

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 25, 2023

TO: All interested persons.

RE: Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

Decision of the Executive Director.

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Revised Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Brazos County Clerk's Office, 300 East 26th Street, Suite 1430, Bryan, Texas..

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

How to Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

The Executive Director has made the Revised Response to Public Comment (RTC) for the application by Smiling Mallard Development, Ltd for TPDES Permit No. WQ0016077001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

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

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016077001) and click the "Search" button. The search results will display a link to the RTC.

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

Additional Information

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

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Brazos County Clerk's Office, 300 East 26th Street, Suite 1430, Bryan, Texas.

MAILING LIST
for
Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

FOR THE APPLICANT:

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George Neill, P.E., Project Engineer
George H. Neill & Associates, Inc.
P.O. Box 811
Athens, Texas 78751

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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Texas Commission on Environmental
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AKABANI , GAMAL
3539 MATOSKA RDG
COLLEGE STATION TX 77845-5767

ANDERHOLM , FRED
17348 CHEVEYO CV
COLLEGE STATION TX 77845-7462

APPLEGATE , DANIEL
DANNY
18522 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6395

BOLLINE , LINDSEY
3718 MARICOPA LN
COLLEGE STATION TX 77845-2009

BURNS , MRS BERNICE
17349 CHEVEYO CV
COLLEGE STATION TX 77845-7461

BUTENKO , JOANNA
3421 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

BUTENKO , SERGIY
DE
3421 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

BUTENKO , XENIA
3421 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

CARAWAY , LAURA
17708 SENECA SPGS
COLLEGE STATION TX 77845-3564

CHESSMAN , TYLER
3000 SANDIA SPRINGS CV
COLLEGE STATION TX 77845-2132

COATNEY , DAVID
3325 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4658

COATNEY , JEAN
3325 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4658

DEHAES , MR WILLIAM
17337 LESHARO CV
COLLEGE STATION TX 77845-1413

ELLIOTT , SHANA
3337 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4540

ETHERIDGE , ANDREA
18643 IROQUOIS CV
COLLEGE STATION TX 77845-7377

FAN , XUE
3469 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

FLANAGAN , CHRISTOPHER
1881 NARROW WAY
COLLEGE STATION TX 77845-8746

FLANAGAN , HERB
10996 WOODLANDS DR
COLLEGE STATION TX 77845-9124

FLANAGAN , LANELL
1006 S DEXTER DR
COLLEGE STATION TX 77840-6123

FLANAGAN , HERB
MOORE SUPPLY COMPANY
1530 HARVEY MITCHELL PKWY S
COLLEGE STATION TX 77840-6209

FLANAGAN , HERB
1881 NARROW WAY
COLLEGE STATION TX 77845-8746

GALBREATH , LAURIE
3897 CADDO CV
COLLEGE STATION TX 77845-4544

GALINDO , CHARLES
3280 TOLTEC TRL
COLLEGE STATION TX 77845-3532

GALINDO , JANET ESTILL
3280 TOLTEC TRL
COLLEGE STATION TX 77845-3532

GATLIN , ANDREA
3493 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

GOEHRING , LAURA
17253 BAQUITO CV
COLLEGE STATION TX 77845-6678

GOERIG , ABBY
18665 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6459

HAMPTON , MEGAN AMANDA
2923 CHACO CANYON DR
COLLEGE STATION TX 77845-4631

HENDERSON , KAYLA
17233 SUNDANCE DR
COLLEGE STATION TX 77845-4594

HOFFPAUIR , LINDA
3300 OSAGE TRAIL CV
COLLEGE STATION TX 77845-4575

HOFFPAUIR , MR PATRICK
3300 OSAGE TRAIL CV
COLLEGE STATION TX 77845-4575

HOLZER , LAURA & REGGI
3113 LA VENTA WAY
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HOMANN , JUSTIN
17295 BAQUITO CV
COLLEGE STATION TX 77845-6678

HOMANN , TASHA
17295 BAQUITO CV
COLLEGE STATION TX 77845-6678

HOWARD , LALLAH
2966 CHACO CANYON DR
COLLEGE STATION TX 77845-4630

HUGGINS , JERALD
3528 CHACO CANYON DR
COLLEGE STATION TX 77845-4559

JENNINGS , HALEY S
17361 CHEVEYO CV
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LANGE , ANDREW
3600 EAGLE NEST
COLLEGE STATION TX 77845-4565

LINDLEY , SHANNON L
18896 INDIAN LAKES DR
COLLEGE STATION TX 77845-8820

MAKNOJIA , SAIROJ
18435 INDIAN LAKES DR
COLLEGE STATION TX 77845-5777

MAXWELL , MEGAN
19106 TALLULAH TRL
COLLEGE STATION TX 77845-8648

MCAULIFFE , MR SHANE
18267 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6155

