

**TCEQ DOCKET NO. 2024-0490-IWD**

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

**JOHN KINZER AND MARJORIE DUNN’S REPLY TO REMY JADE’S RESPONSE  
TO REQUESTS FOR RECONSIDERATION AND A CONTESTED CASE HEARING**

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Requestors John Kinzer and Marjorie Dunn (“**Kinzer-Dunn**”) file this Reply (“**Kinzer-Dunn Reply**”) to the Response of Remy Jade Generating LLC (“**Remy Jade**”) to the Contested Case Hearing Requests and Request for Reconsideration (“**Remy Jade’s Response**”) in the above-captioned matter and respectfully submit the following:

**I. SUMMARY**

Neither Remy Jade’s amendment to its original permit application (Permit No. WQ005333000- the “**Permit**”) nor Remy Jade’s Response provides any evidence of how the wastewater the subject of the Permit is going to flow uphill for over what appears to be 2,196 +/- feet from the point of discharge to Barber’s Hill Road. Instead, Remy Jade ignores a large portion of the discharge path, and submits argument and photos of the area well to the South of the discharge point from the Remy Jade facility (what appears to be at least 2,196 +/- feet to the South). Remy Jade’s original application established and relied on the fact that flow in this area was North (not South) to support granting the Permit. Kinzer-Dunn are affected landowners as if the wastewater does not or cannot flow uphill (defying gravity and defying what Remy Jade previously submitted with its Permit application) it will run onto and over the private property of Kinzer-Dunn, whose property is immediately adjacent to the Remy Jade facility (which is uncontested). Kinzer-Dunn do raise relevant and material questions of material fact, including: 1) how is this

wastewater going to flow uphill for approximately 2196 +/- feet?; 2) why isn't any updated information on the grade of the ditch to the west of the Remy Jade Facility provided for this 2,196 +/- feet?; 3) what happens to the wastewater if it does not follow uphill? and 4) why has no Remy Jade consultant or expert ever provided any topographical/gradient/elevation/ditch capacity information for this area (at least the 2,196 +/- feet) of the discharge path. The request for reconsideration and the contested case hearing request and on these seminal basic fact issues are proper and should be granted. Kinzer-Dunn are unique "affected persons", they timely raised these issues during the public comment period, the issues and facts are contested, and the answers to these and other issues are relevant and material to the decision on the application by the Texas Commission on Environmental Quality ("TCEQ").

## **II. RECONSIDERATION AND A HEARING REQUEST SHOULD BE GRANTED**

### **A. If the Permit is Granted, the Remy Jade Wastewater Is Going To Flow Toward and Onto the Kinzer-Dunn's Farm (Private Property), and Thus Kinzer-Dunn Are Affected in a Manner Not Common To The Public.**

As shown on the attachments from Remy Jade's original application, 1) Kinzer-Dunn are the property owners adjacent and to the North of the Remy Jade facility the subject to the Permit (landowners K,S) and 2) the first ditch taking the outfall from the discharge point (original and in the amended application) flows to/downhill to the private farm of Kinzer-Dunn (Exhibit 1). Thus, any wastewater deposited under the original application or the amendment will flow onto and over the Kinzer-Dunn farm without consent.

As noted in Kinzer-Dunn request, in the original application for the Permit, the Remy Jade wastewater discharge point was on the northern boundary between Remy Jade and Kinzer-Dunn. Exhibit 1. As established in Remy Jade's *own* evidence to support its original Permit application, as shown below and in Exhibit 1, the gradient (and thus the wastewater) discharged flows North onto the Kinzer-Dunn farm. *Id.* Indeed, even if discharged to the West of the Remy Jade facility

