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January 20, 2023

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

**VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING**

01:11 02, NBR02

TCEQ OCC

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

Prairie Crossing Wastewater, LLC ("Prairie Crossing") through its manager Matthew Tiemann, hereby submits this letter to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

I represent Prairie Crossing regarding the Application and Draft Permit. Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

Prairie Crossing is a Texas Limited Liability Company incorporated in 2019. Prairie Crossing is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit"). The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

Below are Prairie Crossing’s timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for Prairie Crossing’s request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

Prairie Crossing requests that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing hereby requests a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, Prairie Crossing asserts that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of the TCEQ’s TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the

¹ Tex. Water Code § 26.081-.087.

identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome's Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities' responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which "ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed" is located within three miles, but that "no connection fee has been provided yet."⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome's needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing's ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

Prairie Crossing contends that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ's regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit applicant to "[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted."⁸ The Instructions further clarify this requirement, stating:

Provide justification for the proposed flows. . .provide an anticipated construction start date and operation schedule for each phase being

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

⁸ Domestic Technical Report 1.1 at 21.

proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024.).¹¹ Prairie Crossing contends that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed TTWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated pond without eutrophication and such analysis should be required by TCEQ. Because the

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, Prairie Crossing believes that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
2. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
3. **Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TTWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.
4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.

5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, Prairie Crossing recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing, through its manager Matthew Tiemann, requests a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, Prairie Crossing, for the benefit of its customers, has a substantial and significant degree of public interest in the Application. Prairie Crossing is willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing, through its manager Matthew Tiemann, also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in Prairie Crossing's public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing is an affected person, as defined by 30 TAC § 55.203. Prairie Crossing has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted. In determining whether a person is an affected person, the TCEQ may consider, among other factors, "(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

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

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law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” The first six considerations are applicable to Prairie Crossing and owner Matthew Tiemann, and, as noted in its public comments in Section II, above, Prairie Crossing has a particular interest in the issues relevant to the Application because the Application is serviceable within Prairie Crossing’s proposed service area and is contrary to TCEQ regionalization policy.

V. CONCLUSION

Prairie Crossing reserves its right to supplement these public comments and this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing and its manager Matthew Tiemann appreciate your consideration of these public comments and their requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

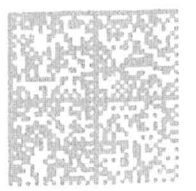
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cc: *(via electronic mail only)*
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.
Mr. Darren Strozewski, DCS Engineering


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 Lloyd Gosselink <small>ATTORNEYS AT LAW</small>
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TO: Ms. Laurie Gharis Office of the Chief Clerk, MC 105 Texas Commission on Environmental Quality PO Box 13087 Austin, Texas 78711-3087

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by GCW H

January 20, 2023

TCEQ OCC

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

VIA FIRST-CLASS MAIL 11:09
AND ELECTRONIC FILING

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of Prairie Crossing Municipal Utility Districts 1 & 2 ("Prairie Crossing MUDs"), to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

Prairie Crossing MUDs are political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County. Prairie Crossing Wastewater, LLC ("Prairie Crossing") is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit") with authorizes the building of a wastewater treatment plant within the area of Prairie Crossing MUDs. The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of

the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

As the political subdivisions of the State of Texas authorized by the TCEQ to provide wastewater services within an area of Williamson County, the Prairie Crossing MUDs adopt Prairie Crossing’s concerns submitted separately and restated below in regard to proposed TPDES Permit No. WQ0016226001. Below are Prairie Crossing MUDs’ timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for Prairie Crossing MUDs’ request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

Prairie Crossing MUDs request that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing MUDs hereby request a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, Prairie Crossing MUDs assert that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems

to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of the TCEQ’s TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome’s Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities’ responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which “ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed” is located within three miles, but that “no connection fee has been provided yet.”⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Prairie Crossing MUDs never received any notification from Epitome. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome’s needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing’s ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

Prairie Crossing MUDs contend that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ’s regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit

¹ Tex. Water Code § 26.081-.087.