MCCORMICK , RHONDA
18530 INDIAN LAKES DR
COLLEGE STATION TX 77845-5778

MCGUIRE , TARA
17349 HALONA CT
COLLEGE STATION TX 77845-2451

MOORE , MICHELE
3718 MARICOPA LN
COLLEGE STATION TX 77845-2009

MORGAN , LINDA R
3549 SHOSHONI CT
COLLEGE STATION TX 77845-4586

MUEHLBRAD , DUANE
17349 MAKAWEE CT
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NAN , BEIYAN
3469 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

NEELEY , D DARLENE
18767 KIOWA CV
COLLEGE STATION TX 77845-7381

NUNLEY , BRENDA
17360 CHEVEYO CV
COLLEGE STATION TX 77845-7462

NUNLEY , MARK
17360 CHEVEYO CV
COLLEGE STATION TX 77845-7462

PHELPS , SHANE
4023 CHACO CANYON DR
COLLEGE STATION TX 77845-7792

PRATER , JANET
17325 MAKAWEE CT
COLLEGE STATION TX 77845-2455

PRITCHARD , KIM
3400 NAVAJO RIDGE DR
COLLEGE STATION TX 77845-4657

PRITCHARD , LUCINDA
3400 NAVAJO RIDGE DR
COLLEGE STATION TX 77845-4657

RACKLEY , ROBIN
3384 CHACO CANYON DR
COLLEGE STATION TX 77845-4555

RAGUSA , JEAN
3473 TOLTEC TRL
COLLEGE STATION TX 77845-3543

RICCIARDELLO , JEAN
4023 CHACO CANYON DR
COLLEGE STATION TX 77845-7792

RICHARDS , BRET
18339 COPPER RIVER DR
COLLEGE STATION TX 77845-4667

RICHARDS , ERIN
18395 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6158

RICKETTS , BECKY
3000 ALGOMA CV
COLLEGE STATION TX 77845-2142

ROETH , CAROLINE
17250 CATORI CV
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SCHUELKE , DAVID
3648 SEMINOLE PT
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STORY , SCOTT
17325 CHEVEYO CV
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SUTTON , MRS SHERRY
18446 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6159

TAYLOR , MARSHALL
18195 COPPER RIVER DR
COLLEGE STATION TX 77845-4663

TAYLOR , SANDRA
17672 SENECA SPGS
COLLEGE STATION TX 77845-3560

TEMPLIN , SHELLY D
3397 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4658

THOMAS , JAMIE
3645 SHOSHONI CT
COLLEGE STATION TX 77845-4588

TOLER , ANGELIQUE
2932 CHACO CANYON DR
COLLEGE STATION TX 77845-4630

URBAN , ALLISON MARIE
17325 HALONA CT
COLLEGE STATION TX 77845-2451

URBAN , ANTHONY
17325 HALONA CT
COLLEGE STATION TX 77845-2451

VAN HORN , MR LARRY
3529 CHACO CANYON DR
COLLEGE STATION TX 77845-4560

WAGNER , MELISA
19059 TALLULAH TRL
COLLEGE STATION TX 77845-8647

WAGNER , PAUL
19059 TALLULAH TRL
COLLEGE STATION TX 77845-8647

WALL , WARREN EDWARD
3384 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4539

