

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

October 3, 2022

TO: All interested persons.

RE: MTX Materials, LP
TPDES Permit No. WQ0005337000

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 Montgomery County Memorial Library System – Central Library, 104 Interstate Highway 45 North, Conroe, 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(S)
for
MTX Materials, LP
TPDES Permit No. WQ0005337000**

The Executive Director has made the Response to Public Comment(RTC) for the application by MTX Materials, LP for TPDES Permit No. WQ0005337000 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 (WQ0005337000 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 Montgomery County Memorial Library System – Central Library, 104 Interstate Highway 45 North, Conroe, Texas.

MAILING LIST
for
MTX Materials, LP
TPDES Permit No. WQ0005337000

FOR THE APPLICANT:

Marc Deer, Owner
MTX Materials, LP
7720 Westview Drive
Houston, Texas 77055

Cole Gorka, President of Sales
MTX Materials, LP
19219 Keenan Cut Off Road
Montgomery, Texas 77316

Paige Baker, Environmental Scientist
ESE Partners, LLC
2002 West Grand Parkway North, Suite
140
Katy, Texas 77449

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
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P.O. Box 13087
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Celia Castro, Staff Attorney
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
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Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
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TPDES PERMIT NO. WQ0005337000

APPLICATION BY	§	BEFORE THE
MTX MATERIALS, LP	§	
FOR TPDES PERMIT	§	TEXAS COMMISSION ON
NO. WQ0005337000	§	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 MTX Materials, LP's (Applicant or MTX) application for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005337000, and on the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comments from Dan Bolton, Mike Machala, and the Cook's Branch Conservancy (CBC). This response addresses all timely public comments received, whether or not withdrawn.

If you need 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

Description of Facility

The Applicant has applied to the TCEQ for a new permit which would authorize the discharge of mine dewatering water and stormwater on an intermittent and flow-variable basis via Outfall 001. The Applicant currently operates the MTX 1 Plant, a sand

mining facility, located at 19219 Keenan Cut Off Road, south of the City of Montgomery, in Montgomery County, Texas.

According to the application, the process of sand mining at this site does not generate any wastewater, and the draft permit does not authorize the discharge of domestic wastewater. The facility's operations at the site include extracting sand (digging up sand via excavator or backhoe) from an open pit on the property (sand mining) and then selling/distributing this product to customers. Stormwater is the only discharge from the site. When natural precipitation falls within the open pit, it also has the potential to collect. The facility utilizes a diesel-powered pump as necessary to pump out the collected stormwater from the open pit into a retention pond. Stormwater naturally drains from all other areas of the site into the same retention pond. Stormwater may be discharged off-site via Outfall 001 as necessary. All other operations are equipped with control measures (secondary containment/double walled tanks and loading/unloading connects from above-ground storage tanks (ASTs) with drip pans to collect any potential leaks/spills). No water treatment occurs in the facility.

Effluent limitations are established in the draft permit as follows:

<i>Outfall</i>	<i>Pollutant</i>	<i>Daily Average mg/L</i>	<i>Daily Maximum mg/L</i>
001	Flow	Report MGD	Report MGD
	Chemical oxygen demand (COD)	N/A	150
	Oil and grease	N/A	15
	Nitrate + Nitrite N	N/A	Report
	Total suspended solids (TSS)	25	45
	pH	6.0 SU, minimum	9.0 SU

OUTFALL LOCATION

Outfall	Latitude	Longitude
001	30.316305 N	95.663158 W

The effluent will be discharged via Outfall 001 to an unnamed tributary, then to an unnamed impoundment, then to an unnamed tributary, then to East Edge Lake, then to an unnamed tributary, then to Lake Creek in Segment No. 1015 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, the unnamed impoundment, and East Edge Lake. The designated uses for Segment No. 1015 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. The 2020 Clean Water Act § 303(d) list, the State's inventory of impaired and threatened waters, does not currently list Segment No. 1015.