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

applicant to “[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted.”⁸ The Instructions further clarify this requirement, stating:

Provide justification for the proposed flows. . . provide an anticipated construction start date and operation schedule for each phase being proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024).¹¹ Prairie Crossing MUDs contend that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed

⁸ Domestic Technical Report 1.1 at 21.

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

TTWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated pond without eutrophication and such analysis should be required by TCEQ. Because the Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, Prairie Crossing MUDs believe that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
2. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
3. **Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TTWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.
5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, 05 Investments recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing MUDs request a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, Prairie Crossing MUDs, as political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County, have a substantial and significant degree of public interest in the Application. Prairie Crossing MUDs are willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing MUDs also request a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in Prairie Crossing MUDs' public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing MUDs are affected persons, as defined by 30 TAC § 55.203. 05 Investments has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted.

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

January 20, 2023

Page 7

In determining whether a person is an affected person, the TCEQ may consider, among other factors, “(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) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” Prairie Crossing MUDs are affected persons, as defined by 30 Tex. Admin. Code § 55.103 and 55.203. Additionally, the Application is serviceable within the area Prairie Crossing MUDs provide services in within Williamson County and the Application is contrary to TCEQ regionalization policy.

V. CONCLUSION

Prairie Crossing MUDs reserve the right to supplement these public comments and this request for a contested case hearing as they learn more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing MUDs appreciate your consideration of these public comments and their requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Nathan E. Vassar". The signature is written in a cursive style with a large initial "N" and "V".

Nathan E. Vassar

NEV/yw

cc: (via electronic mail only)
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.
Mr. Darren Strozewski, DCS Engineering

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Lloyd Gosselink
ATTORNEYS AT LAW

Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue Suite 1900 Austin, Texas 78701

TO:

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

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January 20, 2023

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

VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of 05 Ranch Investments to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

05 Ranch Investments is a Texas Limited Liability Company incorporated in 2020. 05 Ranch Investments owns land in Williamson County, Texas, on which Prairie Crossing Wastewater, LLC ("Prairie Crossing"), has been issued TPDES Permit No. WQ0015850001 (the "PC Permit") to construct a wastewater treatment plant. The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

As the underlying landowner working with Prairie Crossing, 05 Investments’ adopts Prairie Crossing’s concerns submitted separately and restated below in regard to proposed TPDES Permit No. WQ0016226001. Below are 05 Investments’ timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for 05 Investments’ request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

05 Investments requests that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, 05 Investments hereby requests a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, 05 Investments asserts that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of

¹ Tex. Water Code § 26.081-.087.

the TCEQ's TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome's Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities' responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which "ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed" is located within three miles, but that "no connection fee has been provided yet."⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome's needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing's ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

05 Investments contends that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ's regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit applicant to "[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted."⁸ The Instructions further clarify this requirement, stating:

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

⁸ Domestic Technical Report 1.1 at 21.

Provide justification for the proposed flows. . . provide an anticipated construction start date and operation schedule for each phase being proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024.).¹¹ Investments contends that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed TTWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

pond without eutrophication and such analysis should be required by TCEQ. Because the Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, 05 Investments believes that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TWWTP will not become a public nuisance.
2. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
3. **Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.
4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.

5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, 05 Investments recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

05 Investments requests a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, 05 Investments, for its own benefit as a landowner and for the benefit of the customers of its tenant, Prairie Crossing, has a substantial and significant degree of public interest in the Application. 05 Investments is willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

05 Investments also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in 05 Investments' public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, 05 Investments is an affected person, as defined by 30 TAC § 55.203. 05 Investments has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted. In determining whether a person is an affected person, the TCEQ may consider, among other factors, "(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

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

January 20, 2023

Page 7

reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” The first six considerations are applicable to 05 Investments, and, as noted above, 05 Investments has a particular interest in the issues relevant to the Application because it is the underlying landowner of Prairie Crossing’s permitted facility and the Application is serviceable within Prairie Crossing’s proposed service. Additionally, 05 Investments contends the Application is contrary to TCEQ regionalization policy. Finally, 05 Investments contends that Epitome’s failure to meet buffer zone requirements and a noise and odor abatement plan likely will adversely affect the quality of life of nearby residents and the public, including 05 Investments as a nearby landowner.

