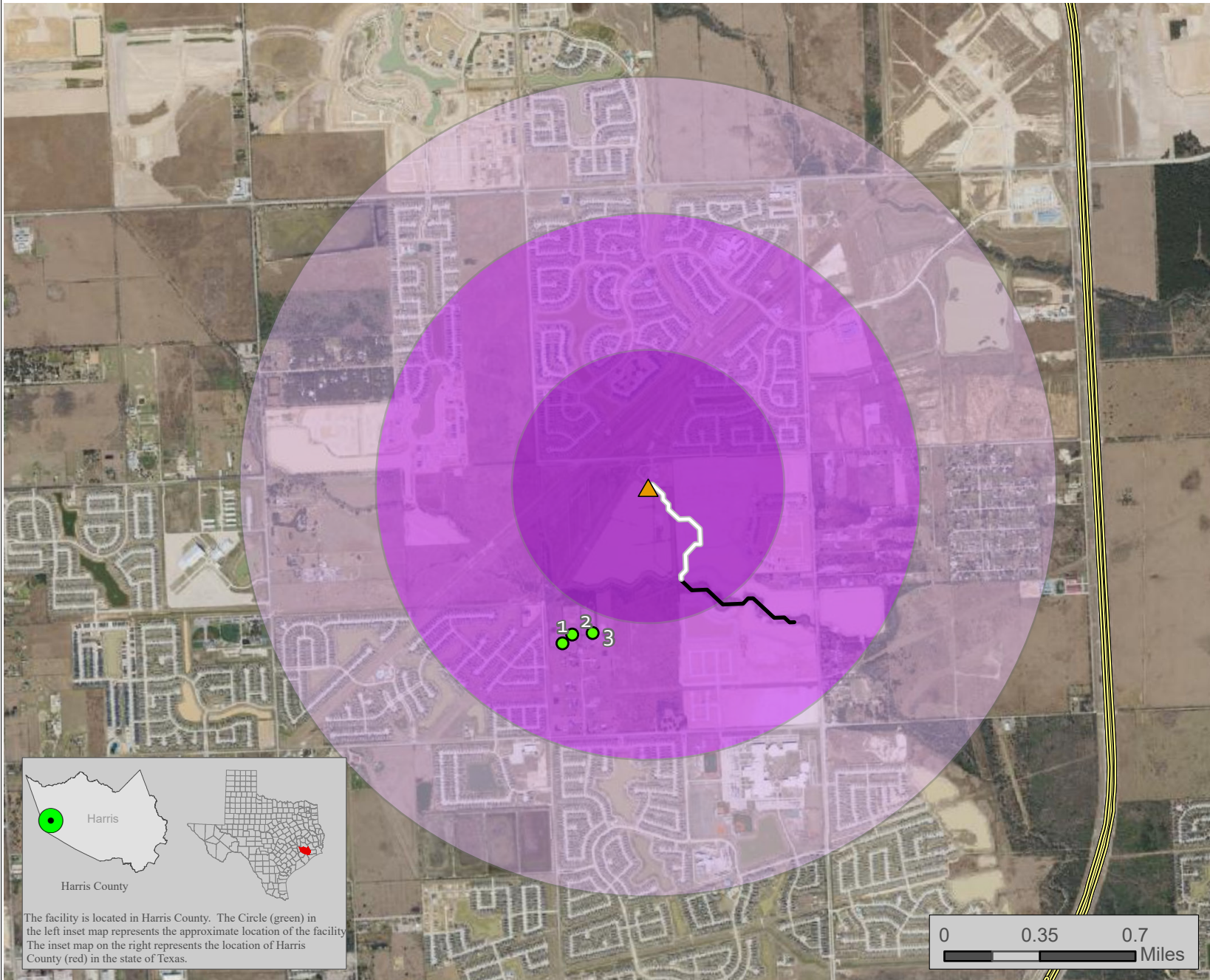
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 171 GIS MAP

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/18/2023
CRF 0083122
Cartographer: jbartlin



- Facility Outfall
- Requestors
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 0.5 Mile Discharge
- 1.0 Mile Discharge

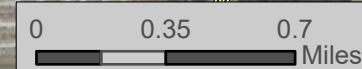
0.65 miles from outfall to
James Donnelly (1)

0.61 miles from outfall to
Christopher and Donnisha
Spicer (2)

0.57 miles from outfall to
Gregory Johnston (3)



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



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

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