In accordance with 30 TAC § 307.5 and the June 2010 *Procedures to Implement the Texas Surface Water Quality Standard* (IPs) for the Texas Surface Water Quality Standards (TSWQS), TCEQ staff performed an antidegradation review of the receiving waters. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The discharge from this permit action is not expected to have an effect on 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's) biological opinion on the State of Texas authorization of the 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. This permit does not require EPA review with respect to the presence of endangered or threatened species.

Procedural Background

The TCEQ received the application on November 11, 2021, and declared it administratively complete on January 27, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Conroe Courier* and in Spanish in *La Voz* newspaper on February 16, 2022. The Applicant published a Combined NORI and Notice of Application and Preliminary Decision (NAPD) in English in the *Conroe Courier* and in Spanish in *La Voz* newspaper on May 18, 2022. The combined notice was issued to correct the discharge route described in the NORI. The public comment period ended on June 17, 2022. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and the procedural requirements of 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

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State Website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules and Rulemaking,” then “Current Rules and Regulations,” then “Download TCEQ Rules”);
- for Federal rules in 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; and
- for Federal environmental laws: <https://www.epa.gov/laws-regulations>.

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), until final action is taken. In addition, some documents located in the Office of the Chief Clerk may be located on the Commissioners’ Integrated Database at: <https://www14.tceq.texas.gov/epic/eCID/>. The application for this facility has been available for viewing and copying at the Montgomery County Memorial Library System – Central Library, 104 Interstate Highway 45 North, Conroe, Texas, since publication of the NORI. The draft permit, the Statement of Basis/Technical Summary, and the ED’s Preliminary Decision have been available since publication of the Combined NORI/NAPD.

COMMENTS AND RESPONSES

COMMENT 1:

Dan Bolton stated that there may be factual errors in the permit application. He commented that most of the discharged water is not from stormwater but mainly from an exposed shallow aquifer and that the discharge has been continuing for several

years prior to this application. Dan Bolton also stated that little mitigation has been put in place to limit the amount of silt deposited in the creek and ponds downstream resulting in excavation and removal in the amount of nearly 20 truckloads. Dan Bolton stated that he did not get any responses to previously submitted complaints to the TCEQ. He also commented that most of the pumping occurs during darkness to avoid revealing the amount of silt and sand in the discharge.

RESPONSE 1:

The facility's operations at the site include mining sand (digging up sand via excavator or backhoe) from an open pit on the property and selling/distributing this product to customers. Stormwater is the only discharge from the site. When natural precipitation falls within the open pit, it also has the potential to collect. The facility utilizes a diesel-powered pump as necessary to pump out the collected stormwater from the open pit into a retention pond. Stormwater naturally drains from all other areas of the site into the same retention pond. Stormwater may be discharged off-site via Outfall 001 as necessary. All other operations are equipped with control measures such as secondary containment/double walled tanks and loading/unloading connects from above-ground storage tanks with drip pans to collect any potential leaks and spills.

The proposed draft permit has total suspended solids (TSS) limits of 25 mg/L for the daily average and 45 mg/L for the daily maximum, which are based on 40 CFR Part 436 § 436.42 (a) (4). With these limits, based on best professional judgment (BPJ), the effluent from this discharge is not expected to cause significant accumulation or settling of silt in the creek and downstream pond.

The TCEQ Region 12 Office received a complaint on April 16, 2018, from the commenter alleging a sediment-laden discharge into a creek from the facility and responded by conducting an investigation on April 17, 2018. The Regional Office issued a Notice of Violation (NOV) which states that the facility failed to properly develop and implement a Stormwater Pollution Prevention Plan (SPW3) according to the provisions of the Multi-Sector General Permit (MSGP, TXR050000) it was operating under at that time. Due to the unsatisfactory compliance history classification, the Applicant is no longer eligible to be covered by the MSGP. As a result, the Applicant is going through the more intensive process of applying for an individual stormwater permit that contains more stringent requirements. Once the individual permit is approved, the Applicant will no longer be covered by the administratively continued authorization TXR05DI60 issued May 25, 2017, under the MSGP.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulations by contacting the TCEQ Region 12 Office at 713-767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 2:

