

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Tuesday, April 25, 2023 7:31 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Jonah Water SUD Comments and Contested Case Hearing Request 2023.04.24.pdf

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PML+

From: katy@carltonlawaustin.com <katy@carltonlawaustin.com>
Sent: Monday, April 24, 2023 4:37 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

FROM

NAME: Erin R. Selvera

EMAIL: katy@carltonlawaustin.com

COMPANY: The Carlton Law Firm, P.L.L.C.

ADDRESS: 4301 WESTBANK DR Suite B-130
AUSTIN TX 78746-6568

PHONE: 5126140901

FAX: 5129002855

COMMENTS: This office represents Jonah Water Special Utility District, and I am writing on its behalf to provide comments and request a contested case hearing.

The Carlton Law Firm, P.L.L.C.

4301 Westbank Drive, Suite B-130
Austin, Texas 78746

Phone: (512) 614-0901
Facsimile: (512) 900-2855

Erin Selvera
Erin@carltonlawaustin.com

April 24, 2023

VIA e-file to: www14.tceq.texas.gov/epic/eComment/

Ms. Laurie Gharis, Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Jonah Water Special Utility District's Comments and Request for a Contested Case Hearing on Wilco MUD 45 WWTP, LLC's Application for a proposed Texas Pollutant Discharge Elimination System Permit No. WQ0016146001 to Authorize a Domestic Wastewater Treatment Facility and the Discharge of Treated Domestic Wastewater in Williamson County, Texas.

Dear Ms. Gharis:

On behalf of Jonah Water Special Utility District ("Jonah"), please accept this letter as Jonah's comments and request for a contested case hearing in opposition to the above-referenced permit application submitted by Wilco MUD 45 WWTP, LLC. Jonah further requests to be placed on the permanent mailing list to receive all future public notices on this application.

Jonah is a political subdivision of the State of Texas operating under Texas Water Code Chapter 65 and the holder of water Certificate of Convenience and Necessity (CCN) number 10970, in Williamson County, Texas. Jonah provides water service for approximately 9,000 customers and 30,000 people in its service area, and wholesale sewer service within its district boundaries. Additionally, Jonah has developed a wastewater master plan for expansion of its wastewater service within its district boundary. The proposed facility is located just outside of Jonah's certificated territory and district boundary and will have a negative impact on the local community within Jonah's CCN. Jonah has an interest in protecting its investments in its infrastructure, and the quality of water sources used to serve its customers, that may be adversely affected by the outcome of this Application.

Jonah believes the proposed facility does not comply with TCEQ's regionalization policy and disputes that Applicant has demonstrated that obtaining wastewater service from Jonah would be cost prohibitive. The TCEQ has adopted a policy of regionalization as a means to safeguard water quality in the state. Texas Water Code ("TWC") § 26.081 provides that the Commission should "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste

The Carlton Law Firm, P.L.L.C.

Page 2

disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of water in the state.”¹ Similarly, TWC § 26.0282 allows the Commission, when considering the issuance of a wastewater permit, to deny a proposed permit based on consideration of need, including “the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems”² Jonah has developed a wastewater master plan and studied the area adjacent to this proposed facility with the focus on developing regional wastewater services for the area.

Thank you for your attention to this matter. Please contact me at (512) 614-0901 or erin@carltonlawaustin.com if you have any questions regarding these comments.

Sincerely,

THE CARLTON LAW FIRM, P.L.L.C.



Erin Selvera
Attorney for Jonah Water Special Utility
District

cc: Bill Brown, General Manager, Jonah Water Special Utility District

¹ TWC § 26.081.

² TWC § 26.0282.