WALLIS , TAD
19154 TALLULAH TRL
COLLEGE STATION TX 77845-8648

WANG , CHRIS
STE 200
4121 STATE HIGHWAY 6 S
COLLEGE STATION TX 77845-8681

WANG , CHRIS
17301 CHEVEYO CV
COLLEGE STATION TX 77845-7461

WERNER , CYNTHIA
3385 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4540

WILCOX , ANGEE
17300 LESHARO CV
COLLEGE STATION TX 77845-1413

WILCOX , AUSTIN
17300 LESHARO CV
COLLEGE STATION TX 77845-1413

WILKE , JULIE
3145 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4536

WILSON , GORDON
17313 CHEVEYO CV
COLLEGE STATION TX 77845-7461

WILSON , MELISSA
17313 CHEVEYO CV
COLLEGE STATION TX 77845-7461

TPDES PERMIT NO. WQ0016077001

APPLICATION BY SMILING MALLARD	§	BEFORE THE TEXAS
DEVELOPMENT, LTD. FOR NEW	§	COMMISSION ON
TPDES PERMIT NO. WQ0016077001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S REVISED RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Revised Response to Public Comment (Revised RTC) on the application by Smiling Mallard Development, Ltd. (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016077001, and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk received timely comments from Jean Ragusa, Jeff Knox, Jean Ricciardello, Lindsey Bolline, Erin Richards, Laurie Galbreath, Daniel Applegate, Caroline Roeth, Gordon Wilson, Melisa Wagner, Shannon Lindley, Andrea Gatlin, Paul Wagner, Scott Story, Justin Homan, Michele Moore, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Julie Wilkie, Kayla Henderson, Robin Rackley, Rhonda McCormick, Janet Prater, Laura Caraway, Cynthia Werner, Angelique Toler, Neetu Kainthla, Larry Van Horn, Lallah Howard, Darlene Neeley, Sairoj Maknojia, Xue Fan, Gamal Akabani, Andrea Etheridge, Alison Urban, Stephen Smith, Brenda Nunley, Jamie Thomas, Abby Goerig, Shelly Templin, Tasha Homann, Paula Murphy, Tyler Chessman, Shane Phelps, Kim Pritchard, Reggi and Laura Holzer, Duane and Stacy Muehlbrad, Charles and Janet Galindo, Austin and Angee Wilcox, Marshall and Sandra Taylor, Sergiy and Joanna Butenko, and Herb and Lanell Flanagan. This Revised RTC adds the additional public comments received after the original close of the comment period on June 22, 2022, whether withdrawn or not, at the Public Meeting held on January 23, 2023. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ web site at <http://www.tceq.texas.gov>.

BACKGROUND

The Applicant applied for TPDES Permit No. WQ0016077001 (**proposed permit**), which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed a daily average flow of 100,000 or 0.1 million gallons per day (**MGD**) and authorizes sludge generated at the Smiling Mallard Site 2 Wastewater Treatment Facility (**proposed facility**) to be hauled by a registered transporter to Mount Houston Road MUD Wastewater Treatment Facility (**WWTF**), Permit No. WQ0005023000, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. Sludge is also authorized to be disposed of at any TCEQ-authorized land application site, co-disposal landfill, WWTF, or facility that further processes sludge.

Description of Facility

If this permit is ultimately issued, the proposed facility will be located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State

Highway 6, in Brazos County, Texas 77845, serve the Mesa Verde Commercial Development at the Villages of Indian Lakes, and will be an activated sludge process plant operated in the conventional mode. Treatment units include bar screens, an aeration basin, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The proposed discharge route for the treated effluent is to an unnamed tributary of Peach Creek, then to Peach Creek, then to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

Technical Review

Staff in the ED's Water Quality Division, (**WQD staff**) performed multiple analyses for the Technical Review of the proposed permit, including but not limited to, a Receiving Water Assessment performed by WQD staff on the Standards Implementation Team (**Standards Team**) and Water Quality Modeling runs by WQD staff in the Water Quality Assessment Section (**Modeling Team**) that used an "uncalibrated QUAL-TX" model. The Receiving Water Assessment, along with other available information, allowed the Standards Team to preliminarily determined the aquatic life uses in the area of the proposed discharge's impact and assigned the corresponding Minimum Dissolved Oxygen (**DO**) criterion as stipulated in the Texas Surface Water Quality Standards (**TSWQS**) (30 TAC § 307.5) and the TCEQ's *Implementation procedures for the Texas Surface Water Quality Standards-June 2010 (IPs)*. For every new discharge, the Standards Team performs antidegradation analysis of the proposed discharge. Because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) of the TSWQS and determined that the unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and limited aquatic life use for Peach Creek with no receiving waters with exceptional, high, or intermediate aquatic life uses within the stream reach assessed, thereby not requiring a Tier 2 Antidegradation review. As with all determinations, reviews, or analyses related to the Technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases or assumptions employed in the applicable review, or analysis.

The designated uses for Segment No. 1209, as stated in the 2018 TSWQS-Appendix A (30 TAC § 307.10) are primary contact recreation, public water supply, and high aquatic life use. The Standards Team, in accordance with the TSWQS and the TCEQ's IPs, performed an Antidegradation Review of the receiving waters with the Tier 1 review preliminarily determining that existing water quality uses will not be impaired by the proposed discharge. Numerical and narrative criteria protecting existing uses will be maintained with no significant degradation of water quality expected in waterbodies within the discharge route with exceptional, high, or intermediate aquatic life uses.

The proposed permit's water quality-related effluent limitations (**limits**), established by WQD staff's uncalibrated QUAL-TX modeling results, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (**CBOD₅**), Total Suspended Solids (**TSS**), and Ammonia Nitrogen (**NH₃-N**), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan. The proposed discharge is less than 0.2 MGD, and was evaluated consistent with the modeling Memoranda Of Agreement between the TCEQ and the United States Environmental Protection Agency (**USEPA**).

Based on WQD staff's modeling results, effluent limits of 10.0 mg/L CBOD₅, 3.0 mg/L NH₃-N, and 4.0 mg/L DO, based on a 30-day average, are predicted to ensure that DO will be maintained above the criterion established by the Standards Team for the unnamed tributary of Peach Creek (2.0 mg/L DO), Peach Creek (3.0 mg/L DO), and Segment No. 1209 (5.0 mg/L). Coefficients and kinetics used in the model are a combination of site specific, standardized default, and estimated values.