Mike Machala was concerned about noise pollution due to dump trucks and dump trailers operating at all times of the day including tandem axle dump trucks that pass through the Hills of Montgomery Subdivision. He also stated that there was dust in his home from air pollution that has been increasing over the years. Mr. Machala

commented that after every major rainfall, dirt has been deposited on Keenan Cut Off Road by dump truck wheels resulting in a buildup of dirt at the plant entrance due to the lack of or non-efficient stormwater pollution prevention plan (SWP3) devices such as stabilized construction exits.

RESPONSE 2:

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out by statute. The wastewater permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ does not consider noise or air borne dust from a facility in determining whether to approve or deny a wastewater permit. Likewise, the TCEQ does not consider dirt deposited on roads by trucks coming from a facility in determining whether to approve or deny a permit. In addition, the TCEQ has no jurisdiction to address trucks passing through a residential subdivision in the wastewater permitting process.

However, the draft permit does not limit the ability of nearby landowners to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property. Landowners may also avail themselves of common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulations by contacting the TCEQ Region 12 Office at 713-767-3500, or by calling the 24-hour

toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

Other Requirement No.5 in the draft permit sets out various duties that a permittee must follow to develop and implement a SWP3 with best management practices (BMPs) to prevent the exposure of pollutants to stormwater, including exposure of dirt or sediment at the site entrance to stormwater. A maintenance program must be developed and implemented to maintain the effectiveness of stormwater structural controls. The SWP3 must identify specific activities, techniques, and schedules for maintenance of stormwater structural controls that ensure continued effective operation of these controls. Maintenance activities must be recorded at a minimum frequency of once per quarter, maintained on site, and be made readily available for inspection by authorized TCEQ personnel upon request. The SWP3 may be modified at any time in order to implement either additional or more effective pollution control measures. A summary of revisions, including the dates of the revisions, shall be maintained on a quarterly basis, maintained as a part of the SWP3 document, and made readily available for inspection by authorized TCEQ personnel upon request.

Qualified personnel who are familiar with the industrial activities performed at the facility must conduct monthly inspections to determine the effectiveness of the measures, programs, and Best Management Practices (BMPs). The results of inspections must be documented in a summary report, include an assessment for any necessary revisions or additional measures to increase effectiveness of the SWP3, and include a

time frame for implementation of any follow-up actions. The summary report must be maintained on site and be made readily available for inspection by authorized TCEQ personnel upon request.

COMMENT 3:

Mike Machala was concerned about the ultimate state of the site. If not filled in, there may be mosquitos and possible illegal dumps of hazardous materials which could affect groundwater quality. If filled, Mr. Machala was concerned about what materials will be allowed to be placed there and their possible effect on groundwater quality and residential water wells.

RESPONSE 3:

Based on the application, the Applicant does not intend to fill in the sand pit. Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the Region 12 Office at 713-767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 4:

Mike Machala commented that the sand mining operation appears to be structural fill soil.

RESPONSE 4:

In its application, MTX represented that the facility is a sand mine, and the ED reviewed the application based on this representation. 40 CFR Part 436, Subpart C,

Construction Sand and Gravel Subcategory, governs the mining and processing of sand and gravel for construction or fill uses. If the draft permit was for mining structural fill soil, the permit would not include TSS limits. The current draft permit is more protective since 40 CFR Part 436 Subpart D, the Industrial Sand Subcategory, governs the mining of sand for uses other than construction or fill and requires TSS limits.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the Region 12 Office at 713-767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 5:

Mike Machala commented that the barium level is much higher than the MAL and slightly higher for both zinc and lead.

RESPONSE 5:

An MAL is the minimal analytical level for a pollutant. Based on 30 TAC § 319.22, the maximum allowable levels in discharges of barium, zinc, and lead for inland waters are 4.0 mg/L, 6.0 mg/L, and 1.5 mg/L respectively. The Applicant submitted concentrations for these pollutants, and they do not exceed the required levels.

