

**TCEQ DOCKET NO. 2024-0131-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>WILCO MUNICIPAL UTILITY</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>DISTRICT 45 WWTP, LLC</b>	<b>§</b>	<b>ENVIRONMENTAL</b>
<b>FOR TPDES PERMIT</b>	<b>§</b>	<b>QUALITY</b>
<b>NO. WQ0016146001</b>	<b>§</b>	

**APPLICANT’S RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the Applicant, Wilco Municipal Utility District 45 WWTP, LLC (“Applicant”) and files its Response to Hearing Requests in the above-referenced matter, and would respectfully show as follows:

**BACKGROUND**

Applicant has applied to TCEQ for a new TPDES Permit No. WQ0016146001.

The wastewater treatment facility will be located approximately 1.56 miles southeast of the intersection of Farm-to-Market Road 3349 and County Road 404, in Williamson County, Texas 76574. The treated effluent will be discharged to Boggy Creek, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The unclassified receiving water use is limited aquatic life use for Boggy Creek.

The draft permit authorizes a discharge of treated domestic wastewater at a daily average flow not to exceed 0.30 million gallons per day (MGD) in the Interim I phase, an annual average flow not to exceed 1 MGD in the Interim II phase, and an annual average flow not to exceed 2 MGD in the Final phase.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 5 mg/L Five-Day Carbonaceous Biochemical Oxygen Demand (CBOD5), 5 mg/L total suspended solids (TSS), 2 mg/L Ammonia-Nitrogen (NH3-N), 1 mg/L Total Phosphorus (TP), 126 colony

forming units (CFU) or most probable number (MPN) of Escherichia coli (E. coli) per 100 mL, and 4.0 mg/L minimum dissolved oxygen (DO). The permittee shall either utilize an Ultraviolet Light (UV) system for disinfection purposes or shall achieve disinfection by chlorination. If the permittee uses chlorination in the Interim I phase, the effluent shall contain a total chlorine residual of at least 1.0 mg/L and shall not exceed a total chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). If the permittee uses chlorination in the Interim II and Final phase, the effluent shall contain a total chlorine residual of at least 1.0 mg/L after a detention time of at least 20 minutes (based on peak flow) and the permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/L total chlorine residual.

### **RESPONSE TO HEARING REQUESTS**

At the outset, the Commission should be made aware that it is Applicant's position that the Prairie Crossing entities are using the Commission process as weapon to essentially extort money from neighboring properties. Although Prairie Crossing does not yet have an operational wastewater plant, Applicant approached persons involved with the Prairie Crossing MUDS about joining forces on a wastewater plant. Among other demands, at one point the Prairie Crossing affiliates sought 50% of the Applicant's MUD reimbursables to allow a connection to the Prairie Crossing plant that is not yet built. This is many times the cost for Applicant's participation in such a plant. The Prairie Crossing entities have discovered a method by which they can take profits from neighboring entities by protesting wastewater applications. As the Commission evaluates these Prairie Crossing Hearing Requests, Applicant requests that the Commission keep in mind Prairie Crossing's cynical use of the TCEQ process for its personal gain.

In fact, in Prairie Crossing's application for a major expansion of its own permit (Permit

No. WQ0015850001), Prairie Crossing simply presumed that it would serve this development as well as that of a development to be served by Epitome Development LLP.<sup>1</sup> The Prairie Crossing entities clearly opposed both permits as leverage to extort those developments into paying exorbitant fees to the Prairie Crossing entities if they wanted to develop.<sup>2</sup>

The Applicant has not agreed to have Prairie Crossing service its tract. The fact that Prairie Crossing has requested a contested case hearing regarding this draft permit should be eyed with suspicion given the fact that Prairie Crossing has declared itself the regional provider despite not having an existing plant and because the Prairie Crossing affiliates seek to profit by utilizing the TCEQ process in this manner.

Prairie Crossing's underhanded use of the TCEQ process for its own gain causes delay, uncertainty, and lost revenue and opportunity. TCEQ should not allow itself to be used in such a manner.

