

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 23, 2024

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

RE: **IN THE MATTER OF THE REQUESTS FOR RECONSIDERATION
FILED BY MURPHY DESHONG CONCERNING THE APPLICATION
BY LOVE'S TRAVEL STOPS & COUNTRY STORES, INC. FOR THE
AMENDMENT AND RENEWAL OF PERMIT NO. WQ0015618001
TCEQ DOCKET NO. 2024-0665-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Service List

DOCKET NO. 2024-0665-MWD

APPLICATION BY	§	BEFORE THE
LOVE’S TRAVEL STOPS &	§	
COUNTRY STORES, INC.	§	TEXAS COMMISSION ON
FOR AMENDMENT OF TPDES	§	
PERMIT NO. WQ0015618001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO
REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the requests for reconsideration received in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission are the Requests for Reconsideration of the Executive Director’s (ED) decision concerning the application of Love’s Travel Stops & Country Stores, Inc. (Applicant) for a major amendment with renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015618001. Two timely requests for reconsideration were submitted by Murphy DeShong.¹ For the reasons stated herein, OPIC respectfully recommends that the Commission grant the pending requests for reconsideration.

¹ On April 23, 2024, Mr. DeShong also submitted an “amendment” to his requests for reconsideration.

B. Background of Facility

Applicant applied to TCEQ for a major amendment with renewal to TPDES Permit No. WQ0015618001. If issued, this permit would authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 15,000 gallons per day to a daily average flow not to exceed 22,500 gallons per day.

The existing Love's Travel Stop #250 wastewater treatment facility is located in Potter County at 14701 West Interstate Highway 40. The Facility is an activated sludge process plant operated in the complete mix mode. Treatment units in the interim phase include a bar screen, an aeration basin, a final clarifier, a chlorine contact chamber, and an aerobic digester. Treatment units in the final phase would include the addition of a common solids separate basin with fine screens, an equalization tank, two anoxic basins, and a membrane bioreactor basin.

The effluent limitations in the interim and final phases of the draft permit, based on a 30-day average, would be 10 mg/L five-day carbonaceous biochemical oxygen demand, 15 mg/L total suspended solids, 2 mg/L ammonia-nitrogen, 126 colony forming units or most probable number of *Escherichia coli* per 100 mL and 5.0 mg/L minimum dissolved oxygen. Also, the effluent must contain a total chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent is discharged to a roadside drainage, then to a playa, then to a drainage, then to a playa, then to Spring Draw, then to Palo Duro Creek,

then to Upper Prairie Dog Town Fork Red River (unclassified), then to Lake Tanglewood, then to Upper Prairie Dog Town Fork Red River in Segment 0229 of the Red River Basin. The unclassified receiving water use is limited aquatic life use for the roadside ditch, playas, and drainage. The designated uses for Segment No. 0229 are primary contact recreation and high aquatic life use.

C. Procedural Background

The TCEQ received the application on April 26, 2023, and declared it administratively complete on June 6, 2023. Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Amarillo Globe-News* on June 21, 2023, and in Spanish in *El Mensajero* on June 21, 2023. ED staff completed the technical review of the application on July 26, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English in the *Amarillo Globe-News* on August 30, 2023, and in Spanish in *El Mensajero* on September 6, 2023. The public comment period ended for the first time on October 6, 2023. After corrections were made to the landowners list, the public comment period was reopened and a Combined NORI/NAPD was published in English in the *Amarillo Globe-News* on December 13, 2023, and in Spanish in *El Mensajero* on December 13, 2023. The public comment period ended for the second time on January 12, 2024. The Chief Clerk mailed the ED's Decision and Response to Comments (RTC) on February 16, 2024. The deadline for filing requests for reconsideration of the ED's decision passed on March 18, 2024. On February 26, 2024 and March 1, 2024, Murphy DeShong filed requests for

reconsideration. On April 23, 2024, Mr. DeShong also filed an “amendment” to his requests.