Renee Lyle

From: PUBCOMMENT-OCC
Sent: Friday, November 10, 2023 1:29 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Renewal Protest Ltr-Permit# WQ0016146001 Cielo Ranch (MUDs) 2023.11.09.pdf

H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Thursday, November 9, 2023 4:59 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

NAME: Nathan Vassar

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend, PC

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

PHONE: 5123225828

FAX:

COMMENTS: Renewal of protest being filed on behalf of Prairie Crossing Municipal Utility Districts 1 & 2 regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

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Austin, Texas 78701
512.322.5800 p
512.472.0532 f
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November 9, 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: Reply to the Executive Director's Response to Public Comments
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch WWTP

Dear Ms. Gharis:

Please accept this letter and reply to the Executive Director's ("ED's") Response to Public Comments ("RTC") on behalf of Prairie Crossing Municipal Utility Districts 1 & 2 ("Prairie Crossing MUDs"). 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") which authorizes the building of a wastewater treatment plant within the area of the Prairie Crossing MUDs. Prairie Crossing MUDs respectfully submit the following letter renewing objections to the application filed by Wilco MUD 45 WWTP LLC ("Wilco MUD") for TPDES Permit No. WQ0016146001 (the "Application") and the Executive Director's preliminary decision on the Application along with the initial draft TPDES Permit No. WQ0016146001 (the "Draft Permit"). In addition, Prairie Crossing MUDs hereby renew the request for a contested case hearing on the Application and Draft Permit. Prairie Crossing MUDs submitted initial comments and a contested case hearing request on April 7, 2023. The ED filed its RTC on the Application on October 6, 2023.

I. AFFECTEDNESS DETERMINATION

The Texas Commission on Environmental Quality (the "Commission" or "TCEQ") may grant a hearing request when the request is submitted by an affected person under TCEQ's rules. An affected person is one who has a personal justiciable interest in the Application not common to members of the general public. 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 [A]pplication 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 and safety of the person, and on the 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 [A]pplication that were not withdrawn; and[,] (7) for governmental entities, their statutory authority over or interest in the issues relevant to the

[A]pplication.” 30 TEX. ADMIN. CODE § 55.203(c) (alteration in original). The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance[.]” 30 TEX. ADMIN. CODE § 55.203(d)(1). Prairie Crossing MUDs are affected persons, as defined by 30 Texas Administrative Code (“TAC”), Section 55.103 and 55.203 as 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. For these reasons, Prairie Crossing MUDs qualify as affected persons and the Draft Permit should be subject to a contested case hearing.

II. PUBLIC COMMENTS

As asserted in initial comments and hearing requests, Prairie Crossing MUDs renew the contention 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 TCEQ’s regionalization policy for wastewater treatment plants; and (4) fails to adequately protect against the proposed Cielo Ranch Wastewater Treatment Plant’s (“CRWWTP’s”) probable negative impacts on water quality and comply with TCEQ’s antidegradation policy. While the ED’s RTC addresses these concerns, Prairie Crossing MUDs contend that it does not rectify them and further review is needed.

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 the 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 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 Wilco MUD’s Application, and Wilco MUD 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’

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.

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, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding its need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own separate wastewater treatment plant. The ED’s RTC reflects this lack of communication. 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the Application. Without this analysis, the Application cannot demonstrate that the two ponds can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. The ED’s RTC states that a Tier 2 anti-degradation analysis is unnecessary and the Draft Permit imposes a phosphorus limit in order to avoid eutrophication. While Prairie Crossing MUDs acknowledge the phosphorus limit as a step in the right direction, it disagrees that a Tier 2 review is unnecessary. Because the Application, as proposed, is not in compliance with TCEQ’s antidegradation policy, the Application and corresponding Draft Permit should be denied.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

C. 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 corresponding Draft Permit should be denied. Additionally, Prairie Crossing MUDs respectfully contend that the ED's RTC was insufficient in addressing these issues:

- 1. Nuisance Odors.** 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 CRWWTP. 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.
- 2. 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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
- 3. Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
- 4. 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.⁸ 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 variance to the buffer zone."⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

Ms. Laurie Gharis
November 9, 2023
Page 5

Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

III. CONCLUSION

For all of these reasons, Prairie Crossing MUDs respectfully request that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Prairie Crossing's initial comments and refer this matter to the State Office of Administrative Hearings.