COMMENT 6:

Mike Machala commented that it appears from photographs that the discharge is unpermitted.

RESPONSE 6:

Due to an unsatisfactory compliance history classification, the Applicant is no longer eligible to be covered by the MSGP. As a result, the Applicant is going through the more intensive process of applying for an individual stormwater permit that contains more stringent requirements. Once the individual permit is approved, the Applicant will no longer be covered by the administratively continued authorization TXR05DI60 issued May 25, 2017, under the MSGP. Because the Applicant submitted the application for this individual permit prior to the expiration of their authorization under the MSGP, the Applicant is operating under administrative continuance of their MSGP authorization until the individual permit is issued.

COMMENT 7:

Mike Machala commented that the pollutant analysis was performed for heavy metals but not for toxic chemicals such as benzene, toluene, or any pesticides. He stated that the receiving waters collect surface runoff; therefore, he believed that tests should be included for organic toxic chemicals as well as for bacteria due to the potential for groundwater pollution. He was concerned that this could affect himself and most of the other affected landowners that have water wells for potable water.

RESPONSE 7:

Based on 30 TAC 307.8(e), pollution in stormwater must not impair existing or designated uses. Controls on the quality of stormwater discharges must be based on BMPs, technology-based limits, or both in combination with instream monitoring to assess standards attainment and to determine if additional controls on stormwater quality are needed. The application indicates that this facility does not use, store, or generate any materials expected to result in the above-mentioned toxic organic

pollutants. Therefore, testing for those chemicals as part of the application or individual permit is not required.

Based on the application, the facility's operations at the site include sand mining (digging up sand via excavator or backhoe) from an open pit on the property and selling/distributing this product to customers. Stormwater is the only discharge from the site. When natural precipitation falls within the open pit, it also has the potential to collect. The facility utilizes a diesel-powered pump as necessary to pump out the collected stormwater from the open pit into a retention pond. Stormwater naturally drains from all other areas of the site into the same retention pond. Stormwater may be discharged off-site via Outfall 001 as necessary. The application further represents that all other operations are equipped with control measures (secondary containment/double walled tanks and loading/unloading connects from above-ground storage tanks with drip pans to collect any potential leaks/spills).

30 TAC Chapter 311 and the accompanying Guidance Document of *Best Management Practices for Sand Mining Operations in the San Jacinto River Watershed* (RG-555) requires operators, when developing a Mine Plan to understand site drainage, including groundwater, to first check the Texas Water Development Board (TWDB) water well reports data on the TWDB website and the TCEQ water well report viewer to determine if registered public and private drinking water supply wells are nearby. Operators must also perform a visual check for possible unregistered private wells or abandoned wells in the immediate vicinity of the sand and gravel pit. If an unregistered private well or abandoned well is discovered, operators must refer to TCEQ's regulatory guidance *Landowner's Guide to Plugging Abandoned Water Wells* (RG-347) for more information on the necessary actions to take.

The effluent limitations and conditions in the draft permit comply with the TSWQS, 30 TAC §§ 307.1 - 307.10. Included are effluent limitations and monitoring requirements to ensure that the site meets water quality standards for the protection of surface, groundwater, and human health. Also, the methodology outlined in the June 2010 IPs is designed to ensure compliance with the TSWQS. Specifically, the methodology is designed to ensure that no discharge will be allowed 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.

The ED has made a preliminary determination that the draft permit, if issued, meets all statutory and regulatory requirements, and will not cause adverse effects to human health, safety, and the environment. The WQ Division of the TCEQ has determined that if the surface water quality is protected, then the groundwater and soil quality in the vicinity will not be impacted by the discharge.