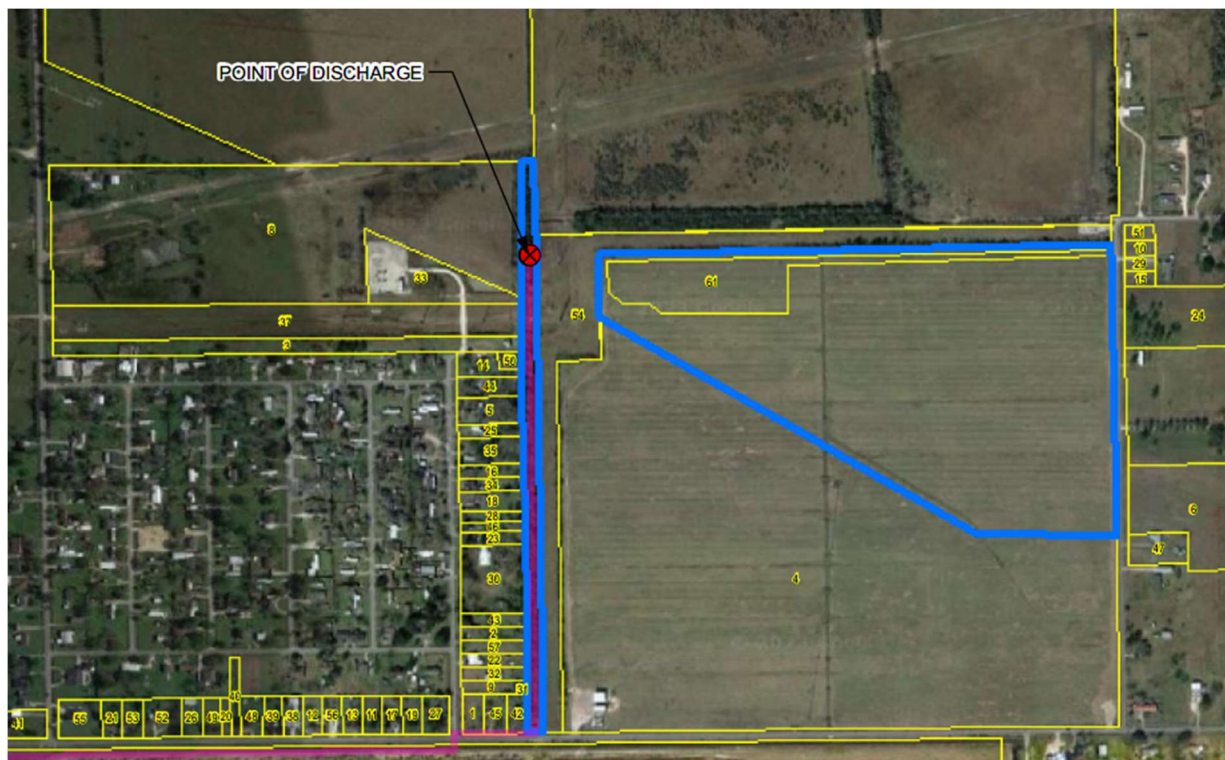
(as proposed by Remy Jade in its amended application), any wastewater would still flow North, then East, then North again onto the Kinzer-Dunn farm. *Id.* In short, the gradient of the ditch to the West of the Remy Jade facility (basically running parallel to CR 1830) runs North, then East, then hits the boundary of the Kinzer-Dunn farm (ultimately depositing wastewater across the Dunn-Kinzer farm (K,S)):



- B. The Remy Jade Amendment Sought does not change the laws of physics of the direction of the wastewater flow Toward and Onto the Kinzer-Dunn's Farm (Private Property), and Thus Kinzer-Dunn Are Affected in a Manner Not Common To The Public.**

As shown on the attachments from Remy Jade's amended application (Exhibit 2; Remy Jade Response Attachment A), while Remy Jade's amendment changes the discharge point from the North of the Remy Jade property/facility to the West of the property/facility, there is no change on the direction of the water flow to the North, to the East, and then to the North again onto the Kinzer-Dunn farm. In short, the water flow does not and cannot spontaneously change direction

and there is nothing in Remy Jades application, amendment or Remy Jade’s Response reflecting that such a change has occurred (See Exhibit 2):