V. CONCLUSION

05 Investments reserves its right to supplement these public comments and this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. 05 Investments appreciates your consideration of these public comments and its requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

NEV/yw

cc: (via electronic mail only)
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.
Mr. Darren Strozewski, DCS Engineering

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
CHIEF CLERKS OFFICE

First Class Mail

TXW 4380-0

<p>Lloyd Gosselink ATTORNEYS AT LAW Lloyd Gosselink Rochelle & Townsend, P.C. 816 Congress Avenue Suite 1900 Austin, Texas 78701</p>	<p>To: Ms. Laurie Charis Office of the Chief Clerk, MC 105 Texas Commission on Environmental Quality PO Box 13087 Austin, Texas 78711-3087</p>
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JAN 28 2023
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Ellie Guerra

From: PUBCOMMENT-OCC
Sent: Friday, January 20, 2023 2:41 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001
Attachments: FINAL Protest Letter-Permit# WQ0016226001 Epitome_2023.01.17.pdf

PM
H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, January 20, 2023 11:14 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Yvette Wilkerson

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 5123225828

FAX:

COMMENTS: For filing, on behalf of Prairie Crossing Wastewater, LLC.

January 20, 2023

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

**VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING**

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

Prairie Crossing Wastewater, LLC ("Prairie Crossing") through its manager Matthew Tiemann, hereby submits this letter to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

I represent Prairie Crossing regarding the Application and Draft Permit. Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

Prairie Crossing is a Texas Limited Liability Company incorporated in 2019. Prairie Crossing is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit"). The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

Below are Prairie Crossing’s timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for Prairie Crossing’s request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

Prairie Crossing requests that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing hereby requests a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, Prairie Crossing asserts that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of the TCEQ’s TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the

¹ Tex. Water Code § 26.081-.087.

identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome's Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities' responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which "ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed" is located within three miles, but that "no connection fee has been provided yet."⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome's needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing's ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

Prairie Crossing contends that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ's regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit applicant to "[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted."⁸ The Instructions further clarify this requirement, stating:

Provide justification for the proposed flows. . . provide an anticipated construction start date and operation schedule for each phase being

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

⁸ Domestic Technical Report 1.1 at 21.

proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024).¹¹ Prairie Crossing contends that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed TTWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated pond without eutrophication and such analysis should be required by TCEQ. Because the

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, Prairie Crossing believes that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
2. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
3. **Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TTWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.
4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.

5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, Prairie Crossing recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing, through its manager Matthew Tiemann, requests a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, Prairie Crossing, for the benefit of its customers, has a substantial and significant degree of public interest in the Application. Prairie Crossing is willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing, through its manager Matthew Tiemann, also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in Prairie Crossing's public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing is an affected person, as defined by 30 TAC § 55.203. Prairie Crossing has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted. In determining whether a person is an affected person, the TCEQ may consider, among other factors, "(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

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

January 20, 2023

Page 7

law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” The first six considerations are applicable to Prairie Crossing and owner Matthew Tiemann, and, as noted in its public comments in Section II, above, Prairie Crossing has a particular interest in the issues relevant to the Application because the Application is serviceable within Prairie Crossing’s proposed service area and is contrary to TCEQ regionalization policy.

V. CONCLUSION

Prairie Crossing reserves its right to supplement these public comments and this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing and its manager Matthew Tiemann appreciate your consideration of these public comments and their requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

NEV/yw

cc: *(via electronic mail only)*

Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.

