

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 8, 2024

TO: All interested persons.

RE: Bayou Side Partners Santa Fe, Ltd.
TPDES Permit No. WQ0015944001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Dickinson Public Library, 4411 State Highway 3, Dickinson, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

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- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis
Chief Clerk

LG/cb

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Bayou Side Partners Santa Fe, Ltd.
TPDES Permit No. WQ0015944001

The Executive Director has made the Response to Public Comment (RTC) for the application by Bayou Side Partners Santa Fe, Ltd. for TPDES Permit No. WQ0015944001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

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

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0015944001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Dickinson Public Library, 4411 State Highway 3, Dickinson, Texas.

MAILING LIST
for
Bayou Side Partners Santa Fe, Ltd.
TPDES Permit No. WQ0015944001

FOR THE APPLICANT:

Jeff Mickler, Authorized Representative
Bayou Side Partners Santa Fe, Ltd.
2000 West Parkwood Avenue
Friendswood, Texas 77546

Paul Tilly, E.I.T., Project Engineer
Ward, Getz & Associates
2500 Tanglewilde Street, Suite 120
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INTERESTED PERSONS:

See Attached List

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
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Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
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Office of Chief Clerk MC-105
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SANTA FE TX 77517-3792

ELLIOTT , MR GLEN E
13931 COUNTRY SIDE ST
SANTA FE TX 77517-3701

FLEMING , AUBREY
13927 DORIS ST
SANTA FE TX 77517-3833

FLEMING , MR JEREMY D
13927 DORIS ST
SANTA FE TX 77517-3833

FLINN , JENNIFER
13820 COUNTRY SIDE ST
SANTA FE TX 77517-3700

GASS , CACEY
423 LAGO CIRCLE DR N
SANTA FE TX 77517-3779

GILBERT , JAY
126 LAGO CIRCLE DR N
SANTA FE TX 77517-3773

GLADNEY, MITCH & MARTIN, TERRY
1207 GINGER ST
SANTA FE TX 77517-3815

GLADNEY , MITCHELL
MITCH
1207 GINGER ST
SANTA FE TX 77517-3815

GREEN , CHRISTOPHER
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SANTA FE TX 77517-3832

GREEN , SHILOH
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HAGAN SR , DENNIS H
7802 CAROLYN ST
SANTA FE TX 77517-3706

HAGAN , KIM
7802 CAROLYN ST
SANTA FE TX 77517-3706

HARAN , EDWARD
1306 GINGER ST
SANTA FE TX 77517-3769

HARMAN , EMILY DIANE
13924 COUNTRY SIDE ST
SANTA FE TX 77517-3794

HARMAN , SHANE
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JARED , MELISSA
1203 GINGER ST
SANTA FE TX 77517-3815

KLYNG , KARLA
13812 COUNTRY SIDE ST
SANTA FE TX 77517-3700

LAYMAN , JANE
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MANNING JR , WILLIAM T
SANDER ENGINEERING
STE 550
2901 WILCREST DR
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MARTIN , JEANNE
135 LAGO CIRCLE DR N
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MARTINEZ , KATHERINE & ROBERT
1100 VERONICA ST
SANTA FE TX 77517-3798

MARTINEZ JR , MR ROBERT F
1100 VERONICA ST
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MAYFIELD , JEREMY
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MCCRARY , ROGER D
13913 COUNTRY SIDE ST
SANTA FE TX 77517-3701

MCGEE , MARISSA
319 LAGO CIRCLE DR N
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MCNAMARA , SHANE ROBERT
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MECOM SR , MR KENNETH PAUL
114 LAGO CIRCLE DR N
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MEYER , DR. JACQUELINE
1309 GINGER ST
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MEYER , JASON
1309 GINGER ST
SANTA FE TX 77517-3770

NICKERSON , PATRICK
110 LAGO CIRCLE DR N
SANTA FE TX 77517-3773

PELLETIER , PENNY
214 LAGO CIRCLE DR N
SANTA FE TX 77517-3785

RORER , EDGAR MARTIN
13907 LAROU LN
SANTA FE TX 77517-3836

RORER , MARTY
13907 LAROU LN
SANTA FE TX 77517-3836

SALTER , DANA
13928 COUNTRY SIDE ST
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TAYLOR , THE HONORABLE LARRY STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 11
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THOMPSON , MS DARLENE
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SANTA FE TX 77517-3817