Segment No. 1209 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria in the portion of Navasota River from the confluence with Camp Creek upstream to Lake Limestone Dam in Robertson County (Assessment Unit [AU] 1209_05). However, the proposed permit includes a requirement that the Applicant use chlorine for disinfection and a bacteria limit of 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml; and this facility, when operated properly, is designed to provide adequate disinfection and should not add to the bacterial impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 111 has been approved for this segment: *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. On August 28, 2019, the TCEQ adopted *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. The EPA approved the TMDLs on October 25, 2019. The TMDL addresses elevated levels of bacteria in one classified segment (Navasota River Below Lake Limestone - 1209, AUs _03 and _05) of this watershed. This project takes a watershed approach, but the TMDL only applies to AU 1209_03 and the AUs and additional unclassified segments upstream of it (1209_04, 1209_05, 1209_H, 1209G, 1209J, 1209K, and 1209P).

The waste load allocation (WLA) for WWTFs was established as the final permitted flow for each WWTF multiplied by the geometric mean criterion for bacteria multiplied by a conversion factor (to get to units per day). The allocated loads were calculated for *Escherichia coli* (*E. coli*). Future growth from existing or new permitted sources is not limited by these TMDLs as long as the sources do not exceed the limits provided. To ensure that the effluent limits in the proposed permit are consistent with the WLAs provided in the TMDL, a concentration-based effluent limitation of 126 CFU or MPN per 100 ml for *E. coli* was added to the proposed permit.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-10, effective 7/22/2010) and the EPA-approved portions of the TSWQS (effective 3/6/2014). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with pH criteria in the TSWQS when the discharge authorized is from a minor facility and the unclassified waterbodies have minimal or limited aquatic life uses. This technology-based approach reasonably assures instream compliance with TSWQS due to relatively smaller discharge volumes authorized by these permits. TCEQ sampling conducted throughout Texas indicating instream buffering quickly restores pH levels to ambient conditions, informs this conservative approach.

The Houston toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within Segment No. 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the Texas' authorization of the TPDES permitting program (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for

TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species. However, the determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment No. 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is determined that the proposed facility's discharge is not expected to impact the Houston toad.

Procedural Background

The TCEQ received the application on November 29, 2021, and declared it administratively complete on March 15, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Brazos County, Texas in the *Eagle Newspaper* on March 18, 2022. The ED completed the technical review of the application on April 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Brazos County, Texas in the *Eagle Newspaper* on May 25, 2022. The public comment period ended on June 24, 2022, and the ED's original RTC was filed on August 29, 2022. On September 1, 2022, the ED approved a Public Meeting Request from Texas State Representative Kyle Kacal. On December 23, 2022 the Applicant published the Notice of Public Meeting in the *Eagle Newspaper*. On January 23, 2023, at 7:00pm, a Public Meeting was held at the Embassy Suites in College Station, located at 201 University Drive East, 77840. The reopened comment period closed on January 23, 2023, at the close of the Public Meeting. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

Access to Rules, Laws and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Current TCEQ Rules," then "Download TCEQ Rules");
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:** <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select "use our online form") or by sending an email to the following address: cmplaint@TCEQ.state.tx.us.

Commission records for the Proposed facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor

(Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the at the Brazos County Clerk's Office located at East 26th Street, Suite 1430, Bryan, Texas 77083, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 9) in Waco, TX at (254) 751-0335 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENTS AND RESPONSES

COMMENT 1:

Michele Moore, Jean Ragusa, Jeff Knox, Jean Ricciardello, Lindsey Bolline, Erin Richards, Laurie Galbreath, Daniel Applegate, Sergiy Butenko, Caroline Roeth, Gordon Wilson, Melisa Wagner, Shannon Lindley, Andrea Gatlin, Paul Wagner, Scott Story, Justin Homan, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Janet Galindo, Julie Wilkie, Kayla Henderson, Robin Rackley, Rhonda McCormick, Janet Prater, Laura Caraway, Angelique Toler, Neetu Kainthla, Larry Van Horn, Lallah Howard, Joanna Butenko, Darlene Neeley, Sairoj Maknojia, Xue Fan, Gamal Akabani, Andrea Etheridge, Alison Urban, Stephen Smith, Brenda Nunley, Jamie Thomas, Abby Goerig, Shelly Templin, Tasha Homann, Paula Murphy, Tyler Chessman, Reggi and Laura Holzer, Duane and Stacy Muehlbrad, and Charles and Janet Galindo, Austin and Angee Wilcox, Marshall and Sandra Taylor, and Sergiy and Joanna Butenko all commented in opposition to the proposed permit and facility, and specifically the proposed facility's location.

RESPONSE 1:

The ED acknowledges the opposition to the proposed permit, facility, and the proposed location of the proposed facility. Texas Water Code (TWC) § 26.027 authorizes the TCEQ to issue permits for discharges into water in the state. The ED evaluates applications for wastewater treatment plants based on the information provided in the application. The ED can recommend issuance or denial of an application based on whether the application complies with the TWC and TCEQ regulations.