Mr. Darren Strozewski, DCS Engineering

Ellie Guerra

From: PUBCOMMENT-OCC
Sent: Friday, January 20, 2023 2:40 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001
Attachments: FINAL Protest Letter-Permit# WQ0016226001 Epitome_2023.01.17 (MUDs version).pdf

PM
H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, January 20, 2023 11:12 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Yvette Wilkerson

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 5123225828

FAX:

COMMENTS: For filing, on behalf of Prairie Crossing Municipal Utility Districts 1 & 2.

January 20, 2023

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

**VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING**

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of Prairie Crossing Municipal Utility Districts 1 & 2 ("Prairie Crossing MUDs"), to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

Prairie Crossing MUDs are political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County. Prairie Crossing Wastewater, LLC ("Prairie Crossing") is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit") with authorizes the building of a wastewater treatment plant within the area of Prairie Crossing MUDs. The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of

the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

As the political subdivisions of the State of Texas authorized by the TCEQ to provide wastewater services within an area of Williamson County, the Prairie Crossing MUDs adopt Prairie Crossing’s concerns submitted separately and restated below in regard to proposed TPDES Permit No. WQ0016226001. Below are Prairie Crossing MUDs’ timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for Prairie Crossing MUDs’ request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

Prairie Crossing MUDs request that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing MUDs hereby request a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, Prairie Crossing MUDs assert that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems

to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of the TCEQ’s TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome’s Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities’ responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which “ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed” is located within three miles, but that “no connection fee has been provided yet.”⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Prairie Crossing MUDs never received any notification from Epitome. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome’s needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing’s ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

Prairie Crossing MUDs contend that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ’s regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit

¹ Tex. Water Code § 26.081-.087.

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

applicant to “[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted.”⁸ The Instructions further clarify this requirement, stating:

Provide justification for the proposed flows. . .provide an anticipated construction start date and operation schedule for each phase being proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024).¹¹ Prairie Crossing MUDs contend that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed

⁸ Domestic Technical Report 1.1 at 21.

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

TTWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated pond without eutrophication and such analysis should be required by TCEQ. Because the Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, Prairie Crossing MUDs believe that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

- 1. Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
- 2. Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
- 3. Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TTWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.
5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, 05 Investments recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing MUDs request a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, Prairie Crossing MUDs, as political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County, have a substantial and significant degree of public interest in the Application. Prairie Crossing MUDs are willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing MUDs also request a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in Prairie Crossing MUDs' public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing MUDs are affected persons, as defined by 30 TAC § 55.203. 05 Investments has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted.

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

January 20, 2023

Page 7

In determining whether a person is an affected person, the TCEQ may consider, among other factors, “(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) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” Prairie Crossing MUDs are affected persons, as defined by 30 Tex. Admin. Code § 55.103 and 55.203. Additionally, the Application is serviceable within the area Prairie Crossing MUDs provide services in within Williamson County and the Application is contrary to TCEQ regionalization policy.

V. CONCLUSION

Prairie Crossing MUDs reserve the right to supplement these public comments and this request for a contested case hearing as they learn more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing MUDs appreciate your consideration of these public comments and their requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

NEV/yw

cc: (via electronic mail only)
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.
Mr. Darren Strozewski, DCS Engineering

Ellie Guerra

From: PUBCOMMENT-OCC
Sent: Friday, January 20, 2023 2:40 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001
Attachments: FINAL Protest Letter-Permit# WQ0016226001 Epitome_2023.01.17 (05 Investments Version).pdf

PM
H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, January 20, 2023 11:10 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Yvette Wilkerson

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 5123225828

FAX:

COMMENTS: For filing, on behalf of 05 Ranch Investments.