**C. Neither the Remy Jade Amendment Nor the Remy Jade Response Establishes the Gradient, Condition or What Even Happens To Wastewater in the First 2196+/- feet of the proposed Discharge Path and thus Kinzer-Dunn Are Affected in a Manner Not Common To The Public.**

In fact, a close examination of the current record reveals that neither the amended application for the Permit, nor the Remy Jade Response addresses this gradient issue to the West of the Remy Jade facility at all. Indeed, Remy Jade’s Response only contains photographs and a discussion well South of the new proposed Point of Discharge at Barber’s Hill Road (Exhibit 3; See Remy Jade’s Response Attachment B “Updated Ditch Survey and Photos”). Remy Jade’s Response does not even have a photograph, survey, topographical survey, gradient calculation, ditch capacity calculation, or an elevation survey of the initial over 2196 +/- feet of the proposed discharge pathway down to Barbers Hill Road (referenced in Remy Jade’s exhibit as “Segment Ditch 1”):



**Attachment 10**  
Ditch Photographs – Remy Jade Generating LLC

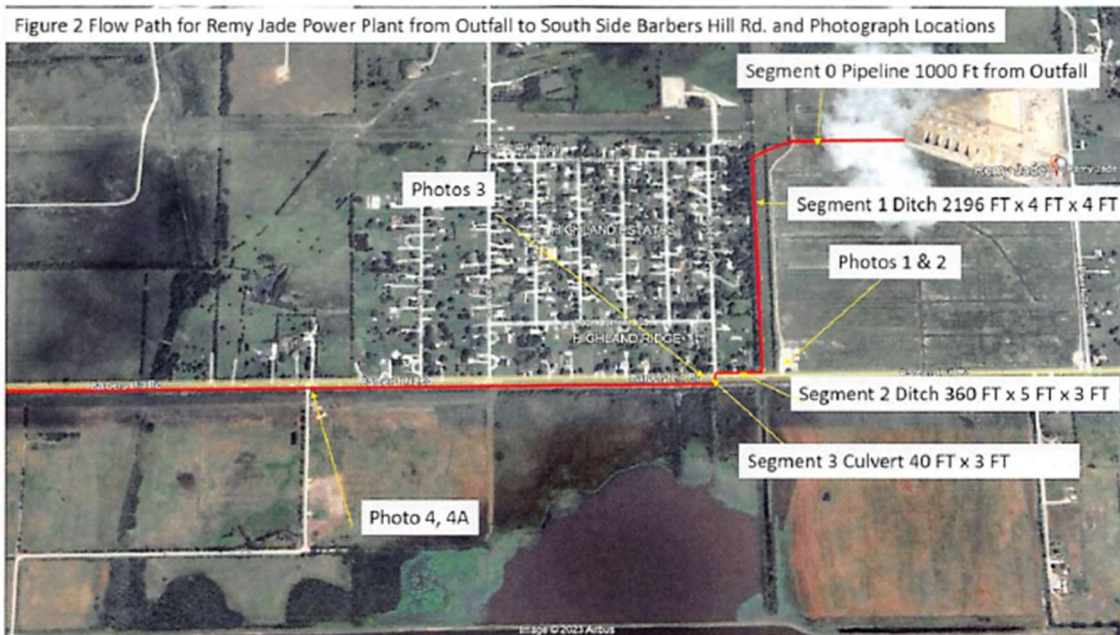
**Attachment B**

Pro Energy Photolog 8/17/23, 8/18/23, 8/22/23

SEGMENT	PHOTO	LATITUDE	LONGITUDE	TIME	PHOTO DIRECTION	DITCH WIDTH, FT	SEGMENT LENGTH, FT	DEPTH TO SOIL EDGE, FT
0-Pipeline from Outfall		In previous application	In previous application				8 inch pipeline	
1-From RJ Pipe to North Side Barbers Hill Rd.	1	N29 50' 31.65"	W95 01' 15.73"	8/17 1355	West	4	2196	4

