

TCEQ DOCKET NO. 2024-0490-IWD

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| APPLICATION BY | § | BEFORE THE |
| REMY JADE GENERATING LLC FOR | § | TEXAS COMMISSION ON |
| TPDES PERMIT NO. WQ0005333000 | § | ENVIRONMENTAL QUALITY |

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Remy Jade Generating LLC (Applicant) for a major amendment to TPDES Permit No. WQ0005333000. The Office of the Chief Clerk received contested case hearing requests from Marjorie Dunn, John Kinzer, Linda Van Heeckeren, Steven Van Heeckeren, David Howell, and Kathleen Howell. The Executive Director also received a request for reconsideration from Mr. Kinzer and Ms. Dunn

The Executive Director recommends that the Commission deny all of the hearing requests filed for this application. The Executive Director also recommends that the Commission deny the request for reconsideration.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility, discharge points, and requestors.

II. FACILITY DESCRIPTION

Remy Jade Generating LLC has applied for a major amendment of TPDES Permit No. WQ0005333000, which would change the discharge route. The draft permit authorizes the discharge of water treatment wastes at a daily average flow not to exceed 162,000 gallons per day via Outfall 001.

The facility is located at 3511 Danek Road, in the City of Crosby, Harris County, Texas 77532. The effluent is discharged to an unnamed ditch, thence to Harris County Flood Control District (HCFCD) ditch O119-00-00, thence to HCFCD ditch O200-00-00, thence to HCFCD ditch G103-03-00 (Bluff Gully), thence to San Jacinto River Tidal in Segment No. 1001 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed ditch and limited aquatic life use for the HCFCD ditches. The designated uses for Segment No. 1001 are primary contact recreation and high aquatic life use.

In accordance with Title 30 Texas Administrative Code (TAC) § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained.

This review has preliminarily determined that no water bodies with intermediate, high, or exceptional aquatic life use are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with intermediate, high, or exceptional aquatic life uses downstream, and existing uses will be maintained and protected.

III. PROCEDURAL BACKGROUND

The TCEQ received the application for major amendment without renewal of TPDES Permit No. WQ0005333000 on September 6, 2023, and declared it administratively complete on September 12, 2023. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published in English and Spanish on September 21, 2023, in *The Baytown Sun* and *El Perico*, respectively. The technical review was complete on October 24, 2023, and the Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was issued on November 21, 2023. The NAPD was published in English on December 3, 2023, in *The Baytown Sun* and in Spanish on November 30, 2023, in *El Perico*. The public comment period ended on January 2, 2024. The hearing request period closed March 14, 2024. This application was filed after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.²

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

² 30 TAC § 55.209(e).

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.⁴

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

To grant a contested case hearing, the Commission must determine that a requestor is an "affected" person by conducting the following analysis:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

³ 30 TAC § 55.201(c).

⁴ 30 TAC § 55.201(d).

- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (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) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely 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.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.”⁵ The Commission may not refer an issue to the State Office of Administrative Hearings (SOAH) for a contested case hearing unless the Commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;

⁵ 30 TAC § 50.115(b).

- (2) was raised during the public comment period by an affected person whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁶

V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

Marjorie Dunn and John Kinzer

Ms. Dunn and Mr. Kinzer submitted a hearing request through their attorney, Clay Steely. Mr. Steely submitted timely comments and a hearing request on behalf of Mr. Kinzer and Ms. Dunn. The requests contained their names, description of their property, and phone number pursuant to 30 TAC § 55.201(d). According to the information provided by Mr. Steely, Mr. Kinzer and Ms. Dunn own a tract of property that is adjacent to and immediately north of the Remy Jade facility. Mr. Steely commented that the notice for the amendment application shows a new discharge point to the west of the Project, but he argues that there is no explanation on how any discharge will travel upgradient, away from his clients' property.

While Mr. Kinzer and Ms. Dunn's property is on the discharge route, 30 TAC § 55.203(c)(1) requires requestors to identify an interest during the comment period that is relevant and material to the application. Upon review of the comments submitted on behalf of Mr. Kinzer and Ms. Dunn, no such interest is identified.

Therefore, the ED recommends that Ms. Dunn's and Mr. Kinzer's hearing request be denied because they have not complied with the requirements for requesting a hearing because they did not raise any relevant and material issues during the comment period.

