

TCEQ DOCKET NO. 2024-1260-MWD

APPLICATION BY	§	BEFORE THE TEXAS
PRAIRIE CROSSING WASTEWATER	§	
LLC	§	COMMISSION ON
FOR TPDES PERMIT NO.	§	
WQ0015850001	§	ENVIRONMENTAL QUALITY

**RESPONSE TO MOTION FOR LEAVE
TO FILE FIRST AMENDED REQUEST FOR HEARING
AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Prairie Crossing Wastewater LLC (“Prairie Crossing”) and files this Response (“Response”) to Taylor Meadows 712, LP’s (“Taylor Meadows”) Motion for Leave to File First Amended Request for Hearing and Request for Reconsideration (“Motion”) and requests the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) deny Taylor Meadows’ Motion, and in support of its Response, would show the following:

I. SUMMARY

The Commission should deny Taylor Meadows’ Motion because it asks TCEQ to dispense with fundamental requirements that are in place for the integrity of the Commission’s permitting process and deadlines. Rules matter in administrative processes to ensure that protestants are identified, and applicants are not prejudiced by tardy or after-the-fact challenges. Granting Taylor Meadows leave to amend its patently deficient Request for Hearing and Request for Reconsideration (“Original Request”) filed on March 1, 2024, would set a dangerous precedent for proceedings before the Commission, allowing entities to submit placeholder protests, only to offer a substitute protestant name days, weeks, or in this case, months later. The Commission should act in a manner consistent with the plain text of its own rules. Taylor Meadows was already afforded the due process to which it is entitled—the opportunity to submit requests for

reconsideration or a contested case hearing within a defined 30-day deadline. It did not do so. By contrast, 05 Ranch Investments, LLC (“05 Ranch”)—a business entity related to Prairie Crossing via common ownership—did allegedly submit a hearing request, but the request was made on its behalf without 05 Ranch’s authorization.¹ Prairie Crossing has been patiently awaiting permit issuance following the close of all applicable protest deadlines and is now facing additional unjust delay—at no fault of its own—should Taylor Meadows’ Motion be granted. No legitimate pending challenge to the issuance of the permit exists, and all valid requests were withdrawn. For the reasons stated below, the Commission should deny the Motion and issue the permit to Prairie Crossing.

II. ARGUMENT

A. **Leave to Amend Is Inappropriate in This Circumstance, As the Commission Cannot Simply Substitute-In—More Than Five Months After the Deadline—A Party That Was Never Identified in the Original Request.**

Granting leave to amend is a discretionary act to be exercised under limited circumstances, none of which are present here. The Texas Water Code and Commission regulations are silent on whether and under what circumstances the Commission should grant leave to amend a deficient hearing or reconsideration request.² However, parallels may be drawn from case law discussing the standards for granting leave to amend in civil matters. In civil proceedings, a party seeking to amend a pleading after the deadline must obtain leave from the judge. Tex. R. Civ. P. 63. Granting leave is discretionary where a party “opposing the amendment shows evidence of surprise or prejudice, or the amendment asserts a new cause of action . . . and is thusly prejudicial on its face

¹ As evidenced by **Exhibit A**, 05 Ranch is a business entity related to Prairie Crossing via common ownership. Both entities are represented by Lloyd Gosselink Rochelle & Townsend, P.C. (“Lloyd Gosselink”). **Exhibit A** contains copies of two letters, with exhibits, previously submitted to TCEQ by Lloyd Gosselink on behalf of 05 Ranch to address the Original Request and Lloyd Gosselink’s legal representation of 05 Ranch and Prairie Crossing.

² 30 Texas Administrative Code § 55.201(g)(2) contemplates Commission discretion to extend the time to file such requests, but no such extension was granted in this instance, and untimely filings are not to be processed by the Chief Clerk. 30 Tex. Admin. Code §§ 55.201(g)(1) and 55.209(a).

. . .”³ A party’s awareness of what an opposing party *could* assert in a pleading is not the same as the opposing party making the assertion in a pleading.⁴ Lack of diligence in seeking to timely amend a pleading can also support a decision to deny leave.⁵ In considering the facts at issue here, the Commission should deny the Motion. Legal counsel for Taylor Meadows filed the Original Request purportedly on behalf of 05 Ranch on March 1, 2024. Now, months later, Taylor Meadows seeks leave to amend the Original Request to substitute the name of the requestor, claiming that it meant to identify itself as the requestor but identified 05 Ranch by virtue of a typographical error. For the reasons described below, leave to amend in this circumstance is not supported by the applicable legal standards.