II. Applicable Law

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC.² The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.³

III. Discussion

A. Summary of Requests

Murphy DeShong submitted two timely requests for reconsideration arguing that the permit application should not be granted because: (1) Applicant does not have sufficient property rights to the discharge route; (2) the Facility does not have sufficient safeguards to prevent the discharge of untreated or inadequately treated wastewater during electrical power failures; and (3) Applicant cannot meet the applicable 150-foot buffer zone requirement. Mr. DeShong notes that during the February 27, 2024, Randall County Commissioners Court meeting, the Applicant presented a layout document showing that the existing wastewater treatment plant is located only 136.02 feet from the western property line.

² 30 TAC § 55.201(e).

³ *Id.*

Mr. DeShong emphasizes that Commission rules require a permittee to comply with all permit conditions and requests that the permit be denied.⁴ On April 23, 2024, Mr. DeShong also submitted an “amendment” to his requests for reconsideration stating that Randall County has refused to allow Applicant to discharge its wastewater on Randall County property.

A. Analysis of the Requests

As a preliminary matter, OPIC must observe that Mr. DeShong’s April 23, 2024 filing was not timely and, therefore, not allowed under Commission rules. By rule, untimely requests are accepted by the Commission but not processed.⁵ As such, OPIC has not considered the information contained in Mr. DeShong’s amendment to his requests for reconsideration.

First, Mr. DeShong contends that Applicant does not have sufficient property rights to the discharge route, however, upon evaluation of the evidence, OPIC cannot find that the ED’s decision to approve the draft permit should be reconsidered on this basis. The ED examined this issue when responding to public comment in this matter, explaining that TCEQ’s jurisdiction as it relates to this matter is principally limited to water quality protection, and it is Applicant’s responsibility to acquire any necessary property rights related to use of the discharge route.⁶ OPIC agrees with the ED that the Applicant’s right to use property—whether that be public or private—to convey treated effluent is not relevant to the Commission’s review of this application. Any potential dispute

⁴ See 30 TAC § 305.125(1).

⁵ See 30 TAC § 55.201(g)(1).

⁶ See ED’s Response to Public Comment, p. 5, Response 1.

concerning the right to use the discharge route is beyond the scope of TCEQ to address in this permitting matter. Permit issuance in no way impedes landowners from exercising their rights to common law remedies if they are negatively impacted in a tortious manner by the discharge. Finally, OPIC notes that to the extent that effluent will be discharged through a *watercourse* as that term has been defined by case law, the Texas Court of Appeals has previously concluded that treated effluent may be transported through a watercourse without seeking permission from riparian landowners.⁷

Regarding Mr. DeShong's second contention, that the Facility lacks sufficient safeguards to prevent the discharge of untreated or inadequately treated wastewater during electrical power failures, OPIC cannot find that the ED's decision to approve the draft permit should be reconsidered on this basis.

By rule, "A wastewater treatment facility must be designed to prevent the discharge of untreated or partially treated wastewater during electrical power outages."⁸ Commission rules further specify that acceptable systems include alternate power sources, on-site generators, interceptor systems, on-site retention, collection system storage, portable generators, mechanical backup systems, and other similar systems.⁹ The materials submitted by Applicant contemplate installation of an electrical generator and include description of its operation. The documents state that the generator will start automatically, be capable of operating all critical treatment units, and have a run time greater than

⁷ *Domel v. City of Georgetown*, 6 S.W.3d 349, 358-359 (Tex. App.—Austin 1999, pet. denied).

⁸ 30 TAC § 217.36(a); *see also* 30 TAC § 217.37.

⁹ 30 TAC § 217.36(i).

the longest known power outage.¹⁰ OPIC finds that these included plans sufficiently meet applicable Commission requirements.