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
Ms. Michaela Dietrick, Tiemann Land and Cattle Development, Inc.

¹¹ Application Attachment B.

Renee Lyle

From: PUBCOMMENT-OCC
Sent: Friday, November 10, 2023 1:30 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Renewal Protest Ltr-Permit# WQ0016146001 Cielo Ranch (05 Inv) 2023.11.09.pdf

H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Thursday, November 9, 2023 4:58 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

NAME: Nathan Vassar

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend, PC

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

PHONE: 5123225828

FAX:

COMMENTS: Renewal of protest being filed on behalf of 05 Ranch Investments, LLC regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.



Mr. Vassar's Direct Line: (512) 322-5867
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November 9, 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: Reply to the Executive Director's Response to Public Comments
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch WWTP

Dear Ms. Gharis:

Please accept this letter and reply to the Executive Director's ("ED's") Response to Public Comments ("RTC") on behalf of 05 Ranch Investments, LLC ("05 Investments"). 05 Investments is a Texas Limited Liability Company that owns land in Williamson County, Texas on which Prairie Crossing Wastewater, LLC ("Prairie Crossing") is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit") which authorizes the building of a wastewater treatment plant. 05 Investments respectfully submits the following letter renewing objections to the application filed by Wilco MUD 45 WWTP LLC ("Wilco MUD") for TPDES Permit No. WQ0016146001 (the "Application") and the Executive Director's preliminary decision on the Application along with the initial draft TPDES Permit No. WQ0016146001 (the "Draft Permit"). In addition, 05 Investments hereby renews its request for a contested case hearing on the Application and Draft Permit. 05 Investments submitted initial comments and a contested case hearing request on April 7, 2023. The ED filed its RTC on the Application on October 6, 2023.

I. AFFECTEDNESS DETERMINATION

The Texas Commission on Environmental Quality (the "Commission" or "TCEQ") may grant a hearing request when the request is submitted by an affected person under TCEQ's rules. An affected person is one who has a personal justiciable interest in the Application not common to members of the general public. 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 [A]pplication 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 and safety of the person, and on the 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 timely submitted comments on the [A]pplication that were not withdrawn; and[,] (7) for governmental entities, their statutory authority over or interest in the issues relevant to the [A]pplication." 30 TEX. ADMIN. CODE § 55.203(c) (alteration in original). The TCEQ may also consider "the merits of the underlying application and supporting

documentation . . . , including whether the application meets the requirements for permit issuance[.]” 30 TEX. ADMIN. CODE § 55.203(d)(1). 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 proposed facility and the Application is serviceable within Prairie Crossing’s proposed service area. 05 Investments contend the Application is contrary to TCEQ’s regionalization policy. Additionally, 05 Investments contend that Wilco MUD’s 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 05 Investments as a landowner. For these reasons, 05 Investments should qualify as an affected person and the Draft Permit should be subject to a contested case hearing.

II. PUBLIC COMMENTS

As asserted in initial comments and hearing requests, 05 Investments renews the contention 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 TCEQ’s regionalization policy for wastewater treatment plants; and (4) fails to adequately protect against the proposed Cielo Ranch Wastewater Treatment Plant’s (“CRWWTP’s”) probable negative impacts on water quality and comply with TCEQ’s antidegradation policy. While the ED’s RTC addresses these concerns, 05 Investments contend that it does not rectify them and further review is needed.

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 the 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 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 Wilco MUD’s Application, and Wilco MUD 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’

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.