Taylor Meadows should not be able to introduce itself and challenge the permit at issue when it skirted the plain-text requirements of Commission regulations. The Commission’s rules clearly state that a request for a contested case hearing must include “the *name . . . of the person who files the request . . .* and identify the person’s *personal* justiciable interest affected by the application.” 30 Tex. Admin. Code § 55.201(d) (emphasis added). Equally clear is that requests for reconsideration or a contested case hearing must be filed *no later than 30 days* after the chief clerk mails or otherwise transmits the executive director’s decision and response to comments. 30 Tex. Admin. Code § 55.201(a) (emphasis added).⁶ Taylor Meadows’—but more accurately stated, 05 Ranch’s—Original Request failed to name the intended requestor.⁷ This deficiency is meaningful and fatal to Taylor Meadows’ attempt to obstruct Prairie Crossing’s permit.

³ *Lower Valley Water Dist. v. Danny Sander Constr.*, 657 S.W.3d 404, 409 (Tex. App.—El Paso 2022).

⁴ *See id.* (rejecting argument that an Appellee should have anticipated Appellant’s intent to assert an affirmative defense which was never plead based on the arguments made in Appellant’s plea to the jurisdiction); *see also Price v. Short*, 931 S.W.2d 677, 685 (Tex. App.—Dallas 1996) (finding that an Appellant’s answer, not his discovery responses, put Appellee on notice of the issues to be addressed at trial).

⁵ *Id.* at 409-10.

⁶ The Executive Director’s Response to Public Comment was transmitted on February 13, 2024, after which Mr. Tuckfield had thirty days, or until March 14, 2024, to file requests on behalf of Taylor Meadows.

⁷ Request for Hearing and Request for Reconsideration (“Original Request”) (March 1, 2024).

Taylor Meadows’ requested amendment to the 05 Ranch Original Request amounts to asserting a new “cause of action” by an entirely different requestor. 05 Ranch, assigned the term of art “Landowner” throughout the Original Request, purportedly made the Original Request in the context of its own personal justiciable interests affected by the application.⁸ Not once in the Original Request does the name Taylor Meadows appear, or any iteration of that name giving notice to the Commission or Prairie Crossing that the Original Request was filed on its behalf.⁹ The only portion of the Original Request identifying other persons is in Paragraph 6 where three “representatives” are specifically named, but there is no apparent tie between the three listed persons and Taylor Meadows and the paragraph clearly identifies them as representatives of “Landowner,” which must be read as meaning 05 Ranch.¹⁰ Even if, *arguendo*, Prairie Crossing or the Commission were aware of Taylor Meadows’ interest in requesting a contested case hearing, there is no burden to assume such a request was made absent a clear and sufficient pleading.¹¹ The deficiency prevented Prairie Crossing (and the Commission) from assessing any accurate claim to a personal justiciable interest affected by the application at the time the Original Request was submitted, and granting leave to sub-in a new requestor at this point would be another bite at the apple rendering the Commissions’ rules meaningless.

In addition, there are timing factors that further support the prejudicial nature of the amendment. As previously stated, Prairie Crossing has been waiting for its permit, even after all valid requests have been withdrawn. Taylor Meadows’ request for leave to amend at the proverbial thirteenth hour—after the deadline has passed—evidences a lack of diligence in seeking to ensure that the correct requestor was identified and that timely amendments were made during the 30-day

⁸ *Id.* at 1-3.

⁹ *Id.* at 1-4 (no mention of Taylor Meadows in the body of the Original Request or Certificate of Service).

¹⁰ *Id.* at 3.

¹¹ See *Lower Valley Water Dist.* at 409.

period prescribed by the Commission. Granting the Motion nearly five months after the close of said deadline would cause further unfair delay to Prairie Crossing and send the message that deadlines are more like guidelines.

B. The “Relation-Back Doctrine” Cannot Be Applied to Cure the Deficiency in the Original Request, As the Error Was More Than a Mere Typo.

The “relation-back doctrine” allows a subsequent amendment or supplement to a pleading to be tied back to the original pleading for purposes of tolling a deadline to the extent it is not wholly based on a new, different, or distinct transaction or occurrence. Tex. Civ. Prac. & Rem. Code Ann. § 16.068. Under similar reasoning for denying requests for leave to amend a pleading (i.e., undue prejudice or surprise), it is well settled that the relation-back doctrine does not apply where a new party is added in an amended pleading except in narrow circumstances of misnomer.¹² Misnomer occurs when “a party misnames itself or another party, but the correct parties are involved,” and a party is generally allowed to correct a misnomer “if it is clear no one was misled or placed at a disadvantage by the error.”¹³ Misidentification, by contrast, is treated more harshly, and arises where “two separate legal entities actually exist” and the incorrect entity is named.¹⁴ Misidentification does not enjoy the same protection under the relation-back doctrine, and can consequently be fatal to a claim where a deadline has passed and limitations are not tolled by the original pleading.¹⁵

¹² *Chavez v. Anderson*, 525 S.W.3d 382, 386-88 (Tex. App.—Houston 2017).