VASQUEZ , PALOMA
225 GLADE BRIDGE LN
DICKINSON TX 77539-3938

WEIR , CINDY LEWIS
13928 DORIS ST
SANTA FE TX 77517-3832

WEIR , CYNTHIA LLEWIS
13928 DORIS ST
SANTA FE TX 77517-3832

TCEQ PERMIT NO. WQ0015944001

APPLICATION BY	§	BEFORE THE
BAYOU SIDE PARTNERS SANTA FE,	§	TEXAS COMMISSION
LTD.	§	ON
FOR TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0015944001	§	

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on Bayou Side Partners Santa Fe, Ltd.'s (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015944001 and the ED's preliminary decision on the application. As required by 30 Texas Administrative Code (TAC) Section 55.156, before this permit is issued, the Executive Director prepares a response to all timely, relevant, and material comments. The Office of the Chief Clerk received timely comments from Mitchell Gladney, Robert F. Martinez, Penny Pelletier, Darryl Burger, Shiloh Green, Jeremy Mayfield, Craig Thompson, Glen Elliott, Jason Meyer, Shane McNamara, Roger McCrary, Marty Rorer, Shane Harman, Jeanne Martin, Kenneth Paul Mecom, Jay Gilbert, Patrick Nickerson, Casey Gass, Jacqueline Meyer, Emily Diane Harman, Jane Layman, Paloma Vasquez, Jeremy Mayfield, Darlene Thompson, Christopher Green, Jeremy D. Fleming, Terry D. Martin, Dennis H. Hagan, Kim Hagan, Dana Salter, Melissa Jared, Edgard Martin Rorer, Marissa McGee, Cynthia L Lewis Weir, Jennifer Flinn, Edward Haran, Katherine Martinez, Aubrey Fleming, Tracey Adams, and Karla Klyng.

This response addresses all timely filed public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at <http://www.tceq.texas.gov>.

Background

Description of Facility

Bayou Side Partners Santa Fe, Ltd. Has applied for a new TPDES Permit No. WQ0015944001, to authorize the discharge of treated domestic wastewater at a daily

average flow not to exceed 75,000 gallons per day. The Bayou Side Partners Santa Fe Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, two aeration basins, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed an annual average flow of 75,000 GPD. The effluent limitations in the draft permit, based on a 30-day average, are 7 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 12 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH₃-N), 63 CFU or MPN of *E. coli* per 100 ml, and 6.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The plant site is located at 13920 Country Side Street, Santa Fe, in Galveston County, Texas 77517. The treated effluent will be discharged to constructed pond 1, thence to constructed pond 2, thence to a ditch, thence to an unnamed tributary, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for constructed ponds 1 and 2 and the ditch, and high aquatic life use for the unnamed tributary. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code Section 307.5 and the 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Unnamed tributary and Dickinson Bayou Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Procedural Background

The TCEQ received Bayou Side Partners Santa Fe, Ltd.'s application for new TPDES permit on October 22, 2020, and declared it administratively complete on March 5, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) on March 17, 2021, in the *Galveston County Daily News*. The application was determined technically complete on September 15, 2021. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on October 29, 2021, in the *Galveston County Daily News*. The comment period for this application closed on April 4, 2022. A public meeting was held virtually on this permit application on April 4, 2022.

This application was filed on or 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), which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

Access to Rules, Laws and Records

- Please consult the following websites to access the rules and regulations applicable to this permit:
- to access the Secretary of State website: <https://www.sos.state.tx.us>;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): <https://www.sos.state.tx.us/tac/> (select "View the current Texas Administrative Code" on the right, then "Title 30 Environmental Quality");
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select "Rules" then "Download TCEQ Rules");
- for Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov;
- and
- for Federal environmental laws: <http://www.epa.gov/lawsregs/>.

Commission records on the Application and draft permit are available for viewing and copying and are located at Dickinson Public Library, 4411 State Highway 3, Dickinson, Texas, and at TCEQ's main office in Austin, 12100 Park 35 Circle, Building

F, 1st Floor (Office of the Chief Clerk, for the current application until final action is taken).