**Attachment 10**  
Ditch Photographs – Remy Jade Generating LLC

**Attachment B**



In fact, there is no evaluation, discussion of and no photographs or topographical/gradient/elevation/ditch capacity information for “Segment Ditch 1 2196 ft 4x4”. And there is no such calculation or evaluation in the original application (there is nothing to see “In Previous Application”). These are significant contested material facts and even if “In Previous Application” is taken as true, the previous information has nothing on this 2196 +/- feet and the previous application showed the ditch gradient *heading north away from Barbers Hill Road*. In short, these significant contested material facts include: 1) how is this wastewater going to flow uphill for approximately over 2196 +/- feet?; 2) why isn’t any updated information on the grade of the ditch to the West of the Remy Jade Facility provided for this 2196 +/- feet?; 3) what happens to the wastewater if it does not follow uphill and 4) why has no consultant or expert provided any topographical/gradient/elevation/ditch capacity information for this 2196 +/- feet segment/area? Neither the application amendment for the Permit nor Remy Jade’s Response has any information on what happens in this 2196 +/- feet. Remy Jade only points to its Attachment B, which relies on the prior application, and the prior application does not have that information.

### **III. CONCLUSION AND PRAYER**

The farm of Marjorie Dunn (in her 90s) and John Kinzer is not public property, and they qualify as affected persons in this matter. Remy Jade’s Permit amendment “Attachment 10”/ Remy Jade’s Response Attachment B provides no evidence of what happens in the initial 2196 +/- feet of the proposed discharge path. The updated ditch survey Remy Jade relies on for its sole basis for why Kinzer-Dunn are not affected is 1) silent for this 2196 +/- feet and 2) references the prior application which reflects the water would travel North, East, The North onto the Kinzer-Dunn farm. Clearly, the unauthorized discharge of wastewater onto private property will affect the health, safety use and enjoyment of the Dunn-Kinzer Property. Indeed, the Kinzer-Dunn families expected some explanation from Remy Jade about this 2196 +/- feet, and how this wastewater

would not impact their farm. Yet there is still no explanation. Their goal is not to suffer the injury and trespass of Remy Jade's wastewater, including it improperly traveling on and flooding the Kinzer-Dunn farm. Remy Jade's Attachment B/Tetra Tech's Photo Survey shows *nothing* in this regard.<sup>1</sup> Kinzer-Dunn respectfully request their rehearing request be granted and in the alternative a contest case hearing be granted/set. Additionally, Kinzer-Dunn recommend and seek denial of the Remy Jade TPDES Permit No. WQ0005333000 amendment, as well as such other and further relief, at law and in equity, which they are justly entitled.

Respectfully submitted,

/s/ Clay M. Steely  
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Attorneys for Marjorie Dunn (in her 90s) and John Kinzer

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of April 2024, the original Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list by electronic mail or regular mail.

/s/ Clay M. Steely

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<sup>1</sup> Quite frankly Remy Jade's Permit amendment and Response Attachment B shows nothing on how discharge into this 2,196 +/- feet would impact the adjacent neighborhood to the West either.