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, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding its need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own separate wastewater treatment plant. The ED’s RTC reflects this lack of communication. 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the Application. Without this analysis, the Application cannot demonstrate that the two ponds can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. The ED’s RTC states that a Tier 2 anti-degradation analysis is unnecessary and the Draft Permit imposes a phosphorus limit in order to avoid eutrophication. While 05 Investments acknowledges the phosphorus limit as a step in the right direction, it disagrees that a Tier 2 review is unnecessary. Because the Application, as proposed, is not in compliance with TCEQ’s antidegradation policy, the Application and corresponding Draft Permit should be denied.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

C. 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 corresponding Draft Permit should be denied. Additionally, 05 Investments respectfully contends that the ED's RTC was insufficient in addressing these issues:

1. **Nuisance Odors.** 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 Texas Administrative Code ("TAC"), Section 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
4. **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.⁸ 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 variance to the buffer zone."⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

III. CONCLUSION

For all of these reasons, 05 Investments respectfully requests that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Prairie Crossing's initial comments and refer this matter to the State Office of Administrative Hearings.

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
Ms. Michaela Dietrick, Tiemann Land and Cattle Development, Inc.

¹¹ Application Attachment B.

Renee Lyle

From: PUBCOMMENT-OCC
Sent: Friday, November 10, 2023 1:31 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Renewal Protest Ltr-Permit# WQ0016146001 Cielo Ranch (PC) 2023.11.09.pdf

H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Thursday, November 9, 2023 4:56 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

NAME: Nathan Vassar

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend, PC

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

PHONE: 5123225828

FAX:

COMMENTS: Renewal of protest being filed on behalf of Prairie Crossing Wastewater, LLC, regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.

her the application meets the requirements for permit issuance[.]” 30 TEX. ADMIN. (d)(1). The first six considerations are applicable to Prairie Crossing and Prairie particular interest in the issues relevant to the Application because the Application within Prairie Crossing’s proposed service area. Prairie Crossing contends the contrary to TCEQ’s regionalization policy for the reasons outlined above. Prairie Crossing contends that Wilco MUD’s failure to provide an adequate noise nent plan, failure to adequately assess stream quality and characteristics, and failure s buffer zone requirements likely will adversely affect the quality of life of nearby ie public. For these reasons, Prairie Crossing qualifies as an affected person and it should be subject to a contested case hearing.

PUBLIC COMMENTS

orted in its initial comments and hearing requests, Prairie Crossing renews its the Application and Draft Permit should be denied because: (1) the Application applicable statutory and regulatory requirements for a TPDES permit application; ermit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to regionalization policy for wastewater treatment plants; and (4) fails to adequately the proposed Cielo Ranch Wastewater Treatment Plant’s (“CRWWTP’s”) probable ts on water quality and comply with TCEQ’s antidegradation policy. While the resses these concerns, Prairie Crossing contends that it does not rectify them and is needed.

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

atutory state regionalization policy exists to “encourage and promote the nd use of regional and area-wide waste collection, treatment, and disposal systems ste disposal needs of the citizens of the state and to prevent pollution and maintain he quality of the water in the state.”¹ In order to implement this Policy, Section s TPDES permit application form (Domestic Technical Report 1.1) contains s related to the potential for regionalization of wastewater treatment plants, tailored ickation of permitted nearby wastewater treatment facilities and/or collection could provide service to the service area proposed in the TPDES permit he third regionalization question in Section 1.B is relevant to Wilco MUD’s d Wilco MUD has failed to complete the regionalization analysis and process.

cally, Section 1.B.3 concerns the existence of *permitted* domestic wastewater ts or sanitary sewer collection systems located within a three-mile radius of the ewater treatment facility.³ If such permittees exist, then the applicant is required to and provide supporting documentation, regarding any such neighboring utilities’ andatory correspondence from the applicant regarding wastewater service for the

² § 26.081-.087.

³ Domestic Wastewater Permit Technical Report 1.1 at 21-22.
ical Report 1.1 at 22.