Linda and Steven Van Heeckeren

Mr. and Mrs. Van Heeckeren submitted timely comments and a hearing request which contained their names, address, and phone number pursuant to 30 TAC § 55.201(d). According to the address they provided, their property is located approximately 0.51 miles away from the proposed outfall. The Van Heeckerens submitted hearing requests that raised concerns during the comment period regarding their personal health, property, property value, livestock, and the environment. They also raised concerns about the adequacy of notice for this application regarding property owners on the discharge route. In their request, the Van Heeckerens tied these concerns to the facility's potential impact on flooding. However, the Van Heeckerens' request failed to articulate how they would be uniquely affected. Their concerns appear to be related to community-wide impacts more common to the general public. The concerns and issues they

⁶ 30 TAC § 50.115(c).

identified do not identify any justiciable interest unique to them that would be protected by the law under which the application will be considered. Furthermore, the request emphasizes the impact from flooding, which is not within the scope of the permitting review process.

Therefore, because they have not shown that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, they are not affected persons. Pursuant to 30 TAC § 55.203(a), the ED recommends that the Commission find them not to be affected persons and that their hearing request be denied.

David and Kathleen Howell

Mr. and Mrs. Howell submitted timely comments and a hearing request which contained their names, address, and phone number pursuant to 30 TAC § 55.201(d). According to the address they provided, their property is located approximately 0.42 miles away from the proposed outfall. The Howells submitted hearing requests that raise concerns regarding potential impacts to their quality of life including impacts to their personal health, the environment, and their personal livestock.

However, the concerns raised are primarily focused on air quality as well as negative impacts as a result of flooding. Air-related issues and flooding are not a part of the ED's permitting process for TPDES permits. Furthermore, the discharge route begins nearly .042 miles from their property and flows directly north away from property identified in their hearing request. Under the Commission's rules, 30 TAC § 50.115(c) states that Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue involves a disputed question of fact or a mixed question of law and fact; was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted and is relevant and material to the decision on the application.

Therefore, as the concerns are directed towards issues that are outside the scope of the permitting review process and are neither relevant nor material to the decision on the application, the ED recommends that the Howells' hearing request be denied pursuant to 30 TAC § 50.115(c).

VI. REQUEST FOR RECONSIDERATION:

Mr. Kinzer and Ms. Dunn timely submitted a Request for Reconsideration. The only issue raised in the RFR is whether reconsideration should be granted as there is no explanation of how the wastewater will travel upstream/uphill and not trespass and intrude on Ms. Dunn and Mr. Kinzer's land.

The RFR did not provide a basis for changing the ED's decision on the draft permit. The applicant is not required to submit information on how the effluent will flow along the discharge route. In addition, the draft permit does not authorize the use of anyone's property. It is the responsibility of the applicant to obtain any needed property rights. As a result, the RFR does not provide any information that would

require the ED to change her recommendation on the draft permit. The ED recommends that the Request for Reconsideration be denied.

VII. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission deny all of the hearing requests.
2. The Executive Director recommends that the Commission deny the request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 1, 2024, the "Executive Director's Response to Hearing Request" for TPDES Permit WQ0005333000 for Remy Jade Generating LLC was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley

MAILING LIST/LISTA DE CORREO
Remy Jade Generating, LLC
TCEQ Docket No./TCEQ Expediente N.º 2024-0490-IWD
TPDES Permit No./TPDES Permiso N.º WQ0005333000

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RESOLUTION/PARA LA RESOLUCIÓN
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SECRETARIO OFICIAL

via eFilings/vía eFilings:

Docket Clerk
Texas Commission on Environmental
Quality
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Austin, Texas 78711

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

REQUESTER(S) /SOLICITANTE(S)

See attached list / Ver lista adjunta

REQUESTER(S)/SOLICITANTE(S)

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Howell, David & Kathleen
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Highlands, Tx 77562-2322