Finally, OPIC finds Mr. DeShong's contention that Applicant cannot meet the applicable 150-foot buffer zone requirement to be credible and borne out by the evidence. The application materials themselves appear to show that the Facility will be unable to comply with the buffer zone. OPIC acknowledges that the evidence regarding this issue is conflicting, and ultimately the record is somewhat muddled, however, on balance, OPIC concludes that Applicant has not demonstrated compliance with this rule requirement. OPIC notes that this issue was not raised during the public comment period, accordingly, it was not responded to in the ED's Response to Public Comment.

Applicable Commission rules require that wastewater plant treatment units not be located closer than 150 feet to the nearest property line.¹¹ Here, the Applicant has stated that it will meet buffer zone requirements through ownership of the land surrounding the Facility.¹²

Included with the application materials are two aerial maps, both attached for reference. One map purports to show compliance, i.e. that the buffer zone is met in all directions.¹³ However, the other map shows that the Facility is only 125 feet from the western property line.¹⁴ This map depicts the treatment plant as a whole and does not indicate the positions of individual treatment units relative

¹⁰ See Attachment A. Design Calculations, pp. 5-6.

¹¹ See 30 TAC § 309.13(e)(1).

¹² Domestic Wastewater Permit Application, Technical Reports, p. 5 of 80, Part B. Buffer Zones.

¹³ See Attachment B.

¹⁴ See Attachment C.

to property boundaries. As such, it is unclear whether the 125-foot distance shown on the map encompasses the entire plant or merely a portion of it. Consequently, OPIC is unable to conclude if the treatment units themselves are able to meet the 150-foot distance requirement. Given the conflicting information contained in the application materials, OPIC finds that the application does not demonstrate compliance with the buffer zone requirements.

Additionally, OPIC acknowledges that requestor references a layout shown during a recent Randall County Commissioners Court meeting. Mr. DeShong argues that it shows the Facility is 136 feet from the western property line instead of the required 150 feet. Mr. DeShong did not include the layout as an exhibit to his request. While OPIC was able to locate and view the Commissioners Court meeting for this item online, meeting documents were not available for download. OPIC took screenshots of both graphics presented by the Applicant and includes them here for completeness of the record.¹⁵ However, after examination, OPIC is unable to conclude that either of these two graphics demonstrate that the buffer zone is inadequate. Nonetheless, OPIC finds that the application materials themselves evince that the buffer zone will not be complied with.

To be clear, OPIC is not certain that either of these documents is the layout referenced by Mr. DeShong. Should he choose to file one, OPIC invites Mr.

¹⁵ See Attachment D. Graphics displayed at Randall County Commissioners Court Meeting, Feb. 27, 2024, available for viewing at: <https://www.randallcounty.gov/AgendaCenter/Commissioners-Court-2>, Item no. 2.

DeShong to include the document he referenced in a timely filed reply to this response.

IV. Conclusion

After consideration, and as discussed in the preceding section, OPIC finds that the permit application does not demonstrate compliance with 30 TAC § 309.13(e)(1). Therefore, based on the available record, OPIC respectfully recommends granting the Request for Reconsideration and remanding this matter to the ED for further technical review. However, OPIC will re-evaluate our position if new information demonstrating compliance with the 150-foot buffer zone requirement is received.

Respectfully submitted,

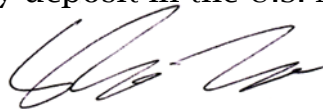
Garrett T. Arthur
Public Interest Counsel

By: 

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Assistant Public Interest Counsel
State Bar No. 24098581
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, the Office of Public Interest Counsel's Response to Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne

ATTACHMENT A

Chlorine Contact Chamber				
Detention time (min)		480	120	270
Volume (ft3)	334.2			
Air Requirements				
Aeration/MBR Basin				
Aeration Basin Assumptions				
Pounds of Oxygen required per pound BOD5	1.4			
Pounds of Oxygen required per pound TKN	4.6			
Pounds of Oxygen Recovered by Denitrification per lb NO3-N Removed	2.86			
Oxygen for BOD removal (lb/day)		87.6	280.2	124.5
Oxygen for nitrification (lb/day)		30.2	96.7	49.9
Oxygen recovered by denitrification (lb/day)		-14.1	-52.3	-23.3
Total oxygen required (AOR)		103.7	324.6	151.2
AOR/SOR		0.365		0.411
Total oxygen required (SOR)		284.1		367.8
Oxygen transfer efficiency (%/ft)	0.7			
Total air required (SCFM)		233.2		301.9