**I. Jonah Water Special Utility District's Request should be denied.**

Jonah Water Special Utility District ("Jonah") admits that "[t]he proposed facility is located just outside of Jonah's certificated territory and district boundary."<sup>3</sup> The proposed facility is not within any Jonah boundary. Jonah does not explain how it has an interest in any facility outside of its boundaries. It fails, therefore, to specify that it has any authority under state law over issues raised by the application in accordance with 30 Tex. Admin. Code § 55.203.

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<sup>1</sup> Texas Commission on Environmental Quality, *An Interim Order Concerning the Application by Epitome Development LLP for TPDES Permit No. WQ0016226001*; TCEQ Docket No. 2023-0571-MWD.

<sup>2</sup> See *Application by Prairie Crossing Wastewater, LLC for a major amendment to Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0015850001*, Application, Attachment N: Explanation of Need for Permit. ("the Cielo Ranch and Taylor Tract Service Areas are proposed to be covered as a part of the Prairie Crossing application, along with the Prairie Crossing Service Area. . . . This permit application is being submitted consistent with the TCEQ Regionalization regulations to include all presently known potential developments.").

<sup>3</sup> Letter from The Carlton Law Firm, P.L.L.C. (April 24, 2023) at 1 (emphasis added).

Moreover, Jonah did not seek a Hearing Request after the issuance of the Response to Public Comment. It, therefore, did not specify any of the executive director's responses that the requestor disputes, the factual basis of the dispute, or list any disputed issues of law as specified by 30 Tex. Admin. Code § 55.201(d)(4)(B).

Finally, Jonah asserts that the Applicant did not comply with the TCEQ's Regionalization Policy. Jonah does not, however, identify a single existing wastewater plant within three miles of the proposed facility to which the development can connect. TCEQ's Regionalization policy states that "regionalization is connecting new subdivisions or housing units to an existing wastewater collection system and its associated wastewater treatment plant rather than constructing a new wastewater treatment plant." RG-632 *Evaluating Regionalization for Proposed Wastewater Systems* (August 2023) at 3 (emphasis added). In the Response to Comments, the Executive Director noted that "while there are three permitted proposed wastewater treatment facilities within a three-mile radius of the proposed facility site location, none of them are existing wastewater treatment facilities. As Jonah has failed to identify a single existing facility to which it believes Applicant should connect, it has failed to identify a regionalization issue over which it has standing.

## **II. Prairie Crossing Municipal Utility Districts 1 & 2's Hearing Request should be denied.**

Prairie Crossing Municipal Utility Districts 1 & 2 ("Prairie Crossing MUDs") discusses three bases justifying its hearing request and its standing: (A) they claim the draft permit fails to meet TCEQ's regionalization policy; (B) they claim that the proposed discharge will not be in compliance with TCEQ's antidegradation policy; and (C) they claim "additional deficiencies."<sup>4</sup>

The only basis upon which they assert a personal justiciable interest is as follows:

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<sup>4</sup> Letter from Lloyd Gosselink (November 9, 2023) at 2-4.

the Application is serviceable within the area Prairie Crossing MUDs are to provide service in Williamson County. Prairie Crossing MUDs contend the Application is contrary to TCEQ regionalization policy. Additionally, Prairie Crossing MUDs contend that Wilco MUDs failure to provide an adequate noise and odor abatement plan, failure to adequately assess stream quality and characteristics, and failure to meet TCEQ's buffer zone requirements likely will adversely affect the MUDs.

Letter from Lloyd Gosselink (November 9, 2023) at 2. Therefore, the MUDs claim a personable justiciable interest because (1) the applicant could potentially be served by the MUDs and (2) they claim the Applicant's alleged other failures "will adversely affect the MUDs."

With respect to the Applicant being "serviceable" by the MUDs, what the MUDs refuse to say is that there is no existing facility being operated by the MUDs. The MUD's hopes and dreams of someday providing wastewater service to all those in the area are nothing more than that – hopes and dreams. The MUDs do not own or operate any existing wastewater plant which can serve the Applicant. They don't currently provide any wastewater service. Applicant urges the Commission to look carefully at all the correspondence from the MUDs and the related entities – especially their Reply, to ascertain whether a plant owned or operated by the MUDs actually exists or existed at the time the application was submitted. It does not and it did not.