Comments and Responses

Comment 1:

Mitchell Gladney, Terry Martin, Shane McNamara, Kim Hagan, Tracey Adams, Dana Salter, Craig Thompson, Christopher Green, Shane Harman, Shiloh Green, Dana Salter, Darlene Thompson, Jacqueline Meyer, Patrick Nickerson, and Jason Meyer express general opposition of the draft permit.

Response 1:

TCEQ acknowledges these comments.

Comment 2:

Shiloh Green, Edward Haran, Aubrey Fleming, Karla Klyng, Dana Salter, Christopher Green, Jeremy Fleming, Glen Elliott, Emily Harman, Jacqueline Meyer, and Patrick Nickerson expressed concern regarding the effluents impact on human health. Craig Thompson, Jason Meyer, and Jacqueline Meyer expressed concern about the safety of their family. Kim Hagan expressed concern regarding the potential loss of life should a natural disaster strike the community. Shane McNamara expresses concern about public safety.

Response 2:

The Water Quality Division has determined that the draft permit is in accordance with the Texas Surface Water Quality Standards (TSWQS), which ensures that the effluent discharge is protective of aquatic life, human health, public safety, and the environment.

The rules in 30 TAC § 309.3(g)(1) require that disinfection of domestic wastewater must be protective of both public health and aquatic life, however the rules do not require a specific method of disinfection. A permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval of the Executive Director.

For this facility, Bayou Side has chosen chlorine disinfection. Chlorine is one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors

during disinfection. The permit limitation for maximum total chlorine residual is 4.0 mg/l to be monitored five times per week.

The TCEQ does not have the authority to address public safety as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize the TCEQ to consider such issues.

However, the permit does not limit the ability of an individual to seek legal remedies against Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Concerns regarding personal safety or security should be directed to local law enforcement or the Galveston County Sheriff's Office at 409-766-2305.

Comment 3:

Shane McNamara comments that the effluent will shed toxic water onto his property. Dana Salter and Jay Gilbert comment that Dickinson Bayou is already considered impaired with low dissolved oxygen levels and higher than normal bacteria, thus, no more wastewater should be put into the waterway. Jeanne Martin expresses concern about water quality in Dickinson Bayou. Robert Martinez asks if the creeks will be contaminated.

Response 3:

In order to address and comply with the permitting constraints associated with the dissolved oxygen impairment, the applicant has proposed to add two effluent polishing ponds to the discharge route for the proposed permit. Based on model results, the effluent limits of 7 mg/L CBOD₅, 2 mg/L NH₃-N, and 6.0 mg/L DO, with two effluent polishing ponds are recommended to ensure that authorized loadings of oxygen-demanding constituents to Dickinson Bayou Tidal will not be increased. The effluent polishing ponds are required for all discharges. The language about polishing ponds is included in the other requirements section of the draft permit.

The draft permit was developed in accordance with the TSWQS to be protective of water quality, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the draft permit's requirements. The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010) is designed to ensure compliance with the TSWQS.

Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater that 1) results in instream aquatic toxicity, 2) causes a violation of an applicable narrative or numerical state water quality standard, 3) results in the endangerment of a drinking water supply, or 4) results in aquatic bioaccumulation that threatens human health. The ED has made a preliminary determination that the draft permit, if issued, meets all statutory and regulatory requirements. Furthermore, conventional domestic sewage does not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing to the waste stream.

Additionally, the draft permit will have end-of-pipe bacteria limits equal to segment criteria; so, this discharge should not contribute to the water quality impairment for bacteria. The draft permit also requires disinfection via chlorination, which is intended to keep the bacteria concentrations below this effluent limit.

Comment 4:

Roger McCrary comments that the application states that the discharge will flow down a drainage ditch and pass by two water wells that are 100 feet or less away from the proposed drainage ditch. Karla Klyng, Jane Layman, Emily Harman and Christopher Green state that the effluent could jeopardize their water wells. Dana Salter comments that the Applicant violates Texas Administrative Code Title 30, Part 1, Chapter 309, Subchapter B regarding the location of the facility near private water wells. Cynthia Lewis Weir, Mitchell Gladney, and Terry Martin express concern regarding their wells which they state are approximately 50 feet from the creek. Aubrey Fleming expresses concern that the discharge will endanger her water well and states that her well is less than 100 feet from the creek that Applicant plans to discharge into. Edward Haran and Jacqueline Meyer express concern about the effluents effect on water wells. Jeremy Fleming comments that his home and 14 other homes have wells within 100 feet of the water source. Robert Martinez asks if the water wells will be contaminated. Glen Elliott expressed concern about the distance of the proposed facility from nearby wells.