Facility Design Features

A. Emergency Power Requirements

The upgrades to the WWTP include the addition of an on-site automatically starting back-up generator capable of operating all critical wastewater treatment system units. The fuel tank shall be sized for a run time greater than the longest power outage in available records. The generator will provide sufficient power for the following units:

1. All control panels
2. 2 – Lift station pumps
3. 2 – Blowers (Train 1)
4. Clarifier equipment
5. Auxiliary equipment (heaters, lighting, flow meters, chlorine pump, etc.)
6. 3 – Blowers (Train 2)
7. 2 – Equalization basin transfer pumps (2 per train)
8. 2 – Anoxic transfer pumps
9. 4 – MBR pumps (Train 2)

10. 2 – MLSS recycle pumps (1 per train)

An automatic transfer switch (ATS) will be included to transfer electrical loads to the generator during an outage.

B. Alarm Features

The facility will be equipped with PLC controls with daily reports sent to stakeholders for monitoring of all critical treatment units. Local alarm lights will be provided. The system will include automatic alarm alerts to alert facility personnel of the following conditions:

1. Power outage
2. Basin high levels
3. Clarifier torque overload
4. Equipment failure (pumps, blowers, etc.)

C. Design Features for Reliability and Operating Flexibility

1. Influent lift station – The influent lift station includes two pumps, each sized to meet the peak daily flow with one out of service. The pumps will be capable of meeting the 2-hour peak flow with both pumps in service. Level controls automatically start and stop the pumps based on wet well levels. High wet well level will result in an alarm condition.
2. Fine screens – fine screens will be installed at the outlet of the solids separation tank. Overflow and screenings will be captured by the basin. A pump will be installed to provide flushing water for the fine screens.
3. Aeration basins – Each train will operate independently, so if one of the trains is out of service, the other train can continue running. The new equalization basin upstream will buffer peak flows.

D. Overflow Prevention

1. The facility design includes a peaking factor of 4 to ensure hydraulic capacity.
2. A large equalization tank will be installed to assist in buffering peak flows.