That someday a wastewater plant might exist does not provide the MUDs with a justiciable interest any more than the undersigned attorney would have a justiciable interest based on his "plan" to purchase property adjacent to the Applicant's site. This "plan" does not constitute a justiciable interest under 30 Tex. Admin. Code § 55.201(d)(2).

With respect to their statement that the Applicant's alleged other failures "will adversely affect the MUDs," the MUDs make no attempt to describe how those alleged failures will adversely affect them. This conclusory statement does not "identify the person's personal justiciable interest affected by the application" and does not comply with 30 Tex. Admin. Code § 55.201(d)(2).

**A. The State Regionalization Policy does not give the MUD's a justiciable interest in this proceeding.**

Like Jonah, the MUDs fail to identify a single existing wastewater plant within three miles of the proposed facility to which the development can connect. TCEQ's Regionalization policy states that "regionalization is connecting new subdivisions or housing units to an existing wastewater collection system and its associated wastewater treatment plant rather than constructing a new wastewater treatment plant." RG-632 *Evaluating Regionalization for Proposed Wastewater Systems* (August 2023) at 3 (emphasis added). In the Response to Comments, the Executive Director noted that "while there are three permitted proposed wastewater treatment facilities within a three-mile radius of the proposed facility site location, none of them are existing wastewater treatment facilities."<sup>5</sup> As the MUDs have failed to identify a single existing facility to which it believes Applicant should connect, they have failed to identify a regionalization issue over which they have a justiciable interest.

**B. The Mere Reference to TCEQ's State Regionalization Policy does not give the MUD's a justiciable interest in this proceeding.**

In response to the Executive Director's Response to Public Comment, the MUDs argue that "the appropriate antidegradation analysis to determine this outcome has not been included in the Application."<sup>6</sup> The antidegradation analysis, however, is not part of the application – it is conducted by TCEQ staff. It is TCEQ staff, not the Applicant, who determines the uses of the receiving waters and sets effluent limits that are protective of those uses.<sup>7</sup>

The MUDs also assert that the Staff was incorrect that a Tier 2 analysis was not required. But the Executive Director determined that "no water bodies with exceptional, high, or

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<sup>5</sup> Emphasis added.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> Response to Public Comments at 7.

intermediate aquatic life uses are present within the stream reach assessed.”<sup>8</sup> But other than say that the ED was wrong, the MUDs do not provide any basis for such an assertion. They simply say that “such analysis should be required.”<sup>9</sup>

Mere recitation of a requirement and saying that they disagree with the ED’s conclusion does not “identify [their] personal justiciable interest affected by the application.” 30 Tex. Admin. Code § 55.201(d)(2). The MUD’s make no attempt to describe how their disagreement with the ED’s analysis affects them any differently from members of the general public. The MUDs do not explain how and why they believes they will be adversely affected by the proposed facility or activity in a manner not common to members of the general public. They do not show how they have a justiciable interest in whether a Tier 2 analysis is required. 30 Tex. Admin. Code § 55.201(d)(2).

Furthermore, the MUDs do not explain how they have an interest in whether a tier 2 analysis is conducted outside of their boundaries. They fail, therefore, to specify that they has any authority under state law over issues raised by the application in accordance with 30 Tex. Admin. Code § 55.203.

**C. The MUDs fail to show a justiciable interest in any of the other alleged “additional deficiencies” cited in its Hearing Request.**

Like the regionalization requirements, The MUDs simply recite four issues as a basis for its hearing request under its alleged “additional deficiencies”: (1) Nuisance Odors; (2) Description of Immediate Receiving Waters; (3) Description of Stream Physical Characteristics; and (4) Buffer Zone requirements.

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<sup>8</sup> *Id.* at 8.

<sup>9</sup> Letter from Lloyd Gosselink (November 9, 2023) at 3.

Just as with the antidegradation requirements, however, they do not “identify [their] personal justiciable interest affected by the application.” 30 Tex. Admin. Code § 55.201(d)(2). The MUD’s make no attempt to describe how their disagreement with the ED’s analysis on these issues affects them any differently from members of the general public. The MUDs do not explain how and why they believe they will be adversely affected by the proposed facility or activity in a manner not common to members of the general public. They do not show how they have a justiciable interest in any of these issues. 30 Tex. Admin. Code § 55.201(d)(2).