The Applicant is the entity that proposes the location of the facility, point of discharge, and the discharge route rather than the ED. The ED's review evaluates the impact of the discharge on the receiving waters; however, the TCEQ's permitting authority does not include the ability to mandate a different location for the facility if

the location in the application complies with 30 TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to “Unsuitable Site Characteristics” for a treatment facility.

Instead, the ED may only evaluate a proposed location for a wastewater treatment facility according to the Location Standards in the TCEQ regulations and the effect(s) of the treated wastewater on the uses of the receiving stream starting at the point of discharge. The ED must provide the proper effluent limitations to protect these uses.

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

COMMENT 2:

Daniel Applegate, Cynthia Werner, Jean Ricciardello, Duane and Stacy Muehlbrad, Sergiy and Joanna Butenko, Melissa Wagner, Scott Story, Justin Homan, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Brenda Nunley, Sandra Taylor, Rhonda McCormick, Michele Moore, Xue Fan, Tyler Chessman, Gamal Akabani, and Stephen Smith all commented about air contaminants from the proposed facility negatively impacting area residents’ quality of life and their health, as well as the health of wildlife in the area.

RESPONSE 2:

The health concerns of residents, as well as those of the public, are considered in reviewing an application for a domestic wastewater discharge permit. The TCEQ takes the concerns and comments expressed by the public relating to water quality, human health, and protecting the State’s rivers and lakes into consideration in deciding whether to issue a wastewater discharge permit. However, WWTFs do not contribute significant amounts of air contaminants to the atmosphere; and thus, the air contaminants from a WWTF have a negligible impact on human health and the environment.

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

Similarly, the TCEQ oversees the protection of water quality with federal regulatory authority, such as the TPDES program, over discharges of pollutants into Texas surface waterbodies. The TCEQ has legislative authority to protect water quality in Texas and under TWC, Chapter 26, to authorize TPDES discharge permits subject to

the regulations in 30 TAC Chapters 305, 307, and 309, including specific rules for wastewater treatment systems under Chapters 217 and 309.

WQD staff evaluated the application as an authorization to discharge treated wastewater into water in the State. Thus, the quality of the effluent and the method of achieving that quality must follow the TWC, the Federal Clean Water Act, and the TSWQS. Further, WQD Staff developed the proposed permit to preclude significant degradation of water quality in the waterbodies within the discharge route. The proposed permit includes effluent limitations and monitoring requirements designed to ensure protection of the receiving waters in accordance with TCEQ rules and procedures.

Chapter 26 of the TWC and TCEQ rules relating to water quality are geared towards the protection of public health, aquatic life, and the environment. Accordingly, the stated policy of both the Water Code and the TSWQS is:

to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.¹

Likewise, the TPDES program mandates that discharges of treated effluent into water in the state from facilities regulated by TPDES permits must meet the requirements of the TSWQS. The TSWQS is a primary mechanism for the TCEQ to protect surface water quality, groundwater quality, human health, aquatic life, the environment, and designated uses of the receiving waters. Development of the proposed permit was in accordance with the TSWQS (30 TAC Chapter 307) and the TCEQ IPs to be protective of water quality, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements.

The TSWQS require that discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals, not degrade receiving waters, and not result in situations that impair existing, attainable, or designated uses.

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

As specified by the methodologies outlined in the TCEQ IPs, TPDES permits issued by the TCEQ must maintain water in the state to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. In addition, permits must prevent adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The design of the proposed permit ensures these water quality standards will be supported.

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

To achieve the goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process WQD Staff review all applications in accordance with the TSWQS and the TCEQ IPs. The proposed permit contains several water quality specific parameters that limit the potential impact of the discharge on the receiving waters, such as the effluent limits that were developed by WQD Staff on the Modeling Team to maintain and protect the existing uses of the receiving waters (primary contact recreation, public water supply, and high aquatic life), which were identified by WQD Staff on the Standards Team.

The Modeling Team developed protective effluent limits by performing Dissolved Oxygen or DO modeling analyses. DO concentrations in a waterbody are critical for the waterbody's health and protection of aquatic life. In many cases, effluent discharges decrease DO levels in waterbodies. To ensure that discharges do not lower DO levels below criteria established for those water bodies by the Standards Team, DO modeling analyses are performed to evaluate whether the proposed permit's effluent limits are predicted to ensure the DO concentrations in the discharge route will be maintained above the criteria established by the Standards Team.

Based on the model results, the effluent set in the proposed permit in all phases, based on a 30-day average, are 10 mg/l BOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N, 126 colony forming units or most probable number of *E. coli* per 100 ml; and the effluent must contain a minimum DO of 4.0 mg/l, which must be monitored once per week by grab sample. The effluent must be free of visible oil and, other than in trace amounts, floating solids, or visible foam.