ATTACHMENT B

Old Route 66

Old Route 66

Old Route 66

Old Route 66

W I-40

W I-40

W I-40

Parcel ID:218606

Parcel ID:141840

Well

Landowner:#6

Landowner:#1

1,309 feet

Landowner:#13

Parcel ID:
141854

Parcel ID: 141728

Landowner:#2

Parcel ID: 141834

Landowner:#5

150 feet Buffer
Zone for Private
Wells

Wastewater
Treatment Plant

Well

Well

Well

523 feet

Parcel ID: 220267

Landowner:#3

578 feet

Parcel ID:
141855

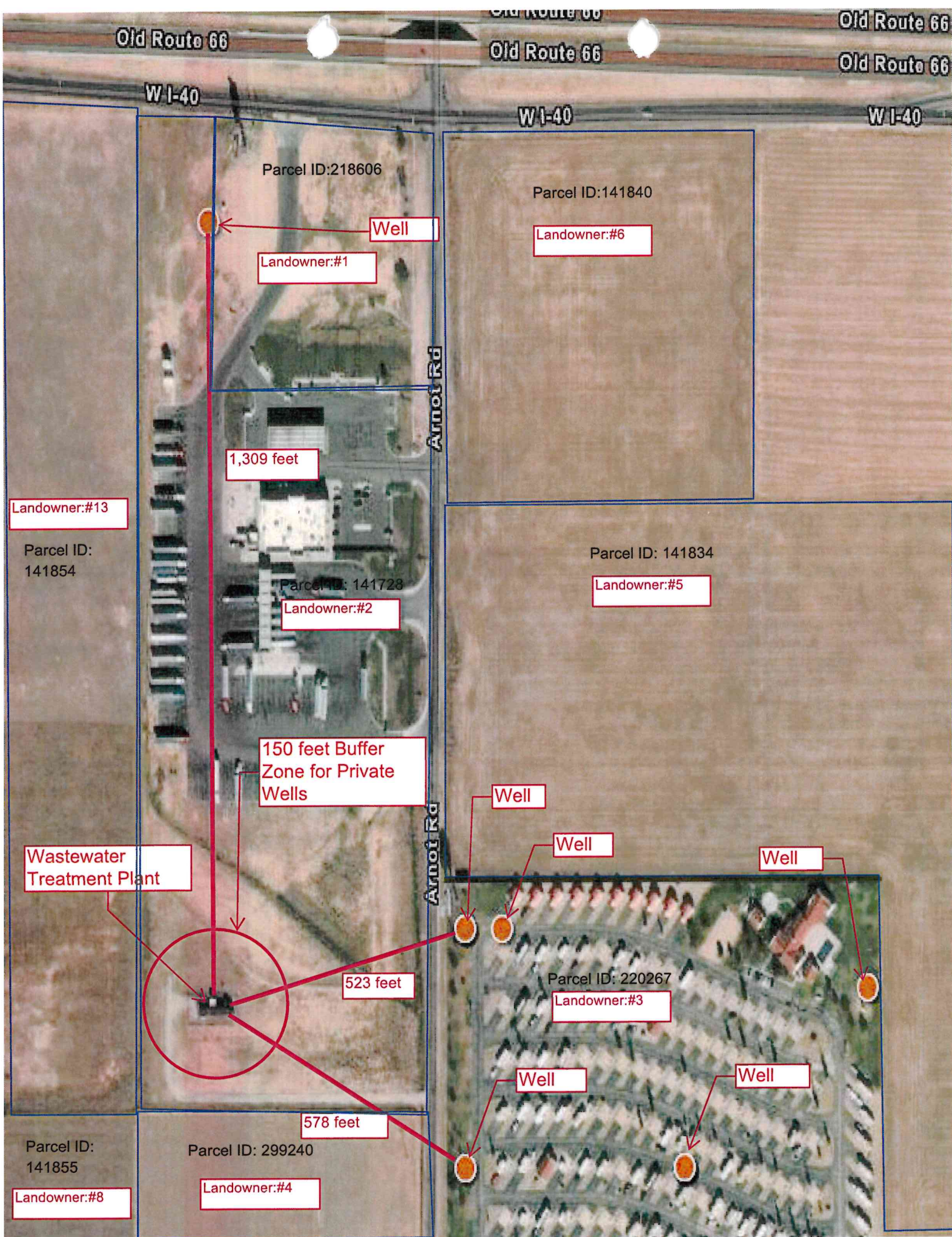
Landowner:#8

Parcel ID: 299240

Landowner:#4

Well