Response 4:

The Water Quality Division has determined that the draft permit is in accordance with the Texas Surface Water Quality Standards, which ensures that the

effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge. Therefore, the permit limits given in the draft permit intended to maintain the existing uses of the surface waters and preclude degradation will also protect groundwater. The effluent limitations and monitoring requirements in the proposed permit are predicted to protect water quality in both surface water and groundwater.

If the Applicant operates the proposed facility in accordance with the Texas Water Code, the TCEQ rules and the provisions in the proposed permit, well waters will be protected. According to 30 TAC § 309.13(c), “[a] wastewater treatment plant unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well.” TCEQ rules protect private and public water wells by requiring that a wastewater treatment plant unit must be located a minimum horizontal distance of 250 feet from a private water well or 500 feet from a public water well site, spring, or other similar sources of public drinking water. A wet well or pump station at a wastewater treatment facility must be located a minimum horizontal distance of 300 feet from a public water well site, spring, or other similar sources of public drinking water.

In the application, Applicant is required to submit a map showing the location of water wells in relation to the proposed facility. The map is to include all springs, public water supply wells, monitor wells, surface water supply intakes, water treatment plants, potable water storage facilities, and sewage treatment facilities located within one mile of the treatment facility. In the map submitted by the Applicant, no wells were shown within one mile of the proposed facility.

Comment 5:

Aubrey Fleming, Dana Salter, Christopher Green, Edward Haran, Jeremy Fleming, Marissa McGee, Melissa Jared, and Glen Elliott express concern regarding their livestock who drink out of the creek.

Shiloh Green, Edward Haran, Karla Klyng, and Dana Salter expressed concern about wildlife drinking water contaminated by the effluent.

Response 5:

As specified in the TSWQS, water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The draft permit includes provisions to ensure that these surface water quality standards will be maintained.

Comment 6:

Darryl Burger, Jeanne Martin, Kenneth Paul Mecom, Shane Robert McNamara, Jay Gilbert, Cacey Gass, Roger McCrary, Emily Diane Harman, Jane Layman, Paloma Vasquez, Jeremy Mayfield, Darlene Thompson, Christopher Green, Jeremy Fleming, Dennis Hagan, Kim Hagan, Craig Thompson, Dana Salter, Melissa Jared, Edgar Martin Rorer, Marissa McGee, Shiloh Green, Cynthia Lewis Weir, Mitchell Gladney, Terry Martin, Edward Haran, Jason Meyer, and Tracey Adams expressed concern regarding the effluent leading to more flooding of the receiving waters. Several individuals commented that the receiving waters are already sensitive to flooding from intense rain events. Shane Harman and Emily Harman comment that the site of the proposed facility is located within a floodplain. Jennifer Flinn expresses concern regarding the quantity of the discharge. Marissa McGee comments that the flooding poses a risk to homes and possessions. Mitchell Gladney expresses concern about access to his property if wastewater is allowed to be discharged into the Southwest corner of his property, his ditch will be saturated constantly which is a road easement. Mr. Gladney further comments that the easement is mowed by the county, and if it's constantly saturated, it can't be mowed. Robert Martinez comments that he has video proof of the flow going the opposite way. Darryl Burger asks if TCEQ takes into consideration the flood zones and history of flooding in the surrounding area.

Response 6:

The TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the

state's rivers, lakes and coastal waters. However, to the extent that an issue related to flooding also involves water quality, Bayou Side is required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit at all times, including during flooding conditions.

According to the application, the proposed facility will be located above the 100-year flood plain. For additional protection, the proposed permit includes Other Requirement No. 4 of the draft permit requires the permittee to provide protection for the facility from a 100-year flood.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691. Additionally, the Federal Emergency Management Agency (FEMA) has programs that are designed to mitigate damage caused by flooding.