COMMENT 8:

CBC commented that the MTX facility is located on 130 acres in Montgomery County in the San Jacinto River Basin, immediately adjacent to CBC's northeast property boundary. It stated that the piped wastewater discharge and all surface runoff from the property and sand pit has no place to drain other than into Cook's Branch. CBC then commented that the discharge route described in the April 18, 2022, TCEQ application is incorrect and that the correct discharge route description should include Cook's Branch and 160 Lake. It stated that all drainage flows into Cook's Branch or its western tributary and then to 160 Lake, then to Lake Creek and then to the West Fork of the San Jacinto River.

RESPONSE 8:

The original discharge route description was contained in the NORI published on February 18, 2022: *The discharge route is from the plant site to an unnamed tributary of Lake Creek; thence to East Edge Lake; thence to Lake Creek.* On May 18, 2022, the Applicant published a Combined NORI and Notice of Application and Preliminary Decision (NAPD) in English in the *Conroe Courier* and in Spanish in *La Voz* newspaper. The combined notice was issued to correct the discharge route described in the NORI. *The effluent will be discharged via Outfall 001 to an unnamed tributary, thence to an unnamed impoundment, thence to an unnamed tributary, thence to East Edge Lake, thence to an unnamed tributary, thence to Lake Creek in Segment No. 1015 of the San Jacinto River Basin.*

Information provided in the application indicates that Outfall 001 discharges to an unnamed tributary of Lake Creek. TCEQ's Standards Implementation Team generally uses the terminology as described on the USGS topographic map, but we also sometimes include local, generally used names for receiving waters if they can be verified by official documents.

COMMENT 9:

CBC commented that the ecologically significant segment of Lake Creek, a TPWD "Ecologically Significant Stream", runs the entire stream length. They stated that four biological and ecological attributes of Lake Creek described by Texas Park and Wildlife Department (TPWD) include a significant overall habitat for fish; valuable hydrologic functions relating to flood attenuation and water quality; high aesthetic value as an ecoregion reference stream; and a unique community containing a significant riparian habitat.

In addition, CBC stated that Cook's Branch is an aquatic nursery that is also ecologically important to Lake Creek. CBC commented that water quality is also affected by runoff from development and urban areas and that the increase of impervious surfaces, such as building roofs, roads, parking lots, and sidewalks, results in contaminants washed into the river systems as stormwater runoff.

RESPONSE 9:

Based on the application, the facility's operations at the site include mining sand (digging up sand via excavator or backhoe) from an open pit on the property and selling/distributing this product to customers. Stormwater is the only discharge from the site. When natural precipitation falls within the open pit, it also has the potential to collect. The facility utilizes a diesel-powered pump as necessary to pump out the collected stormwater from the open pit into a retention pond. Stormwater naturally drains from all other areas of the site into the same retention pond. Stormwater may be discharged off-site via Outfall 001 as necessary. The application represents that all other operations are equipped with control measures (secondary containment/double walled tanks and loading/unloading connects from above-ground storage tanks with drip pans to collect any potential leaks/spills).

The proposed draft permit has a pH limit of 6.0 standard units (SU) to 9.0 SU and TSS limits of 25 mg/L for the daily average and 45 mg/L for the daily maximum which are based on 40 CFR Part 436 § 436.42(a)(4). With these limits, based on best professional judgment (BPJ), the effluent from this discharge is not expected to cause significant accumulation or settling of silt in the creek and downstream pond. The proposed pH limits of 6.0-9.0 SU are consistent with the procedures for pH screening that were submitted to EPA with a letter dated May 28, 2014, and approved by EPA in a

letter dated June 2, 2014, requiring a discharge to an unclassified water body to meet pH limits of 6.0 - 9.0 SU. These pH limits reasonably ensure instream compliance with TSWQS pH criteria. Therefore, the discharge is not expected to change the current pH range in the streams.