January 20, 2023

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

**VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING**

RE: Public Comments, Request for Public Meeting, and Hearing Request
Application for Proposed TPDES Permit No. WQ0016226001
Applicant: Epitome Development LLC
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of 05 Ranch Investments to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Epitome Development LLC ("Epitome" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

Please include me on the TCEQ's mailing list for all filings in the above-reference Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

05 Ranch Investments is a Texas Limited Liability Company incorporated in 2020. 05 Ranch Investments owns land in Williamson County, Texas, on which Prairie Crossing Wastewater, LLC ("Prairie Crossing"), has been issued TPDES Permit No. WQ0015850001 (the "PC Permit") to construct a wastewater treatment plant. The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not to exceed 0.990 MGD.

The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant (“TTWWTP”). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s existing outfall.

As the underlying landowner working with Prairie Crossing, 05 Investments’ adopts Prairie Crossing’s concerns submitted separately and restated below in regard to proposed TPDES Permit No. WQ0016226001. Below are 05 Investments’ timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for 05 Investments’ request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

05 Investments requests that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ’s regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, 05 Investments hereby requests a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, 05 Investments asserts that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP’s negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome’s failure to satisfy all buffer zone requirements).

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of

¹ Tex. Water Code § 26.081-.087.

the TCEQ's TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Epitome's Application, and Epitome has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of permitted domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities' responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Epitome indicated that a permitted facility which "ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed" is located within three miles, but that "no connection fee has been provided yet."⁶ While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome's needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.⁷ At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a separate wastewater treatment plant. Prairie Crossing's ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

B. The Application fails to sufficiently demonstrate need for the final phase.

05 Investments contends that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ's regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit applicant to "[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted."⁸ The Instructions further clarify this requirement, stating:

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Domestic Technical Report 1.1 at 22.

⁷ Application Attachment M.

⁸ Domestic Technical Report 1.1 at 21.

Provide justification for the proposed flows. . .provide an anticipated construction start date and operation schedule for each phase being proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”⁹

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”¹⁰

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024.).¹¹ OS Investments contends that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

C. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed TTWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.¹² The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated

⁹ Instructions For Completing Domestic Wastewater Permit Applications at 67.

¹⁰ Instructions at 67.

¹¹ Application Attachment K.

¹² Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

pond without eutrophication and such analysis should be required by TCEQ. Because the Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

D. The Application contains a number of additional deficiencies.

After a careful review of the Application, 05 Investments believes that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and Draft Permit should be denied:

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.¹³ Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.¹⁴ In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."¹⁵ Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
2. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.¹⁶ The instructions further specify that "[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone."¹⁷ The information provided by Epitome does not show that these buffer zone requirements have been met.¹⁸
3. **Nuisance Odors.** In addition to the buffer zone issues described above, a noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed TTWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.
4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of

¹³ Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

¹⁴ Domestic Technical Report 1.0 at 13.

¹⁵ Domestic Technical Report 1.0 at 12-13.

¹⁶ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

¹⁷ Instructions at 46.

¹⁸ Application Attachment E.

the receiving waters.¹⁹ The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.

5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, 05 Investments recommends that the TCEQ deny the Application and Draft Permit.

III. REQUEST FOR PUBLIC MEETING

05 Investments requests a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting," and that "[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, 05 Investments, for its own benefit as a landowner and for the benefit of the customers of its tenant, Prairie Crossing, has a substantial and significant degree of public interest in the Application. 05 Investments is willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

05 Investments also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in 05 Investments' public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, 05 Investments is an affected person, as defined by 30 TAC § 55.203. 05 Investments has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted. In determining whether a person is an affected person, the TCEQ may consider, among other factors, "(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

¹⁹ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

January 20, 2023

Page 7

reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” The first six considerations are applicable to 05 Investments, and, as noted above, 05 Investments has a particular interest in the issues relevant to the Application because it is the underlying landowner of Prairie Crossing’s permitted facility and the Application is serviceable within Prairie Crossing’s proposed service. Additionally, 05 Investments contends the Application is contrary to TCEQ regionalization policy. Finally, 05 Investments contends that Epitome’s failure to meet buffer zone requirements and a noise and odor abatement plan likely will adversely affect the quality of life of nearby residents and the public, including 05 Investments as a nearby landowner.