Additional protection of human health comes from the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires disinfection of domestic wastewater into water in the state in a manner conducive to the protection of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval from the ED. Whichever form is used, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Therefore, in accordance with the TCEQ rules (30 TAC § 309.3(g)(1)), the proposed permit requires the treated effluent to be disinfected prior to discharge in a manner conducive to protect both the public health and aquatic life.

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

Also protecting the water quality of the creeks and waterbodies of the discharge route are the assigned aquatic life uses themselves, which govern what uses and criteria will apply to protect Segment No. 1209 of the Brazos River Basin and the

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

³ Smiling Mallard Dev. Ltd. Draft Permit, Effluent Limitations and Monitoring Requirements, page 2; see also 30 TEX. ADMIN. CODE § 309.3(g)(2)

creeks upstream of Segment No. 1209, their uses and the aquatic life that dwell in them, as well as consumption by terrestrial wildlife. The proposed facility is a minor municipal facility that will discharge to first an unnamed tributary of Peach Creek, which is unclassified and, like Peach Creek, has a “limited aquatic life” use. However, the discharge also enters the Navasota River Below Lake Limestone in Segment No. 1209, which has a “high aquatic life” use. Waterbodies that support an exceptional and high aquatic life uses have associated criteria that protect both the aquatic life that live in the waterbodies and terrestrial wildlife that use the waterbodies as a source of water or food. Additionally, Minor municipal facilities, with conventional domestic sewage do not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing wastewater. However, the proposed facility does not, and the proposed discharge will have to meet a high DO criterion to support an aquatic community with exceptional and high-existing aquatic life uses. The proposed permit’s limits will protect the uses and quality of the receiving waters of the discharge route for the benefit of the aquatic life and terrestrial wildlife that depend on it.

WQD staff developed and designed the proposed permit to be protective of the uses of all water bodies that could be potentially affected by the proposed discharge. In addition, the discharge cannot cause significant degradation of water quality in any water bodies that exceed fishable/swimmable quality, such as Segment No. 1209. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in or on the water. To achieve the goal of supporting a level of water quality sufficient to protect existing water body uses, the proposed permit contains several water quality-specific parameter requirements that limit the potential impact of the discharge on the receiving waters. It is the mission of WQD staff to provide appropriate effluent limitations to protect the uses of the receiving waterbody.

Because Waters in the State must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three, the WQD Staff determined that the proposed permit includes provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of aquatic life, human health, and the environment.

COMMENT 3:

Duane and Stacy Muehlbrad, Lindsey Bolline, Shannon Lindley, Andrea Gatlin, Michele Moore, Julie Wilkie, Lallah Howard, Larry Van Horn, Andrea Etheridge, Brenda Nunley, Jamie Thomas, Tyler Chessman, Justin Homan, Angelique Toler, and Jamie Thomas all commented that the neighborhood is all on septic systems and the proposed discharge would not benefit the neighborhood at all.

RESPONSE 3:

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

utilize individual septic tanks to serve the proposed residential area, it will be subject to 30 TAC Chapter 285, relating to “On-site Sewage Facilities (OSSF).”⁴

Instead, WQD staff evaluate applications for WWTFs based on the information provided in the application. It is the sole responsibility of the Applicant to propose the manner of treatment and disposal of the effluent. TCEQ’s permitting authority does not include the authority to mandate the manner of treatment or method of disposal of the effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309. WQD staff, after evaluation of the proposed wastewater treatment technology and the effect(s) of the treated wastewater on the uses of the receiving waterbody starting at the point of discharge, can recommend issuance or denial of an application based on whether the application complies with the TWC and TCEQ regulations.

The wastewater strength, or organic loading, of CBOD₅ and NH₃-N in untreated sewage from a residential subdivision is estimated to be 250-400 mg/l and 15 - 75 mg/l, respectively.⁵ The proposed permit, for example, requires that the treated effluent shall not exceed 10 mg/l CBOD₅ with 2.0 mg/l NH₃-N.⁶ Therefore, the proposed facility will be required to achieve a more than 90%-95% reduction in BOD₅/CBOD₅ concentration in the treated effluent prior to discharge. In comparison, a well-maintained septic tank treats sewage to approximately 100 mg/l BOD₅ prior to discharging into the underground drain field or soil absorption field.

Treated effluent may also be disposed of via land application. A Texas Land Application Permit (TLAP) authorizes the disposal of treated effluent by means of surface irrigation, subsurface irrigation, or evaporation. The effluent must be treated to the pollutant concentrations prescribed in 30 TAC § 309.4.

Further, treated effluent may also be utilized for beneficial use pursuant to 30 TAC Chapter 210, relating to “Use of Reclaimed Water;” however this is an authorization that requires either a TPDES or TLAP permit be obtained first.