In addition, the draft permit includes a chemical oxygen demand (COD) limit of 150 mg/L for the daily maximum and oil and grease limits which are based on General Guidance - Industrial Permits: Uncontaminated Stormwater Runoff, EPA, January 1997. The draft permit also includes monitoring requirements for nitrate+nitrite nitrogen which is based on Sector J (Mineral Mining and Processing Facilities) of the MSGP, TXR050000, for industrial stormwater. Therefore, with these limits for the effluent, the dissolved oxygen in the receiving waters is not expected to be significantly impacted as a result of this discharge. The Applicant submitted hazardous metals sample results with the application which the TCEQ has compared with effluent limits in 30 TAC Chapter 319, for inland water, and determined that no effluent limit is needed. Therefore, the discharge is not expected to contain heavy metals of concern. The facility does not propose to use any chemicals in its process and the effluent is uncontaminated stormwater only. All other operations are equipped with control measures to prevent any potential contamination of the stormwater. Therefore, the discharge is not expected to release the chemicals which include, but are not limited to, diesel fuel, gasoline fuel, hydraulic fluid, engine oil, lubricating oil, chemical solvents, heavy metals, and certain acidic chemicals to the receiving waters.

COMMENT 10:

CBC commented that the introduction of increased sediment loads and/or harmful chemicals into wastewater discharge and runoff from the facility into Cook's

Branch and Lake Creek could have both immediate and long-term negative biological, chemical, and ecological effects on both streams and all their living organisms. These contaminants could directly and indirectly negatively affect, and perhaps kill, any of at least one federally proposed and six state listed species that are known to inhabit or are likely to inhabit these two water bodies. CBC stated that the effects could include a higher suspended sediment load and turbidity; deeper bottom sediment (that could degrade or destroy suitable mollusk habitat); shallower channels that increase flooding and alter stream course; and changes in the flow, current, and water chemistry including oxygen levels and acidity/alkalinity (pH) of both streams. CBC also pointed out additional impacts to these seven species might occur if harmful chemicals (such as diesel and gasoline fuel, hydraulic fluid, engine and lubricating oil, chemical solvents, heavy metals, and certain acidic chemicals used in industrial sand mining manufacturing) are released by MTX either through the outfall pipe or as natural surface runoff after rainfall events from any part of the site.

RESPONSE 10:

The Applicant submitted hazardous metals sample results with the application which the TCEQ has compared with effluent limits in 30 TAC Chapter 319, for inland water, and determined that no effluent limit is needed. Therefore, the discharge is not expected to contain heavy metals of concern. In addition, the facility does not propose to use any chemicals in its process, and the Applicant represented in the application that the effluent is uncontaminated stormwater only.

Other Requirement No.5 in the draft permit sets out various duties that a permittee must follow to develop and implement a SWP3 with best management practices (BMPs) to prevent the exposure of pollutants to stormwater, including

exposure of dirt or sediment at the site entrance to stormwater. A maintenance program must be developed and implemented to maintain the effectiveness of stormwater structural controls. The SWP3 must identify specific activities, techniques, and schedules for maintenance of stormwater structural controls that ensure continued effective operation of these controls. Maintenance activities must be recorded at a minimum frequency of once per quarter, maintained on site, and be made readily available for inspection by authorized TCEQ personnel upon request. The SWP3 may be modified at any time in order to implement either additional or more effective pollution control measures. A summary of revisions, including dates of the revisions, shall be maintained on a quarterly basis, maintained as a part of the SWP3 document, and made readily available for inspection by authorized TCEQ personnel upon request.

As part of the anti-degradation review for this application, TCEQ's extensive technical review resulted in permit limits to ensure the permitted discharge is consistent with applicable laws, rules, and procedures and protective of the TSWQS which includes the antidegradation policy and designated and presumed uses. Therefore, the permit is expected to be protective of aquatic and aquatic-dependent species, including federally listed threatened and endangered species that reside in the receiving streams and other wildlife that utilize the receiving streams.

Additionally, the discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the USFWS's biological opinion on the State of Texas authorization of the 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. This permit does not require EPA review with respect to the presence of endangered or threatened species.