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, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding its need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own separate wastewater treatment plant. The ED’s RTC reflects this lack of communication. 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ’s regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the Application. Without this analysis, the Application cannot demonstrate that the two ponds can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. The ED’s RTC states that a Tier 2 anti-degradation analysis is unnecessary and the Draft Permit imposes a phosphorus limit in order to avoid eutrophication. While Prairie Crossing acknowledges the phosphorus limit as a step in the right direction, it disagrees that a Tier 2 review is unnecessary. Because the Application, as proposed, is not in compliance with TCEQ’s antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

and corresponding Draft Permit should be denied. Additionally, Prairie Crossing respectfully contends that the ED's RTC was insufficient in addressing these issues:

1. **Nuisance Odors.** 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 Texas Administrative Code ("TAC"), Section 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
4. **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.⁸ 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 variance to the buffer zone."⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

Ms. Laurie Gharis
November 9, 2023
Page 5

III. CONCLUSION

For all of these reasons, Prairie Crossing respectfully requests that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Prairie Crossing's initial comments and refer this matter to the State Office of Administrative Hearings.

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 black ink, appearing to read "Nathan E. Vassar", written in a cursive style.

Nathan E. Vassar

NEV/yw

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



REVIEWED

APR 13 2023

By

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Austin, Texas 78701
512.322.5800 p
512.472.0532 f
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April 7, 2023

PM
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TCEQ CCC

12 APR '23 9:47

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 for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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

The 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") which authorizes the building of a wastewater treatment plant within the area of the 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. On January 6, 2023, Prairie Crossing submitted an application for an Amendment to the PC Permit to expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant ("CRWWTP"). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant's proposed discharge is less than two miles from Prairie Crossing's permitted 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. WQ0016146001. 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 it fails to: (1) meet the TCEQ's regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP's probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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 Wilco MUD’s Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels

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.

to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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 corresponding Draft Permit should be denied:

1. **Nuisance Odors.** 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 CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

4. **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.⁸ 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 variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

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 Wilco MUD 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 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. Prairie Crossing MUDs have 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 Application be approved. 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

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

Ms. Laurie Gharis
April 7, 2023
Page 6

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 and the Application is serviceable within the area Prairie Crossing MUDs provide services within Williamson County. Prairie Crossing MUDs contend the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, Prairie Crossing MUDs contend that Wilco MUD’s 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 quality of life of nearby residents and the public.

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 and corresponding Draft Permit—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 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,

A handwritten signature in black ink, appearing to read "Nathan E. Vassar". The signature is fluid and cursive, with the first name "Nathan" and last name "Vassar" clearly distinguishable.

Nathan E. Vassar

NEV/yw

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

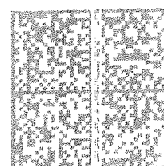
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Lloyd

Gosselink

ATTORNEYS AT LAW

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

RECEIVED

APR 12 2023

TO:

Ms. Laurie Sharis

TCED MAIL CENTER
DA

Chief Clerk (MC 145)

TCEDA

PO Box 13087

Austin TX 78711-3087

04/10/2023 043M31230918

000 0301



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

REVILED

APR 13 2023

By BP

816 Congress Avenue, Suite 1900
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April 7, 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

TCEQ 000

12 APR '23 9:47

RE: Public Comments, Request for Public Meeting, and Hearing Request for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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. On January 6, 2023, Prairie Crossing submitted an application for an Amendment to the PC Permit to

expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant ("CRWWTP"). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant's proposed discharge is less than two miles from Prairie Crossing's permitted 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 it fails to: (1) meet the TCEQ's regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP's probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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 Wilco MUD's Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which "have the capacity to accept or are willing to expand to accept the volume of wastewater proposed" are located within three miles. This statement is incorrect, as Prairie Crossing's permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain

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

aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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 corresponding Draft Permit should be denied:

1. **Nuisance Odors.** 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 CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
4. **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.⁸ 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

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

plan, or variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing, through its manager Matthew Tiemann, also 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 Wilco MUD to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing also requests a contested case hearing regarding the Application 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 Application be approved. 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 Prairie Crossing and manager Matthew Tiemann, and, as noted above, Prairie Crossing has a particular interest in the issues relevant to the Application because the Application is serviceable within Prairie Crossing’s

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

Ms. Laurie Gharis
April 7, 2023
Page 6

proposed service area. Prairie Crossing contends the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, Prairie Crossing contends that Wilco MUD's 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 quality of life of nearby residents and the public.