Any suggestions to the Applicant for a different method for disposal of wastewater would need to be made directly to and negotiated with the Applicant and would be separate from the permitting process for this TPDES permit.

COMMENT 4:

Laurie Galbreath, Daniel Applegate, Linda Morgan, Tyler Chessman, Gordon Wilson, Andrea Gatlin, Carla Shaw, Tara McGuire, Angee Wilcox, Janet Prater, Brenda Nunley, and Duane Muehlbrad all commented expressing concerns about foul odors from the proposed facility.

RESPONSE 4:

Instances of foul odors from a discharge of treated wastewater can exist when there are insufficient levels of dissolved oxygen (DO) present in the effluent. To prevent odors from occurring the number of oxygen-demanding constituents must be controlled. The proposed effluent limitations, specifically the minimum dissolved oxygen limit, restrict the amount of oxygen-demanding constituents and are set at

⁴ 30 TEX. ADMIN. CODE § 285.4

⁵ 30 TEX. ADMIN. CODE § 217.32(a)(3)

⁶ Smiling Mallard Dev. Ltd. Draft Permit, Effluent Limitations and Monitoring Requirements, page 2

levels to significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters.

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

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

The proposed permit does not limit a landowner's ability to seek private action against the Applicant, and if anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may reported to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Regional Office (Region 9) in Waco at (254) 751-0335. Complaints may be filed electronically by using the methods described in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENT 5:

Duane and Stacy Muehlbrad, Andrea Gatlin, Justin Homan, Linda Morgan, Angelique Toler, Darlene Neeley, and Tasha Homann all commented expressing concern over the application's notice process.

RESPONSE 5:

Notice provisions for Applicants and the Commission are found in 30 TAC Chapter 39 (Public Notice). When the ED determines that an application is administratively complete, the Chief Clerk mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.⁷ Not later than 30 days after the ED determines that the application is administratively complete, the Applicant must publish the NORI in the newspaper that has the largest circulation within the county or municipality in which the facility is located.⁸ The Applicant must also make a copy of the administratively complete application available for public viewing in the county in which the facility is located.⁹ Finally, the Applicant, using county deed records, must identify all landowners adjacent to the proposed facility and discharge and submit the list to the TCEQ Chief Clerk's office so

⁷ 30 TAC § 39.418(a).

⁸ 30 TAC § 39.405(f).

⁹ 30 TAC § 39.405(g).

it can mail timely copies of the public notices for the application to the adjacent landowners.

After completing the technical review of an application, the ED files its preliminary determination and the draft permit with the Chief Clerk.¹⁰ The Chief Clerk must mail the preliminary decision, along with the Notice of Application and Preliminary Decision (NAPD), to the Applicant, who must then publish the NAPD in the same newspaper as the NORI.¹¹ The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.¹²

The NAPD must set a deadline for filing public comments with the Chief Clerk that is no earlier than 30 days after its publication in a newspaper.¹³ If the ED holds a public meeting on the application after the 30 day period, then the public comment period is automatically extended to the end of the public meeting.¹⁴ The ED may hold a public meeting at any time in the county where the facility is located if there is evidence of substantial public interest or if a legislator representing the general area where the facility will be located requests a meeting.¹⁵ As the public comment period has ended, the ED must file this Response to Public Comments, addressing all timely, relevant and material, or significant public comments submitted during the comment period, regardless of whether the comments were withdrawn.¹⁶

In this case, the TCEQ received the application on November 29, 2021, and declared it administratively complete on March 15, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Brazos County, Texas in the *Eagle Newspaper* on March 18, 2022. The ED completed the technical review of the application on April 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Brazos County, Texas in the *Eagle Newspaper* on May 25, 2022. The comment period for this application closed on June 24, 2022. The notices are not intended to provide a full description of the application, but rather to provide instructions on where to obtain additional information, such as more comprehensive description of the information in the application. Documents associated with the application are made public at the locations below to allow the public to review them and determine if they have additional comments or questions.

The permit application has been available for viewing and copying at the at the Brazos County Clerk's Office located at East 26th Street, Suite 1430, Bryan, Texas 77083, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the NAPD. Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

¹⁰ 30 TAC § 39.419(a).

¹¹ 30 TAC § 39.419(b).

¹² 30 TAC § 39.413.

¹³ 30 TAC § 39.551(c)(3).

¹⁴ 30 TAC § 55.152(b).

¹⁵ 30 TAC § 55.154(c).

¹⁶ 30 TAC § 55.156.

COMMENT 6:

Reggi & Laura Holzer, Daniel Applegate, Sergiy Butenko, Gordon Wilson, Andrea Gatlin, Linda Morgan, Tara McGuire, Angee Wilcox, Janet Prater, Cynthia Werner, Xue Fan, Andrea Etheridge, Brenda Nunley, and Tyler Chessman all commented on the proposed facility's adverse impact to the Villages at Indian Lakes by affecting property values and the marketability of the neighborhood. Laurie Galbreath and Angie Wilcox commented expressing concern over the visual aesthetics of the proposed facility and the noise from the proposed facility.