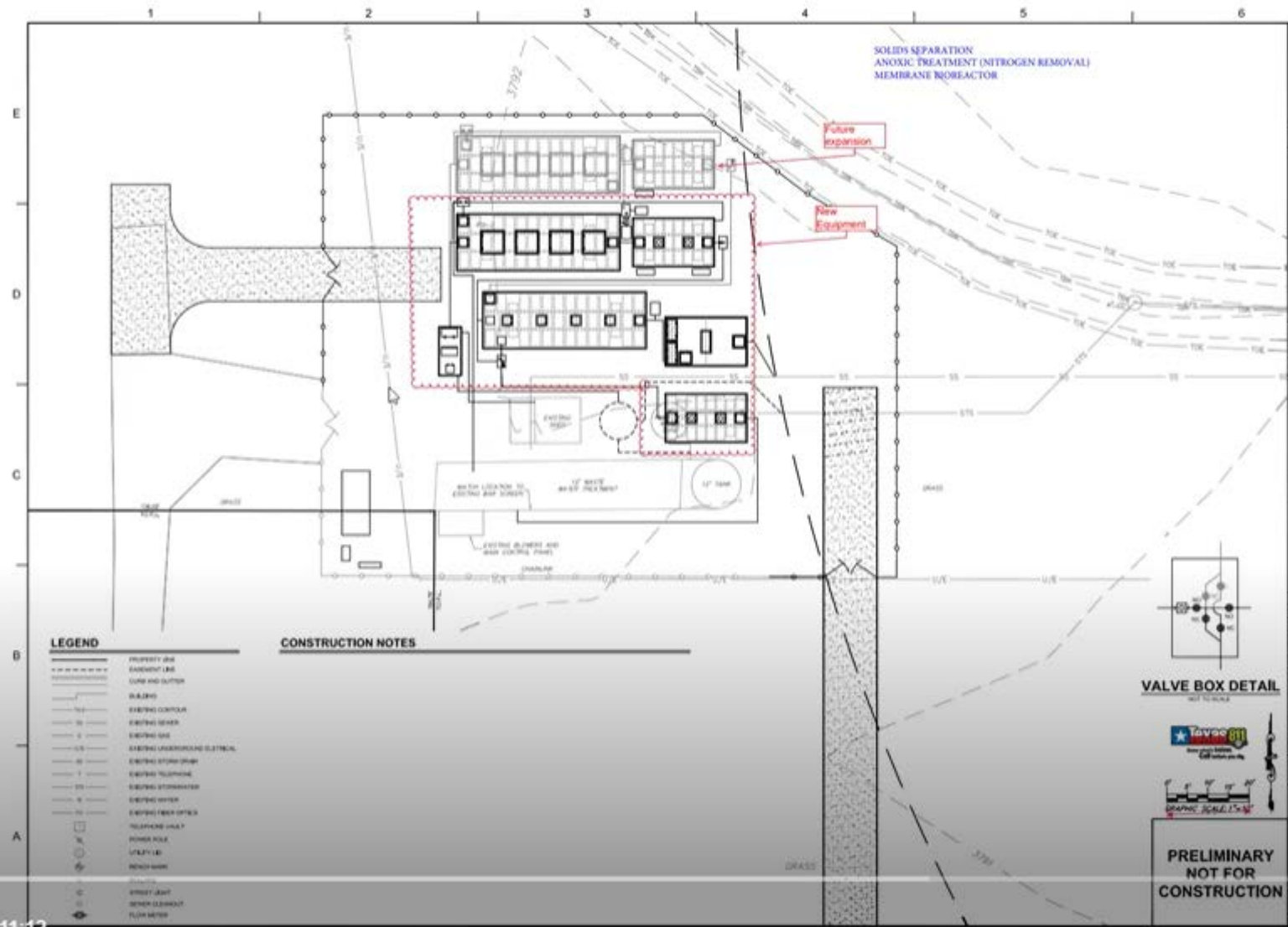
Well



ATTACHMENT C



ATTACHMENT D



LEGEND

- PROPERTY LINE
- EXISTING LINE
- LINE AND OUTLET
- BUILDING
- EXISTING CURB
- EXISTING DRIVE
- EXISTING GAS
- EXISTING UNDERGROUND ELECTRICAL
- EXISTING STORM DRAIN
- EXISTING TELEPHONE
- EXISTING STORMWATER
- EXISTING WATER
- EXISTING DATA OPTICS
- TELEPHONE POLE
- POWER POLE
- UTILITY POLE
- REINFORCED CONCRETE
- EXISTING CURB
- EXISTING DRIVE
- EXISTING STORMWATER
- EXISTING WATER
- EXISTING DATA OPTICS
- TELEPHONE POLE
- POWER POLE
- UTILITY POLE
- REINFORCED CONCRETE