Furthermore, the MUDs do not explain how they have an interest in in any of these issues outside of their boundaries. They fail, therefore, to specify that they has any authority under state law over issues raised by the application in accordance with 30 Tex. Admin. Code § 55.203.

### **III. 05 Ranch Investments, LLC Hearing Request should be denied.**

Except for the few sentences attempting to describe its justiciable interest, 05 Ranch Investments, LLC (“05 Investments”) submitted a Hearing Request that was identical in all substantive respects to the letter submitted by the MUDS.<sup>10</sup>

Its statement regarding its personal justiciable interest was that “05 Investments has a particular interest in the issues relevant to the Application because it is the underlying landowner of Prairie Crossing’s permitted proposed facility and the Application is serviceable within Prairie Crossing’s proposed service area.”<sup>11</sup> Being a landowner of property over which some other entity has a plan to someday have a facility constructed, is even one more step removed from the alleged interest of the MUDs, who do not even assert ownership or control over the permit for the proposed facility. Just because a person owns land upon which some proposed facility may someday be

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<sup>10</sup> Letter from Lloyd Gosselink (November 9, 2023).

<sup>11</sup> Letter from Lloyd Gosselink (November 9, 2023) at 2 (emphasis added).



built does not give that person an existing justiciable interest in regionalization or any other matter asserted as an interest by 05 Investments.

For the same reasons that the MUDs failed to show a justiciable interest, so too does 05 Investments, and Applicant incorporates by reference all the same arguments submitted about the MUDs to 05 Investments.

It is important to note that Applicant's primary argument, that neither the MUDs nor 05 Investments show how they are affected differently from members of the general public, is illustrated by the fact that the MUDs and 05 Investments use identical language to assert their justiciable interest. The fact that the Hearing Request Letter could have been submitted by anybody, and, in fact, was submitted by these separate entities, show that the interests asserted in what amounts to a form letter are common to members of the general public. 05 Investments should not be granted standing because it has not shown how its interest is different from members of the general public.

#### **IV. Prairie Crossing Wastewater, LLC's Hearing Request should be denied.**

Prairie Crossing Wastewater, LLC ("Prairie Crossing"), has been issued TPDES Permit No. WQ0015850001 (the "PC Permit") to construct a wastewater treatment plant. **But Prairie Crossing has not yet constructed that wastewater plant.**

Except for the few sentences attempting to describe its justiciable interest, Prairie Crossing submitted a Hearing Request that was identical in all substantive respects to the letter submitted by the MUDS and 05 Investments.<sup>12</sup>

Its statement regarding its personal justiciable interest was that the Applicant proposes to serve an area that is "within Prairie Crossing's proposed service area."<sup>13</sup> Being the owner of a

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<sup>12</sup> Letter from Lloyd Gosselink (November 9, 2023).

<sup>13</sup> Letter from Lloyd Gosselink (November 9, 2023) at 2 (emphasis added).

permit for a plant that is not yet constructed does not give that person an existing justiciable interest in regionalization or any other matter asserted as an interest by Prairie Crossing.

For the same reasons that the MUDs and 05 Investments failed to show a justiciable interest, so too does Prairie Crossing, and Applicant incorporates by reference all the same arguments submitted about the MUDs to Prairie Crossing.

It is important to note that Applicant's primary argument, that neither the MUDs nor 05 Investments, nor Prairie Crossing shows how they are affected differently from members of the general public, is illustrated by the fact that they all use identical language to assert their justiciable interest. The fact that the Hearing Request Letter could have been submitted by anybody, and in fact was submitted by all these separate entities, show that the interests asserted in what amounts to a form letter are common to members of the general public. Prairie Crossing should not be granted standing because it has not shown how its interest is different from members of the general public.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of April 2024 a true and correct copy of the foregoing document was filed with the Office of the Chief Clerk at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) and was served on the following by email (where indicated) and first-class mail (where indicated) as

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