RESPONSE 6:

The ED acknowledges the significance of these concerns; however, the TCEQ does not have the authority to address these types of issues as part of the wastewater permitting process. While the ED encourages the participation of all citizens in the environmental permitting process, there are certain concerns of citizens that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute. The Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes, and coastal waters. The ED, through his Water Quality Division, has no jurisdiction to address noise, aesthetics, property values, or the marketability of neighboring properties in the wastewater permitting process, which is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's waterbodies.

TPDES permits establish terms and conditions that are intended to provide water quality pollution control. The TCEQ's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. Likewise, section 26.027 of the TWC authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of state waters. As such, the water quality permitting process is limited to controlling the discharge of pollutants into water in the state. The TCEQ, in its determination of whether to issue a water quality permit, does not have jurisdiction under the TWC or its regulations to address or consider property values, the marketability of surrounding properties, visual aesthetics and noise, nor the types of subdivisions.

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

Nor does the proposed permit limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to the TCEQ Region 9 Waco Office at (254) 751-0335, or by calling the statewide toll-free number at 1-888-777-3186. Complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records).

Finally, the issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. In addition, the scope of

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

COMMENT 7:

Shane Phelps commented on the proposed facility's location, possible foul odors, negative impacts to quality of life, property values, aesthetics, and on human and wildlife health.

RESPONSE 7:

To avoid repeating the responses in the ED's original RTC that is above, the proposed facility's location was addressed in Response 1 (Pg. 5), human health and wildlife health were addressed in Response 2 (pg. 6), foul odors were addressed by Response 4 (Pg. 4), and property values, aesthetics, and quality of life were addressed by Response 6 (Pg. 11).

COMMENT 8:

Daniel Applegate commented on whether the proposed permit complied with TCEQ's Regionalization policy.

RESPONSE 8:

According to Texas Water Code (TWC) § 26.081, the State's policy is to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state," otherwise known as "Regionalization."

Likewise, TWC § 26.0282 provides that "in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as area wide or regional disposal systems by Commission Order. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater."

To implement the Regionalization policy, TCEQ's domestic wastewater application requires information, in sections 1 of the Domestic Technical Report 1.0 and 1.A of the Domestic Technical Report 1.1, regarding the applicant's proposed flows and need for each of the facility's phases. The information requested includes the design flow and estimated construction start date of each phase, estimated start dates for effluent disposal, and justification for any phase beyond the facility's initial phase. The ED's staff uses all submitted information to evaluate whether the Commission should grant the application and, if so, whether each of the proposed phases should be incorporated into a permit.

Further, when evaluating the need for a proposed facility, TCEQ's regionalization policy requires applicants to identify the existing permitted facilities within a 3-mile radius of the proposed facility. Applicants are then required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility does have the capacity and is willing to accept the proposed wastewater, Applicants must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion. Finally, Applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed facility regarding regionalization with their system. According to the application information submitted by the Applicant, there is one wastewater treatment facility or collection system within three miles of the site of the proposed facility. The Applicant sent a letter to the City of College Station inquiring whether they had capacity to accept the proposed wastewater volumes included in the application. However, no response was received from the City.

COMMENT 9:

Herb Flanagan commented on the aesthetics of the proposed facility, the direction the wind blows in the area and how often it changes as it relates to foul odors from the proposed facility, and the development plan for the Applicant's project.

RESPONSE 9:

The ED's original RTC above, addressed the proposed facility's aesthetics in Response 6 (Pg. 11), and foul odors were addressed by Response 4 (Pg. 10).

The Applicant's development plan is outside the TCEQ's jurisdiction in the wastewater permitting context.

COMMENT 10:

Kim Pritchard commented on the Navasota ladies'-tress and its critical habitat, which was enlisted as an endangered species on May 6, 1982.

RESPONSE 10:

During the Technical Review process described above, an endangered species evaluation was performed. The *Houston toad* (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within the Segment 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is

determined that the facility's discharge is not expected to impact the *Houston toad*. No other endangered species were identified during the study.

COMMENT 11:

Lanell Flanagan commented that the handouts or materials provided by the Applicant at the public meeting were last minute. Ms. Flanagan also commented on using septic tanks instead of discharging.

RESPONSE 11:

The ED acknowledges that the Applicant's handouts and materials were provided at the beginning of the public meeting, but the ED has no control over what information the Applicant provides at a public meeting or when this information is provided.

Related to septic tanks, the ED's original RTC above, addressed the use of septic tanks in Response 3 (Pg. 9).

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor,
Interim Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 18, 2023, the Executive Director's Response to Public Comment for Permit No. WQ0016077001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

A handwritten signature in black ink that reads "Michael T. Parr II". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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