



September 11, 2024

TO: All interested persons.

RE: Docket No. 2024-1228-MWD
City of Josephine (Applicant)
Request(s) TPDES Permit No. WQ0010887003

To Whom It May Concern:

We are in receipt of TCEQ's letter dated September 4th, 2024, regarding the above-mentioned permit application. The commission rules entitle all recipients of the timely hearing requests/requests for reconsideration to file a formal written response to the hearing requests/requests for reconsideration by September 16th, 2024. The applicant, City of Josephine ("Josephine" or the "City"), files this Response to Public Comment for consideration by the commissioners of TCEQ on October 11th, 2024. Accordingly, please find the following responses.

PUBLIC COMMENT 1:

Aaron Hensley commented that the proposed development will be inclusive of certain people and will use municipal resources.

EXECUTIVE DIRECTOR'S RESPONSE 1:

The ED acknowledges this comment.

APPLICANT'S RESPONSE 1:

The City acknowledges this comment and ED's response.

PUBLIC COMMENT 2:

James M. Ridgway, Jane E. Ridgway, and Kevin Christensen requested a contested case hearing on this application.

EXECUTIVE DIRECTOR'S RESPONSE 2:

The ED acknowledges the hearing requests.

To request a contested case hearing, the parties must follow the hearing request procedures found in 30 TAC Chapter 55. 30 TAC § 55.201 (a) requires that a hearing request is filed no later than thirty days after the Office of the Chief Clerk mails the ED's Response to Comment. A hearing requestor must meet the affected person requirements found in 30 TAC § 55.203. The hearing request itself must meet the requirements found in section 55.201 (c) and (d). All timely filed hearing requests will be processed in accordance with section 55.209. Unless the case is directly referred to the State Office of Administrative Hearings under section 55.210, the Commission will consider the hearing requests and determine whether to grant or deny them in accordance with section 55.211.

APPLICANT'S RESPONSE 2:

The City acknowledges this hearing request and ED's response

PUBLIC COMMENT 3:

A. Barochiere, Frank Barochiere, Jo Collin, and L.H. expressed concern that the proposed housing development will create nuisance noise.

EXECUTIVE DIRECTOR'S RESPONSE 3:

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to issues set forth in statutes. While 30 TAC Chapter 309, specifically Subchapter B, contains some nuisance considerations, the TCEQ does not have jurisdiction to consider noise from a wastewater treatment facility, nor from any related development, when determining whether to approve or deny a permit application. However, the draft permit does not limit the ability of individual landowners to seek legal remedies against the 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.

APPLICANT'S RESPONSE 3:

The City's proposed wastewater treatment facility will have components installed to minimize noise from pumps and blowers associated with the typical of operations of a wastewater plant.

PUBLIC COMMENT 4:

Barbara Newton and Shannon Villegas requested a public meeting for this application.

EXECUTIVE DIRECTOR'S RESPONSE 4:

Under 30 TAC § 55.154, TCEQ must hold a public meeting when a member of the legislature, representing the general area in which the activity is proposed, requests that a public meeting be held or when the Executive Director determines that there is a substantial or significant degree of public interest in an application. Here, there was no request for a public meeting from a member of the legislature. Additionally, the Executive Director determined that two public meeting requests did not constitute substantial or significant public interest in this application. Therefore, a public meeting was not held.

APPLICANT'S RESPONSE 4:

The City acknowledges this public meeting request and ED's response.

PUBLIC COMMENT 5:

Stacie Bockemehl, Kevin Christensen, Patricia Jan Kearney, Barbara Newton, and Jane E. Ridgway expressed concerns that discharge from the WWTF and runoff from the accompanying development will increase the likelihood of flooding events.

EXECUTIVE DIRECTOR'S RESPONSE 5:

The TCEQ does not have jurisdiction to address flooding issues as part of 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. The proposed permit includes effluent limits and other requirements that the WWTF must meet even during rainfall events and periods of flooding.

According to the application, the proposed site for the WWTF is located above the 100-year flood plain. For additional protection, the draft permit includes Other Requirement No. 5, which requires the City of Josephine to

provide protection for the wastewater treatment facilities 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.

APPLICANT'S RESPONSE 5:

The City is the local floodplain administrator in this area. The proposed wastewater treatment facility will not produce an instantaneous discharge of 0.75 MGD of effluent into the point of discharge. This facility will have intermittent discharges into the unnamed tributary to prevent the possibility of flooding as a result of the facility's discharge.

PUBLIC COMMENT 6:

Stacie Bockemuhl, Jo Collin, James M. Ridgway, and Jane E. Ridgway expressed concerns about the proposed WWTF causing air pollution.