V. CONCLUSION

05 Investments reserves its right to supplement these public comments and this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. 05 Investments appreciates your consideration of these public comments and its requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

NEV/yw

cc: *(via electronic mail only)*
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc.
Mr. Darren Strozewski, DCS Engineering

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Monday, April 24, 2023 11:38 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001
Attachments: Daffin_WQ0016226001_Request for Hearing2.pdf

PM
H

From: wes@oconnellwest.com <wes@oconnellwest.com>
Sent: Friday, April 21, 2023 4:14 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Wesley D West

EMAIL: wes@oconnellwest.com

COMPANY:

ADDRESS: 505 W 12TH ST Suite 200
AUSTIN TX 78701-1830

PHONE: 5125477265

FAX: 5123095388

COMMENTS: Patricia Daffin, by and through her attorney of record, Wesley D. West

 O'CONNELL
WEST, PLLC
OConnellWest.com
505 WEST 12TH STREET, SUITE 200
AUSTIN, TEXAS 78701

Wesley D. West
Telephone: (512) 547-7265
E-Mail: wes@oconnellwest.com

April 21, 2023

Executive Director, TCEQ
Attn: Laurie Gharis, Chief Clerk
TCEQ, MC-105
PO Box 13087
Austin, TX 78711-3087

SUBJECT: Patricia Daffin's Request for Contested Case Hearing; Epitome Development, LLC concerning permit WQ0016226001

RE: Patricia Daffin, 2401 FM 973, Taylor, TX 76574 concerning permit WQ0016226001, by and through her attorney of record, Wesley West at 505 W. 12th Street, Suite 200, Austin, TX 78701

Director:

Patricia Daffin has retained our firm to request a Contested Case Hearing in the above-number and entitled matter.

On January 19, 2023, Patricia Daffin submitted comments to the Executive Director concerning Epitome, LLC's (Applicant) application to install a waste water treatment facility directly adjacent to her land at 2401 FM 973, TAYLOR, TX 76574.

Patricia Daffin made comments to which the director offered three consolidated responses. Patricia Daffin now disputes those responses and *requests a contested case hearing*.

- Patricia Daffin was notified in sufficient time to make sufficient comments concerning the pending application or plans to construct a facility or detention pond.
- Patricia Daffin requested to know an approximation in terms of gallons of discharge and is concerned with any treated waste water discharged on or near her land.
- Patricia Daffin expressed concern about overflow from the facility, especially when coupled with environmental factors such as heavy rains and the type of soil which exists in the area.

- Patricia Daffin expressed concern that the discharge would pollute streams used for livestock watering and recreational use.

Patricia Daffin also incorporates by reference the comments made by 05 Investments, Prairie Crossing, and Prairie Crossing MUDs in so much as those comments align with Patricia Daffin's concerns about the effects of this facility on her property and in the general area, that:

- The facility fails to comply with the State's regionalization policy.
- There is no need for a final phase.
- Does not comply with anti-degradation policy.
- The facility will become a public nuisance.
- Buffer zone requirements have not been met.
- Noise and odor abatement plans are either absent or severely lacking.
- Failure to adequately identify receiving waters.
- Application was approved without description of stream physical characteristics.

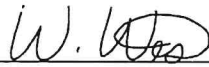
Patricia Daffin, through her attorney of record, Wesley D. West, requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in her comments and the comments made by Prairie Crossing's public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Patricia Daffin is an affected person, as defined by 30 TAC § 55.203. Patricia Daffin has a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be granted. In determining whether a person is an affected person, the TCEQ may consider, among other factors, "(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) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor 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." The TCEQ may also consider "the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance." The first six considerations are applicable to Patricia Daffin.