CONSTRUCTION NOTES

VALVE BOX DETAIL

NOT TO SCALE



**PRELIMINARY
NOT FOR
CONSTRUCTION**

WASTEWATER TREATMENT
PLANT DESIGN

LOVE'S TRAVEL STOP

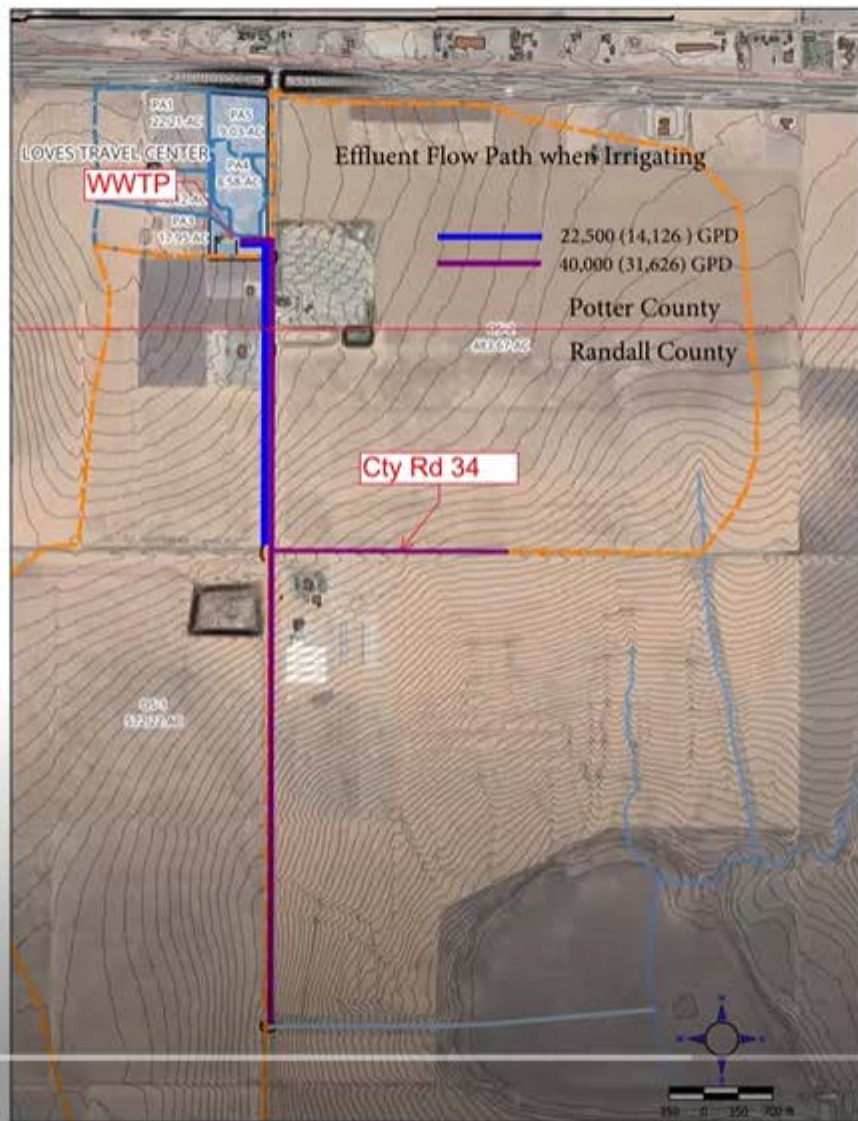
PROJECT NO.	2024-02-13
DATE FILED	2024-02-13
DESIGNED BY	ALJ
DRAWN BY	WJD
CHECKED BY	WJD
DATE	2024-02-13
DRAWING SCALE	AS SHOWN

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DETAILED PLAN



PROJECT NO.
C-102



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Love's Travel Stops & Country Stores, Inc.
TCEQ Docket No. 2024-0665-MWD

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