EXECUTIVE DIRECTOR'S RESPONSE 6:

TCEQ is the agency responsible for enforcing air pollution laws. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health, and the environment will be protected. According to the TCEQ rules in 30 TAC § 106.532, wastewater facilities have undergone this review, and their air emissions are permitted by rule provided the facility performs only the functions listed in that rule. The Applicant indicated in its application that the proposed facility would be an activated sludge process plant using sequencing batch reactors, which does not make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code §§ 382.057 and 382.05196. The WWTF is therefore permitted by rule with respect to air emissions.

APPLICANT'S RESPONSE 6:

The proposed wastewater treatment facility will be an activated sludge process plant with sequencing batch reactors, as mentioned by the executive director's response. The facility will also have odor control units installed at lift stations to minimize potential odors.

PUBLIC COMMENT 7:

Kevin Christensen, Patricia Jan Kearney, Jane E. Ridgway, and James M. Ridgway expressed concerns that the proposed facility will create nuisance odors.

EXECUTIVE DIRECTOR'S RESPONSE 7:

30 TAC § 309.13(e) requires domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor. According to the application, the applicant intends to locate treatment units at least 150 feet from the nearest property line. This requirement is also incorporated into the proposed permit. Additionally, foul odors may exist when effluent contains an insufficient amount of dissolved oxygen. The draft permit restricts the amount of oxygen demanding constituents to simultaneously reduce the odors in discharged effluent and prevent degradation of receiving waters.

However, the proposed permit does not limit a landowner's ability to seek private action against the Applicant. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report the incident to TCEQ by calling toll-free at 1-888-777-3186, or by calling the TCEQ Regional Office (Region 4) in Dallas, Texas at (817) 588-5800. Complaints may also be filed electronically by using the methods described in subsection C of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the WWTF is out of compliance with TCEQ rules, enforcement actions may arise.

APPLICANT'S RESPONSE 7:

Buffer zone requirements for the proposed wastewater facilities will be met. Also, as stated in Applicant's Response 6, odor control units will be installed at the on-site lift stations to help minimize potential odors.

PUBLIC COMMENT 8:

Kevin Christensen asked for the WWTF to be moved to a different location.

EXECUTIVE DIRECTOR'S RESPONSE 8:

The ED acknowledges the opposition to the proposed location of the WWTF. Texas Water Code § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state. The ED evaluates applications for wastewater 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. The Applicant is the entity that proposes the location of the facility, point of discharge, and the discharge route rather than the ED. The ED's review evaluates the impact of the discharge on the receiving waters; however, the TCEQ's permitting authority does not include the ability to mandate a different location for the facility if the location in the application complies with 30 TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to "Unsuitable Site Characteristics" for a treatment facility. Instead, the ED may only evaluate a proposed location for a wastewater treatment facility according to the Location Standards in the TCEQ regulations and the effect of the treated wastewater on the uses of the receiving stream starting at the point of discharge.

APPLICANT'S RESPONSE 8:

The proposed wastewater treatment facility is proposed to be constructed on an existing wastewater treatment site with an operating wastewater treatment currently owned and operated by the City. The City's existing northern sewer collection system flows to the site. Relocation of the plant would be cost prohibitive for the City to acquire additional land and relocate the existing sewer collection system.

PUBLIC COMMENT 9:

Stacie Bockemuhl and Jane E. Ridgway were concerned that nearby landowners were not properly notified.

EXECUTIVE DIRECTOR'S RESPONSE 9:

There are two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI), and the Notice of Application and Preliminary Decision (NAPD). The TCEQ's notice rules require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, the applicant [must] publish notice in any newspaper of general circulation in the municipality."¹ After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge."²

For a history of the published notices regarding this application, please see the first paragraph of section C, Procedural History.

Additionally, the TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk.³ The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. Anyone who submits a comment or contested case hearing request before the end of the public comment period is also added to the mailing list for that permit action.

APPLICANT'S RESPONSE 9:

The City has complied with 30 TAC §§ 39.405(f)(1) and 39.418(b)(1) requirements regarding publishing notices in newspapers of general circulation. As mentioned in the first paragraph of section C, Procedural Background, the City published two public notices regarding this permit application. Since the site's location is in the City of Josephine and within Collin County, the NORI and the NAPD were both published for notice in *Collin County Commercial Record*. The NAPD was additionally published in the *Herald Banner-Greenville, Hunt County, Texas* and *The Farmersville Times/C&S Media-Farmersville, Collin County, Texas*.

PUBLIC COMMENT 10:

James M. Ridgway commented that the permit application was improperly filled out.

EXECUTIVE DIRECTOR'S RESPONSE 10:

TCEQ performed an administrative review of the application, upon receipt, to ensure that all required information was provided therein. TCEQ determined that the application was administratively complete on June 6, 2023. The review included TCEQ staff reviewing all administrative information provided in the application.