COMMENT 11:

CBC commends TCEQ for the new 30 TAC Chapter 311, Subchapter J rules that require facilities that mine sand to comply with the following provisions by July 5, 2022: creation of a written onsite Mine Plan; implementation of Best Management Practices (BMPs); and submission of a Final Stabilization Report, all certified by a licensed Professional Engineer or Professional Geoscientist. However, the CBC doubted that the rules were adequate to fully protect Cook's Branch and Lake Creek's water quality or the seven species that inhabit these water bodies from harm and intends to request a copy of the MTX certified Mine Plan, BMP Implementation and Stabilization Report from TCEQ's Office of Compliance and Enforcement.

RESPONSE 11:

TCEQ staff acknowledge the comment about the new 30 TAC Chapter 311, Subchapter J rules. 30 TAC § 311.103 states that sand mining facility operators registered as an aggregate production operation (APO) with the commission on the effective date of this rule must comply with §§ 311.103(a) - (e) and (g) of this title within 180 days following the effective date of this subchapter. All future updates or changes to BMPs must be certified in accordance with § 311.103(g). All future updates or changes to the Mine Plan must be made in accordance with § 311.103(h)(1). The provisions of § 311.103 were effective January 6, 2022. This watershed protection rule

was developed to further regulate Sand Mining Operators in the San Jacinto River Watershed through BMPs. The rule is implemented jointly with TPDES permitting to protect the water quality of receiving waters within the watershed.

Copies of the certified Mine Plan and the BMP Implementation are available onsite and will need to be requested directly from the Applicant's representative, Cole Gorka, at his contact information listed in the public notices. Sand mining operators are not required to submit their Mine Plan or BMPs to the ED. The operators are required to develop and maintain all documents onsite. No documents have been submitted to the ED at this time. TCEQ's Office of Compliance and Enforcement would only have this documentation if they conducted a site visit and collected it as part of an investigation. Only the Final Stabilization Report must be submitted to the ED, and it is created only when the operator wants to terminate the authorization for the site or portions of the site. Prior to termination, the Applicant's Final Stabilization Report must be submitted to TCEQ's WQ Division for review and approval. At this time, the WQ Division has not received a Final Stabilization Report from any sand mining facility in the watershed.

In conjunction with the rulemaking, TCEQ developed the Guidance Document of *Best Management Practices for Sand Mining Operations in the San Jacinto River Watershed* (RG-555) for sand mining facilities in the San Jacinto River Watershed. It includes all the BMPs that sand mine operators are required to implement and a description of what is required in the Mine Plan and the Final Stabilization Report. BMPs include schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants into surface water in the state. The BMPs also include treatment

requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas. Sand mining operators must use this document to comply with the new Subchapter J rule requirements in Chapter 311 for vegetative and structural controls, and pre-mining, mining, and post-mining phases. The Guidance Document was developed with input from both the petitioners to the rulemaking and from stakeholders and is accessible on TCEQ's public website at

<https://www.tceq.texas.gov/downloads/permitting/stormwater/rulemaking/bmps-sand-mining-rg-555.pdf>.

The TSWQS in 30 TAC Chapter 307 require that discharges not degrade the receiving waters and not result in situations that impair existing, attainable or designated uses, and that surface waters not be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. The 2020 Clean Water Act § 303(d) list, the State's inventory of impaired and threatened waters, does not currently list Segment No. 1015 of the San Jacinto River Basin.

The draft permit was developed through a series of rigorous technical reviews in accordance with the TSWQS to be protective of water quality, provided that the Applicant operates and maintains the facility according to TCEQ rules and the proposed permit's requirements. The methodology outlined in the June 2010 IPs is designed to ensure compliance with the TSWQS. Specifically, it is designed to ensure that no discharge will be allowed 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.

The ED has determined that the draft permit is protective of the environment, water quality, aquatic life, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. Individuals are encouraged to report any concerns about suspected noncompliance with terms of the permit or other environmental regulation by contacting the Region 12 Office at 713-767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
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Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 26, 2022, the Executive Director's Response to Public Comment for Permit No. WQ0005337000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro, Staff Attorney
Environmental Law Division
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