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TCEQ DOCKET NO. 2024-0490-IWD**

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**Attachment 1.1 - 1.c  
Affected Landowners Cross-Reference List**

Map ID	Property Address	Property Owner	Owner Address	
A	0 BARBERS HILL RD	WALKER MARK	CROSBY	77532
B	0 BARBERS HILL RD	HSC PIPELINE PARTNERSHIP LLC	CROSBY	77532
C	3307 BARBERS HILL RD	WALKER EVELYN	CROSBY	77532
C	3307 BARBERS HILL RD	WALKER EVELYN	CROSBY	77532
D	3304 DANEK RD	BARNES WADE EDWARD & KIMBERLY	CROSBY	77532
E	3354 DANEK RD	RAMOS HARVEY & AUDREA	CROSBY	77532
F	3404 DANEK RD	MASSEY EVELYN D	CROSBY	77532
G	3406 DANEK RD	SANCHEZ MARIA H	CROSBY	77532
H	3510 DANEK RD	WHEELER ORVEL JAY	CROSBY	77532
I	0 DANEK RD	WHEELER JANICE	CROSBY	77532
J	3554 DANEK RD	ALAVAREZ MARCO & BLANCA	CROSBY	77532
J	3554 DANEK RD	ALAVAREZ MARCO & BLANCA	CROSBY	77532
J	3554 DANEK RD	ALAVAREZ MARCO & BLANCA	CROSBY	77532
J	3554 DANEK RD	ALAVAREZ MARCO & BLANCA	CROSBY	77532
K	0 FM 1942 RD	DUNN MARJORIE MOORE	CROSBY	77532
L	0 FM 1942 (OFF) RD	ESPINOZA VANESSA G	CROSBY	77532
M	0 FM 1942 (OFF)	MENDEZ JUAN & MARIA	CROSBY	77532
N	0 FM 1942 (OFF)	GARCIA EFRAIN	CROSBY	77532
O	3645 CAMINO DEL RANCHO RD	ABREGO ERICK	CROSBY	77532
P	0 FM 1942 (OFF) RD	HARO RAMON	CROSBY	77532
Q	0 FM 1942 (OFF) RD	GONZALEZ GERARDO A &	CROSBY	77532
R	3703 CAMINO DEL RANCHO RD	ALMAGUER HECTOR H	CROSBY	77532
S	0 FM 1942 RD	KINZER JOHN	CROSBY	77532