Comment 7:

Jeremy Mayfield, Robert Martinez, Roger McCrary, Marty Rorer, and Mitchell Gladney raised regionalization issues, stating that existing, alternative systems exist which the Applicant should connect to. Robert Martinez stated that nearby water districts should be notified and shown to have denied service to the Applicant. Robert Martinez requested copies of the service denial letters from the water districts in the surrounding area.

Response 7:

Texas Water Code § 26.081 enumerates the State's Regionalization policy. Section 26.081 states that the policy "encourage[s] and promote[s] 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." In furtherance of that policy the Texas Water Code § 26.0282 authorizes the TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems. To that end, when an Applicant applies for a new permit or applies for a major amendment to an existing permit to increase flow, the TCEQ Domestic Wastewater Permit Application,

specifically the “Domestic Technical Report 1.0,” requires Applicants to provide detailed information regarding regional wastewater treatment facilities or collection systems. First, the Report requires Applicants to provide information about any domestic permitted wastewater treatment facilities and/or collection systems located within a three-mile radius of the proposed facility. Second, whether those facilities currently have the capacity or are willing to expand to accept the volume of wastewater proposed by Applicants. Lastly, the report requires an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion. Additionally, Applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding connection to their system.

According to the Domestic Technical Report 1.1, Section 1. Justification for Permit, a new mobile home will be developed with 350 connections. The applicant indicated that no wastewater treatment plants are located within a 3-mile radius of the proposed facility.

Comment 8:

Mitchell Gladney, Terry Martin, and Shane McNamara asked who will be responsible for clean up in the event of a plant malfunction or natural disaster weather event resulting in contamination of the receiving water. Edward Haran comments that the treatment plant is a hazard to the bayou system and that one failure of the system would create a pollution hazard to the bayou ecosystem. Emily Harman and Robert Martinez ask what will happens if the power goes out. Robert Martinez asks if there’s a backup power plan. Roger McCrary asks what will happen when something goes wrong such as loss of power, malfunction of equipment, or storms.

Response 8:

The proposed permit prohibits unauthorized discharge of wastewater or any other waste and includes appropriate requirements. For example, a permittee must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works

associated with any domestic permit must be approved by TCEQ. All of these permit provisions are designed to help prevent unauthorized discharges of raw sewage. Except as allowed by 30 TAC § 305.132, Applicant will be required to report an unauthorized discharge to the TCEQ within 24 hours. Finally, Applicant will be subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

If you would like to file a complaint about the facility concerning its compliance with provisions of its permit or with TCEQ rules, you may call the TCEQ Environmental Complaints Hot Line at 1-888-777-3186 or the TCEQ Region 4 Office. Citizen complaints may also be filed sending an e-mail to complaint@tceq.texas.gov or on-line at the TCEQ website (select “Reporting,” then “Make an Environmental Complaint”). If the facility is found to be out of compliance, it may be subject to enforcement action.

Comment 9:

Emily Harman asks what experience the developer has in running a sewage plant. Robert Martinez asks how often the sewage plant will be maintained and have service checks. Robert Martinez asks who will monitor the management company to ensure that service checks are being completed in a timely manner when needed.

Response 9:

Per Other Requirement 1 of the draft permit, the permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations, and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Class C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

Operational Requirement No. 1 of the draft permit requires the Applicant to ensure that the proposed facility and all its systems of collection, treatment, and disposal are properly operated and maintained at all times. Operational Requirement No. 4 of the draft permit makes the Applicant “responsible for installing, prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.”

As required by Operational Requirement No. 8(b), “the plans and specifications for domestic sewage collection and treatment works associated with [this facility] must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.” Likewise, the proposed facility must be designed in accordance with 30 TAC Chapter 217 (Design Criteria for Domestic Wastewater Systems). Permit Condition 2(g) prohibits unauthorized discharge of wastewater or any other waste.

Comment 10:

Shane McNamara and Jason Meyer raised issues related to odors emanating from the facility and these odors interfering with businesses in the area. Dana Salter, Jay Gilbert, Kenneth Paul Mecom, and Jeanne Martin comment on odor. Darlene Thompson comments that she moved away from her previous home because of a sewer plant; she states the noise level and smell were unacceptable. Jeremy Mayfield comments on odor. Jay Gilbert comments that the odor will affect property values. Robert Martinez asks if the plant will create a sewage smell.