Steely, Clay
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Attachment A

REMY JADE GENERATING LLC

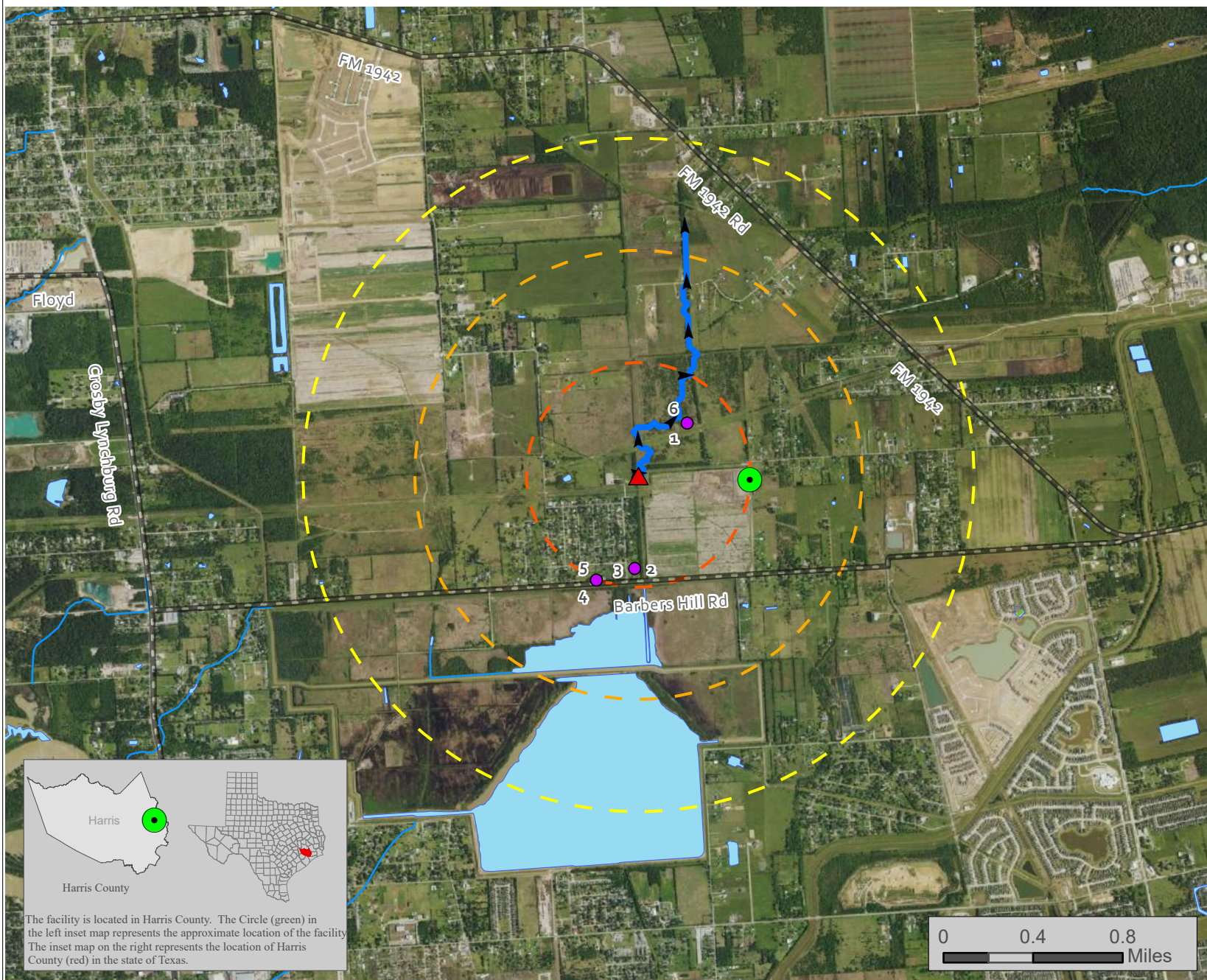
WQ0005333000

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 4/1/2024
CRF 0102390
Cartographer: jbartlin



- Facility
- ▲ Facility Outfall
- Requestors
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- ➔ 1.5 Mile Discharge Route

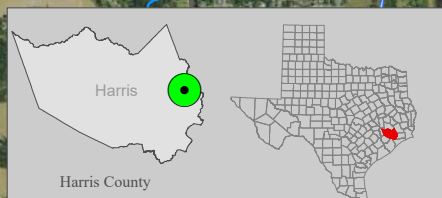
The distance from John Kinzer and Marjorie Dunn (1,6) to the facility outfall is 0.32 miles.

The distance from David Howel and Kathleen Howell (2,3) to the facility outfall is 0.42 miles.

The distance from Linda Van Heeckeren and Steven Van Heeckeren (4,5) to the facility outfall is 0.51 miles.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Harris County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Harris County (red) in the state of Texas.

0 0.4 0.8
Miles