TCEQ also performed a technical review of the application to ensure that the applicant adequately addressed all required technical issues to show that wastewater from the facility would be treated to required standards and to establish effluent limits that will ensure protection of the receiving water bodies and their existing uses. TCEQ reviewed the proposed discharge route, the designated uses and dissolved oxygen criteria of the receiving water bodies, antidegradation analysis of the discharges, and identification of any endangered species that may be present in the receiving water bodies. Based on the review and analysis, TCEQ established effluent limits and conditions designed to maintain the receiving water body's designated uses and protect human health and aquatic life.

APPLICANT'S RESPONSE 10:

The City acknowledges the submission of an administratively and technically complete application as determined by TCEQ and acknowledged by the ED's response above.

PUBLIC COMMENT 11:

A. Barochiere, Frank Barochiere, Jo Collin, Aaron Hensley, and H.L. expressed general opposition to the draft permit.

EXECUTIVE DIRECTOR'S RESPONSE 11:

The ED acknowledges these comments.

APPLICANT'S RESPONSE 11:

The City acknowledges this comment and ED's response.

PUBLIC COMMENT 12:

A. Barochiere and Frank Barochiere expressed concerns about the impacts of development surrounding the proposed WWTF.



City of Josephine
P.O. Box 99
201 Main Street Josephine, Texas 75164
972-843-8282

EXECUTIVE DIRECTOR'S RESPONSE 12:

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. The TCEQ does not have jurisdiction to consider the possibilities of how future development surrounding the WWTF will impact area residence as a part of the wastewater permitting process.

However, the proposed permit does not limit a landowner's ability to seek private action against the Applicant. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report the incident to TCEQ by calling toll-free at 1-888-777-3186, or by calling the TCEQ Regional Office (Region 4) in Dallas, Texas at (817) 588-5800. Complaints may also be filed electronically by using the methods described in subsection C of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the WWTF is out of compliance with TCEQ rules, enforcement actions may arise.

APPLICANT'S RESPONSE 12:

The City is experiencing rapid growth thereby requiring wastewater treatment facility improvements/upgrades in order to remain compliant with the requirements of TCEQ. The proposed wastewater treatment facility will serve the referenced development in the area.

PUBLIC COMMENT 13:

James M. Ridgway and Jane E. Ridgway expressed concern that discharged effluent would negatively impact wildlife.

EXECUTIVE DIRECTOR'S RESPONSE 13:

30 TAC § 307.6(b)(4) requires water in the state to be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. While the TSWQS and the IPs do not specifically designate criteria for the protection of livestock, terrestrial wildlife, or domestic animals, the criteria designated for the protection of human health and aquatic life should preclude adverse impacts to livestock, terrestrial wildlife, and domestic animals.

The Executive Director has determined that the draft permit would be protective of the environment, including aquatic and terrestrial wildlife. Potential water quality issues that could negatively affect wildlife – excessive salinity, high nitrogen content, bacterial contamination, depressed dissolved oxygen, and heavy growths of blue-green algae – are not expected in the receiving waters provided the Applicant complies with proposed permit.

APPLICANT'S RESPONSE 13:

The City intends to comply with the proposed permit in order to prevent the discharge effluent that would have adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals.

PUBLIC COMMENT 14:

Pamela Sardo commented that the NORI and the NAPD should not have been published in the *Collin County Commercial Record* because the subscription fee is too high.



City of Josephine
P.O. Box 99
201 Main Street Josephine, Texas 75164
972-843-8282

EXECUTIVE DIRECTOR'S RESPONSE 14:

Under 30 TAC §§ 39.405(f)(1) and 39.418(b)(1), the NORI must be published in the newspaper of largest circulation in the county in which the proposed WWTF is located, or, if the facility is located in a municipality, then the applicant may publish the NORI in any newspaper of general circulation. Under 30 TAC § 39.419(b), the NAPD must be published at least once in the same newspaper as the NORI.

Here, the NORI and NAPD were both published in the Collin County Commercial Record, but the NAPD was also published in the *Harald Banner-Collin County* and in *The Farmersville Times/C&S Media-Collin County*.

APPLICANT'S RESPONSE 14:

The City has complied with 30 TAC §§ 39.405(f)(1) and 39.418(b)(1) requirements regarding publishing notices in newspapers of general circulation. As mentioned in the first paragraph of section C, Procedural Background, the City published two public notices regarding this permit application. Since the site's location is in the City of Josephine and within Collin County, the NORI and the NAPD were both published for notice in *Collin County Commercial Record*. The NAPD was also published in the *Herald Banner-Greenville, Hunt County TX* and *The Farmersville Times/C&S Media-Farmersville, Collin County, Texas*.

If you should require additional information or further clarification, please feel free to contact me.

Sincerely,



Lisa Palomba
City Administrator
City of Josephine



City of Josephine
P.O. Box 99
201 Main Street Josephine, Texas 75164
972-843-8282