Response 10:

All wastewater treatment facilities have the potential to generate odors. To control and abate odors the TCEQ rules require domestic WWTPs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides three options for applicants to satisfy the nuisance odor abatement and control requirements. Applicant can comply with the rule by: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by Bayou Side; or 3) providing

nuisance odor control. According to its application, Bayou Side intends to comply with ownership of the buffer zone area (Other Requirement 3).

The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).

Regarding property values, TCEQ does not have the authority to address issues like property values as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize the TCEQ to consider issues such as property values.

However, the permit does not limit the ability of an individual to seek legal remedies against Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

Comment 11:

Shane McNamara comments that personal property will be harmed if this permit is granted.

Response 11:

Chapter 26 of the Texas Water Code and TCEQ rules relating to water quality are designed to protect public health, aquatic life and the environment. Accordingly, the stated policy of both the Water Code and the TSWQS is:

to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; 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 require the use of all reasonable methods to implement this policy.

The Texas Legislature and the Commission encourages the participation of all citizens in the environmental permitting process. However, there are certain concerns of property owners that the Commission cannot address in the review of a wastewater discharge permit. The Commission does not have jurisdiction under the Texas Water Code or its regulations to address or consider property values or the marketability of

adjacent property in its determination of whether or not to issue a water quality permit.

Comment 12:

Mitchell Gladney and Terry Martin comment that the draft permit states that Applicant is not discharging into tidal influenced waters. Mr. Gladney further states that the proposed discharge will go into a ditch, which will flow into a rice irrigation/drainage canal, then into Dickinson Bayou which is tidal influenced. Mr. Gladney asks whether this would make the irrigation/drainage canal tidal influenced.

Response 12:

The discharge route for the above referenced permit is described in the subject application is to constructed pond 1, thence to constructed pond 2, thence to a ditch, thence to an unnamed tributary, thence to Dickinson Bayou Tidal in Segment 1103 of the San Jacinto-Brazos Coastal Basin. Only Dickinson Bayou Tidal was assessed as a tidal waterbody.

Comment 13:

Jeanne Martin, Kenneth Paul Mecom, Cacey Gass, Marissa McGee, and Jeanne Martin expressed concern regarding negative effects on development resulting in more population growth than the area can handle.

Response 13:

The TCEQ does not have jurisdiction to address population growth in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

Comment 14:

Edward Haran comments that the application violates drainage easements, and his property lies in the "unnamed" canal where the discharge will take place. Terry Martin states that the unnamed tributary is a rice lease used for irrigation purposes and should not be used for wastewater discharge. Emily Harman comments that the location does not seem logical, and the ditch is dry for portions of the year.

Response 14:

TCEQ does not have the authority to mandate a different discharge location or wastewater treatment plant location if the applicant's proposed location and discharge route comply with the TWC Chapter 26 and 30 TAC Chapter 309, relating to "Domestic Wastewater Effluent Limitations and Plant Siting."

Comment 15:

Mitchell Gladney comments that the proposed discharge area is not large enough to handle all the water they plan to run through it. Mr. Gladney requests that someone from TCEQ come out to see the ditch and not take the word of the Developers. Jeremy Mayfield comments that TCEQ has not come out to see property of the discharge route. Marty Rorer comments that the ditch is not a state waterway, and that Applicant is discharging into private property.

Response 15:

TCEQ recognizes the commenters request to visit the site and see the waterway. Unfortunately, due to limited resources and the high volume of applications, technical staff cannot visit every site during the application process. Staff have reviewed USGS maps, aerial photos, and information provided by the applicant including site photos to make a best assessment of the proposed discharge path, its uses, and the water quality standards that apply throughout the route. The draft permit, if granted, will not authorize the applicant to use private property.

Comment 16:

Shane Harman expresses concern about air quality.