## Attachment A

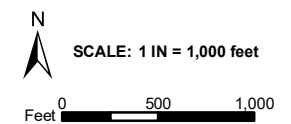


FIGURE 2  
AFFECTED  
LANDOWNERS MAP

HARRIS COUNTY,  
TEXAS

LEGEND

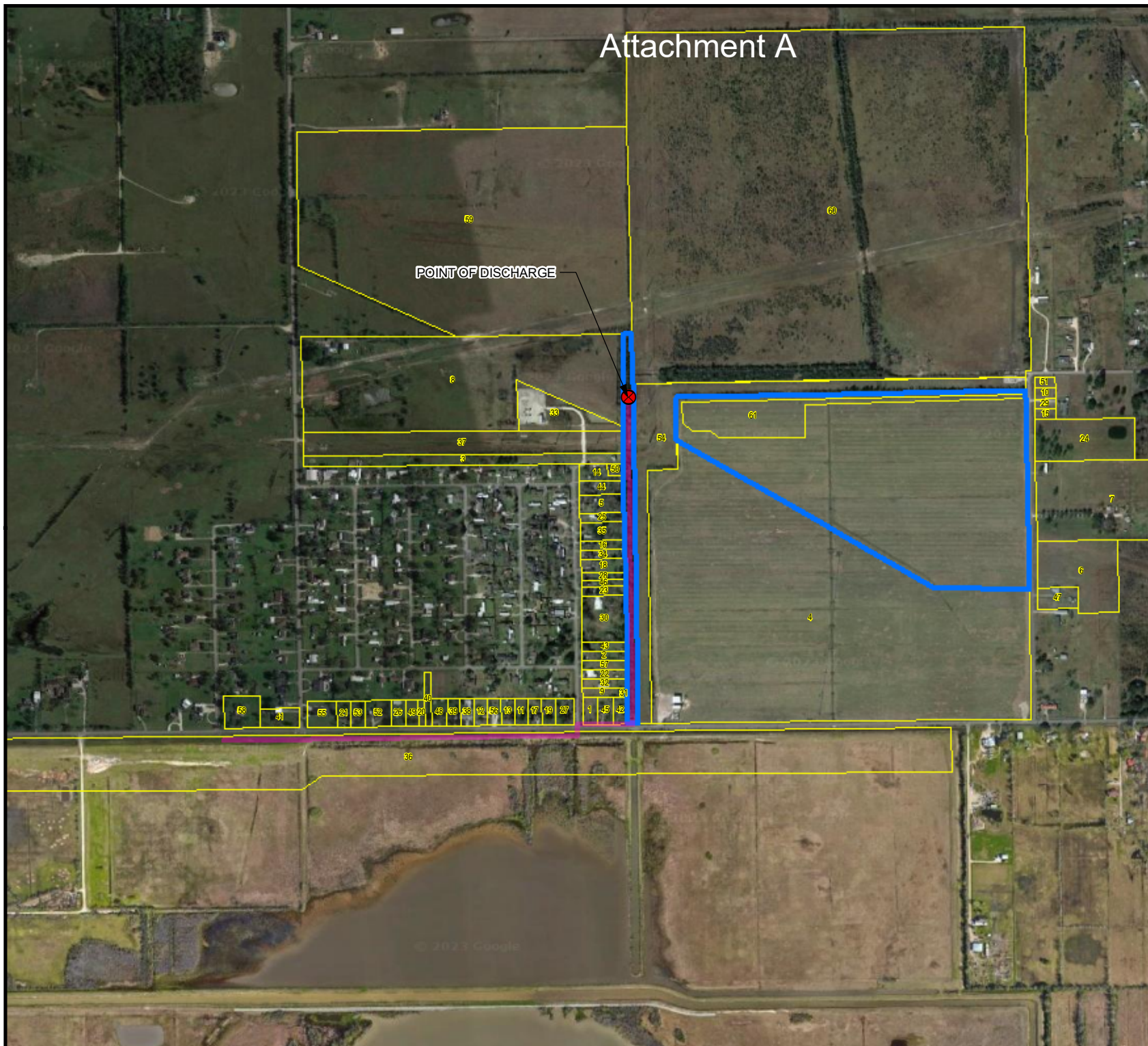
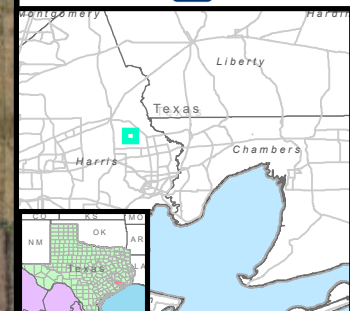
-  Property Boundary
-  1-Mile Downstream of Point of Discharge
-  Adjacent Property Boundary
-  Outfall 001



SOURCE: GOOGLE EARTH PRO, 2020.

Date: 9/11/2023  
Project: 212C-HN-01640

Prepared By:  TETRA TECH






**Attachment 10**  
Ditch Photographs – Remy Jade Generating LLC

Pro Energy Photolog 8/17/23, 8/18/23, 8/22/23

SEGMENT	PHOTO	LATITUDE	LONGITUDE	TIME	PHOTO DIRECTION	DITCH WIDTH, FT	SEGMENT LENGTH, FT	DEPTH TO SOIL EDGE, FT
0-Pipeline from Outfall		In previous application	In previous application				8 inch pipeline	
1-From RJ Pipe to North Side Barbers Hill Rd.	1	N29 50' 31.65"	W95 01' 15.73"	8/17 1355	West	4	2196	4
	2	N29 50' 31.64"	W95 01' 12.43	8/17 0821	West	N/A	N/A	N/A
2-North Ditch BH Rd. to Braemer Rd.	3	N29 50' 31.95"	W95 01' 19.91	8/18 1358	South	5	360	3
3-Culvert under Barbers Hill Road.						3	40	N/A
	4	N29 50' 30.45"	W95 01' 46.77	8/17 0816	East			
	4A	N29 50' 30.45"	W95 01' 46.77	8/17 0821	West			
4_Barbers Hill Road West past SJRA Canal						30	8860	5
	5	N29 50' 29.69"	W95 02' 56.42"	8/17 0821	East			
	5A	N29 50' 29.69"	W95 02' 56.42"	8/17 0824	East			
	5B	N29 50' 29.69"	W95 02' 56.42"	8/17 0824	East			
	5C	N29 50' 29.69"	W95 02' 56.42"	8/18 0824	South			