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 and corresponding Draft Permit—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing 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,

A handwritten signature in black ink, appearing to read "Nathan E. Vassar". The signature is fluid and cursive, with the first name "Nathan" and last name "Vassar" being clearly legible, and "E." in the middle.

Nathan E. Vassar


NEV/yw

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

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First Class Mail



Lloyd Gosselink
ATTORNEYS AT LAW

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APR 12 2023

To: *Ms. Laurie Gharis* TCEQ MAIL CENTER
Chief Clerk (Mc 195) DA
TCEQ
PO Box 13087
Austin TX 78711-3087

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0416 02 24421



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

REVIEWED

APR 13 2023 PM
By GCW H

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
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April 7, 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

TCEQ OCC
12 APR '23 9:43

RE: Public Comments, Request for Public Meeting, and Hearing Request for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of 05 Ranch Investments, LLC ("05 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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 Investments is a Texas Limited Liability Company incorporated in 2020. 05 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. On January 6, 2023, Prairie Crossing submitted

an application for an Amendment to the PC Permit to expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant ("CRWWTP"). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant's proposed discharge is less than two miles from Prairie Crossing's permitted 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. WQ0016146001. 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 it fails to: (1) meet the TCEQ's regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP's probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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.

TCEQ OCC
12APR '23 9:45

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 Wilco MUD's Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which "have the capacity to accept or are willing to expand to accept the volume of wastewater proposed" are located within three miles. This statement is incorrect, as Prairie Crossing's permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate

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

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 variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

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 Wilco MUD 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 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 Application be approved. 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 05 Investments, and, as noted

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

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 area. 05 Investments contends the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, 05 Investments contends that Wilco MUD's 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 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 and corresponding Draft Permit—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.

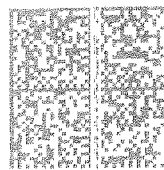
Sincerely,



Nathan E. Vassar

NEV/yw

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



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Lloyd Gosselink ATTORNEYS AT LAW	
Lloyd Gosselink Rochelle & Townsend, P.C. 816 Congress Avenue Suite 1900 Austin, Texas 78701	
RECEIVED APR 12 2023	
TO: <i>Ms. Laurie Gharis</i> <i>Chief Clerk (MC 105)</i> <i>TCEA</i> <i>PO Box 13087</i> <i>Austin TX 78711-3087</i>	TCEA MAIL CENTER DA

000 0301
12 APR '23 9:43

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Monday, April 10, 2023 11:15 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Protest Letter - Permit # WQ0016146001 Cielo Ranch (Prairie Crossing MUDs).pdf

PM
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From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, April 7, 2023 1:55 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

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: Formal request for contested case hearing, on behalf of Prairie Crossing Municipal Utility Districts 1 & 2, regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
lglawfirm.com

April 7, 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 for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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

The 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") which authorizes the building of a wastewater treatment plant within the area of the 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. On January 6, 2023, Prairie Crossing submitted an application for an Amendment to the PC Permit to expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant ("CRWWTP"). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant's proposed discharge is less than two miles from Prairie Crossing's permitted 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. WQ0016146001. 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 it fails to: (1) meet the TCEQ's regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP's probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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 Wilco MUD’s Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels

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.

to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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 corresponding Draft Permit should be denied:

1. **Nuisance Odors.** 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 CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

- 4. 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.⁸ 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 variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

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 Wilco MUD 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 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. Prairie Crossing MUDs have 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 Application be approved. 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

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

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 and the Application is serviceable within the area Prairie Crossing MUDs provide services within Williamson County. Prairie Crossing MUDs contend the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, Prairie Crossing MUDs contend that Wilco MUD’s 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 quality of life of nearby residents and the public.