Response 16:

Certain types of facilities have been found, upon review, to not make significant contributions of air contaminants to the atmosphere. Such facilities are permitted by rule under the Texas Clean Air Act and TCEQ air rules. Domestic wastewater treatment plants are permitted by rule. Wastewater treatment plants performing only the functions listed in 30 TAC § 106.532 are exempted and permitted by rule. Pursuant to Texas Health and Safety Code, and the Texas Clean Air Act § 382.057, the activities listed in 30 TAC § 106.532 have been reviewed and determined not to make a significant contribution of air contaminants to the atmosphere.

Comment 17:

Mitchell Gladney asks why the Applicant is only requesting a permit for two wells at 5 million gallons per year. Mr. Gladney states that this is not even half of the water needed for the 75,000 gallons per day they plan to discharge.

Response 17:

Water well permit applications are considered by the TCEQ water supply division. Providing the source of potable water is not a requirement for a waster permit application. That information was not provided in the wastewater permit application and was not reviewed as part of this application.

Comment 18:

Robert Martinez asks whether the lagoons that are proposed are going to be able to contain the amount of sewage if there happens to be another pandemic.

Response 18:

Operational Requirement No. 1 requires the Applicant to ensure that the proposed facility and all its systems of collection, treatment, and disposal are properly operated and maintained at all times. Operational Requirement No. 4 makes the Applicant “responsible for installing, prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.” As required by Operational Requirement No. 8(b), “the plans and specifications for domestic sewage collection and treatment works associated with [this facility] must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.” Likewise, the proposed facility must be designed in accordance with 30 TAC Chapter 217 (Design Criteria for Domestic Wastewater Systems). Permit Condition 2(g) prohibits unauthorized discharge of wastewater or any other waste.

Comment 19:

Shane Harman and Emily Harman commented that the application contains false information.

Response 19:

The Commenters did not specify what false information was contained in the application. The applicant certified that all information contained in the application was correct.

As provided by state law, a permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the CWA; TWC §§ 26, 27, and 28; and the Texas Health and Safety Code § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the draft permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations

Comment 20:

Glen Elliot commented that there are alternative options available for the applicant to dispose of the discharge, including the Applicant using their own retention pond. Jeremy Fleming states that there are other options for Applicant's septic plans which need to be considered.

Response 20:

The TCEQ does not have the authority to mandate the method of disposal of treated effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309.

If Applicant decides to utilize individual septic tanks to serve the proposed residential area, it will be subject to 30 TAC Chapter 285, relating to "On-site Sewage Facilities (OSSF)".¹ However, the anticipated combined flow from all systems on a tract of land must be less than 5,000 gallons per day (gpd) on an annual average basis. If the anticipated combined flow exceeds 5,000 gpd, a domestic wastewater treatment facility is required, because wastewater treatment facilities produce a higher quality effluent than septic tanks and are therefore more protective of the environment.

The Texas Water Code § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The ED evaluates applications for wastewater

¹ 30 TEX. ADMIN. CODE § 285.4

treatment plants based on the information provided in the application. The ED can recommend issuance or denial of an application based on whether the application complies with the Texas Water Code and TCEQ regulations. However, the ED does not have the authority to mandate a different discharge route or location.

Comment 21:

Mitchell Gladney, Terry Martin, and Edgar Martin Rorer comment that the additional 75,000 gallons on top of normal flow will cause significantly more erosion of the creek beds.

Response 21:

The Commission does not have jurisdiction to regulate erosion in the context of a wastewater discharge permit. However, the applicant is required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit at all times, including during flooding conditions and erosion. The commenters may wish to contact the Floodplain Administrator in the area where the facility and discharge route is located.

Comment 22:

Traffic: Marissa McGee, Kim Hagan, Craig Thompson, and Shane McNamara comments that the increased truck volume resulting from the permit will harm the roads and increase traffic. Darlene Thompson, Kenneth Paul Mecom, Penny Pelletier, and Roger McCrary, and Shiloh Green comment on traffic. Jane Layman comments that the infrastructure in the area is not sufficient for a large project like this and will create traffic. Jeanne Martin comments that the project will negatively affect streets and roads.

Response 22:

The TCEQ does not have the authority to address traffic as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize the TCEQ to consider issues such as harm to the roads and increase traffic, increased truck volume, or property values. For concerns pertaining to roads and traffic, you should contact the City, County, or the Texas Department of Transportation (TXDOT).

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

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