Patricia Daffin reserves its right to supplement her public comments as well as this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Mrs. Daffin humbly appreciates your consideration of these public comments and

their requests for a public meeting and contested case hearing. Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Respectfully submitted,

O'CONNELL WEST, PLLC



By: WESLEY D. WEST

Texas Bar No. 24052002

505 West 12th Street, Ste 200

Austin, Texas 78701

Tel. (512) 547-7265

Email: wes@oconnellwest.com

Attorney for Patricia Daffin

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Monday, April 24, 2023 11:35 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001

From: wes@oconnellwest.com <wes@oconnellwest.com>
Sent: Friday, April 21, 2023 4:11 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Wesley D West

EMAIL: wes@oconnellwest.com

COMPANY:

ADDRESS: 505 W 12TH ST Suite 200
AUSTIN TX 78701-1830

PHONE: 5125477265

FAX: 5123095388

COMMENTS: Patricia Daffin, through her attorney of record, Wesley D. West

Marielle Bascon

From: PUBCOMMENT-OCC
Sent: Thursday, January 12, 2023 5:32 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016226001

From: pat.daff@yahoo.com <pat.daff@yahoo.com>
Sent: Wednesday, January 11, 2023 4:05 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016226001

REGULATED ENTY NAME TAYLOR TRACT WWTP

RN NUMBER: RN111577433

PERMIT NUMBER: WQ0016226001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: EPITOME DEVELOPMENT LLC

CN NUMBER: CN606062958

FROM

NAME: Patricia Ann Daffin

EMAIL: pat.daff@yahoo.com

COMPANY:

ADDRESS: 2950 FM 3349
TAYLOR TX 76574-5298

PHONE: 5129136084

FAX:

COMMENTS: I am the owner of Farm R-019962; address: 2401 FM 973. Taylor, TX 76574, in Williamson County. Received TCEQ Notice of Application and Preliminary Decision TPDES Permit for Municipal Wastewater on December 20,2022. This letter was sent right before Christmas and year end which was very untimely during the holidays and has a response deadline of January 16, a holiday. I am against having 300.000 gals. per day, of treated wastewater discharged into the creek, lake and dam area on the east portion of my property. There are landowners on the List of Affected

Landowners that do not own land near the unnamed creek, that runs east of FM 973. The Landowners that will be affected east of CR 405 thence to Battleground Creek, thence to Soil Conservation Service Site 31 Reservoir, have not received your October 4th or Dec. 16th letter. TCEQ never notified me that Samsung would construct a large retention pond directly across FM973 west of my property. How many gallons of water will be released into above mentioned creek at any given time? We do have torrential rains that will cause flooding. This water will accumulate in the retention pond first and overflow onto my property. Overflow from this pond and 300,000 gals of wastewater will be a tremendous effect on my property and downstream. Note: In May,2022, Samsung's Austin Plant had an acid spill into Harris Branch Creek, that killed all aquatic life. TCEQ stated in your Review it was determined that no water bodies have exceptional high, or intermediate aquatic life uses present within the stream reach. Landowners do fish their tanks, ponds, and lakes and ranchers rely on this unnamed tributary to supply water to their livestock. Williamson County is rerouting CR404, because of Samsung, from FM 3349 to FM 973. CR 404 will end at FM 973 directly west of Epitome's property. Williamson County Long Range Transportation has provided Epitome with a preliminary map showing CR 404 crossing FM 973 through the entire North Boundary of Epitome's property where they intend to construct their Wastewater Plant. WCLRT is in the process of providing me a map, where the road may be on my property. My farm is six(6) generational. I had planned to move back and enjoy the farm I grew up on. As you can tell my future plans are now on hold because of all this development. TCEQ should not grant permission for Epitome to construct their wastewater treatment plant until ALL landowners have been notified. They need to be aware of how this plant will affect them. TCEQ should consider: Samsung's retention pond, Epitome's water treatment plant, future CR404 extension which may be built along the unnamed tributary's route. Respectfully, Patricia Daffin