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 and corresponding Draft Permit—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 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,

A handwritten signature in black ink, appearing to read "Nathan E. Vassar". The signature is fluid and cursive, with the first name "Nathan" and last name "Vassar" being clearly legible.

Nathan E. Vassar

NEV/yw

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

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Monday, April 10, 2023 11:14 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Protest Letter - Permit # WQ0016146001 Cielo Ranch (Prairie Crossing LLC).pdf

PM
H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, April 7, 2023 1:53 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

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: Formal request for contested case hearing, on behalf of Prairie Crossing Wastewater, LLC, regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
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April 7, 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 for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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. On January 6, 2023, Prairie Crossing submitted an application for an Amendment to the PC Permit to

expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant (“CRWWTP”). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s permitted 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 it fails to: (1) meet the TCEQ’s regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP’s probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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 Wilco MUD's Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which "have the capacity to accept or are willing to expand to accept the volume of wastewater proposed" are located within three miles. This statement is incorrect, as Prairie Crossing's permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain

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

aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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 corresponding Draft Permit should be denied:

1. **Nuisance Odors.** 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 CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
4. **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.⁸ 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

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

plan, or variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing, through its manager Matthew Tiemann, also 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 Wilco MUD to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing also requests a contested case hearing regarding the Application 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 Application be approved. 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 Prairie Crossing and manager Matthew Tiemann, and, as noted above, Prairie Crossing has a particular interest in the issues relevant to the Application because the Application is serviceable within Prairie Crossing’s

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

Ms. Laurie Gharis
April 7, 2023
Page 6

proposed service area. Prairie Crossing contends the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, Prairie Crossing contends that Wilco MUD's 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 quality of life of nearby residents and the public.

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 and corresponding Draft Permit—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing 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
Ms. Michaela Dietrick, Tiemann Land and Cattle Development, Inc.

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Monday, April 10, 2023 11:14 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016146001
Attachments: Protest Letter - Permit # WQ0016146001 Cielo Ranch (05 Investments, LLC).pdf

PM
H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, April 7, 2023 1:49 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016146001

REGULATED ENTY NAME CIELO RANCH WWTP

RN NUMBER: RN111476636

PERMIT NUMBER: WQ0016146001

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILCO MUD 45 WWTP LLC

CN NUMBER: CN606006583

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: Formal request for contested case hearing, on behalf of 05 Ranch Investments, LLC, regarding proposed TPDES permit WQ0016146001, Cielo Ranch WWTP.



Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
lglawfirm.com

April 7, 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 for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of 05 Ranch Investments, LLC ("05 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 Wilco MUD 45 WWTP LLC ("Wilco MUD" 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-referenced 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 Investments is a Texas Limited Liability Company incorporated in 2020. 05 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. On January 6, 2023, Prairie Crossing submitted

an application for an Amendment to the PC Permit to expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant (“CRWWTP”). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP 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. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s permitted 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. WQ0016146001. 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 it fails to: (1) meet the TCEQ’s regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) 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 policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP’s probable negative impacts on water quality and comply with TCEQ antidegradation policy.

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 Wilco MUD's Application, and Wilco MUD 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, Wilco MUD indicated that no such permitted facilities which "have the capacity to accept or are willing to expand to accept the volume of wastewater proposed" are located within three miles. This statement is incorrect, as Prairie Crossing's permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own 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 pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

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

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate

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

antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. 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 corresponding Draft Permit should be denied:

1. **Nuisance Odors.** 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 CRWWTP. 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.
2. **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.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
3. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in 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. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.
4. **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.⁸ The instructions further specify that "[t]he buffer zone, either 150 or 500

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

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 variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

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 Wilco MUD 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 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 Application be approved. 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 05 Investments, and, as noted

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

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April 7, 2023
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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 area. 05 Investments contends the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, 05 Investments contends that Wilco MUD's 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 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 and corresponding Draft Permit—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
Ms. Michaela Dietrick, Tiemann Land and Cattle Development, Inc.