Date Taken	Photographs Taken By:	Page No.	Client:	Site/Project Name:	
08/17, 18, 22/23	John Christiansen	1 of 12	Remy Jade Generating LLC	Remy Jade Power Station/ TPDES Permit Major Amendment	

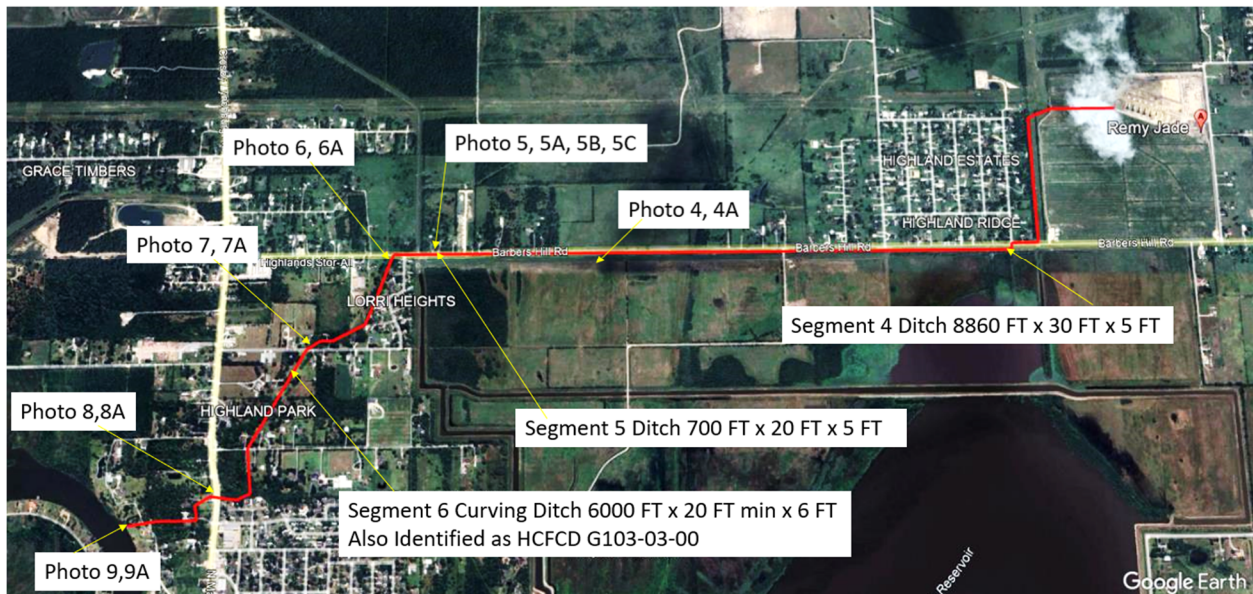
# Attachment 10

## Ditch Photographs – Remy Jade Generating LLC

# Attachment B



Figure 3 Flow Path for Remy Jade Power Plant from Barbers Hill Road to Outlet to San Jacinto River Segment 1001 and Photograph Locations



Date Taken	Photographs Taken By:	Page No.	Client:	Site/Project Name:	
08/17, 18, 22/23	John Christiansen	12 of 12	Remy Jade Generating LLC	Remy Jade Power Station/ TPDES Permit Major Amendment	