¹³ *Reddy P'ship/5900 N. Freeway LP v. Harris Cnty. Appraisal Dist.*, 370 S.W.3d 373, 376-77 (Tex. 2012) (relation-back applied where party misnamed itself Reddy Partnership, ETAL and amended to Reddy Partnership/5900 North Freeway, L.P.); see also *Chilkewitz v. Hyson*, 22 S.W.3d 825, 827 (Tex. 1999) (relation back applied where defendant's assumed name was used, and the pleading was later amended to add defendant's correct legal name).

¹⁴ *Reddy P'ship* at 377; see e.g., *Chavez v. Anderson*, 525 S.W.3d 382, 387 (Tex. App.—Houston 2017) (plaintiff denied relation back where pleading amended to correct the misidentification of the driver of a vehicle).

¹⁵ *Chavez* at 387-88.

The deficiency in Taylor Meadows’ Original Request is a clear case of misidentification—not misnomer.¹⁶ Taylor Meadows and 05 Ranch are separate, distinct, and unrelated legal entities. By filing its Original Request purportedly on behalf of 05 Ranch, Taylor Meadows identified the wrong legal entity—an incorrect party—and assigned that incorrect party the term of art “Landowner” to be used throughout the Original Request.¹⁷ Taylor Meadows, or any iteration of its name, does not appear anywhere in the Original Request, and the term “Landowner” may only be read as identifying 05 Ranch as defined by the Original Request.¹⁸ To define the deficiency in the Original Request as an innocuous typographical error would be to significantly downplay the distinction and legal ramifications of misidentification.¹⁹ The substitution of one unrelated legal entity’s name for another may have occurred on a computer’s word processing feature, but that does not necessarily mean technology is to blame, as the Original Request clearly identifies 05 Ranch as the requestor.²⁰ For these reasons, an amended Request substituting Taylor Meadows for 05 Ranch should not relate back to the Original Request and is therefore untimely because it is more than five months past the applicable deadline. 30 Tex. Admin. Code § 55.201(a).

III. PRAYER

In the interest of consistency with applicable rules and in setting clear and rational precedent, and for the reasons stated above, Prairie Crossing respectfully requests that the Commission deny Taylor Meadows’ Motion. Prairie Crossing further requests that its permit be

¹⁶ To illustrate, had Taylor Meadows misnamed itself in the Original Request using for example a d/b/a rather than its legal name or by a minor exclusion or typographical error within its correct legal name such that it was still possible to identify it as a party, then the error may have fairly been considered a misnomer.

¹⁷ Original Request at 1.

¹⁸ *See id.*

¹⁹ Tellingly, Taylor Meadows offers no evidence in support of its claim that the alleged typographical error was just that, and instead relies upon its conclusions briefing statement. As such, the Commission has no evidentiary basis to grant the leave requested.

²⁰ It is difficult to imagine how such a typo could even occur. This wasn’t a similar name botched by letters being close on a keyboard, and it’s doubtful that autotext would completely replace a wholly dissimilar name with another.

issued as soon as practicable, as there are no live or valid requests for a hearing or reconsideration, or any other impediments to permit issuance.

Respectfully submitted,

A handwritten signature in blue ink that reads "Nathan E. Vassar". The signature is written in a cursive style with a horizontal line underneath it.

NATHAN E. VASSAR
State Bar No. 24079508
nvassar@lglawfirm.com

MARY MARTHA MURPHY
State Bar No. 24098158
mmurphy@lglawfirm.com

CERTIFICATE OF SERVICE

I, Nathan E. Vassar, hereby certify that on this 30th day of August, 2024, a true and correct copy of the above and foregoing document has been sent via TCEQ's electronic filing case management system and electronic mail to the following parties and counsel of record:



NATHAN E. VASSAR

For Taylor Meadows 712, LP

David J. Tuckfield
The AL Law Group, PLLC
12400 West Highway 71, Suite 350-150
Austin, Texas 78738
david@allawgp.com

For Public Interest Counsel

Garrett T. Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
garrett.arthur@tceq.texas.gov

For the Executive Director

Allie Soileau, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
allie.soileau@tceq.texas.gov

For Alternative Dispute Resolution

Kyle Lucas, Attorney
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
kyle.lucas@tceq.texas.gov

Exhibit A

Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

July 25, 2024

Ms. Mary Smith
General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**VIA ELECTRONIC TRANSMISSION
AND FIRST-CLASS MAIL**

Ms. Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Withdrawal of Request for Hearing and Request for Reconsideration on the Major Amendment Application for Permit No. WQ0015850001—Prairie Crossing Wastewater Treatment Facility

Dear Ms. Smith and Ms. Gharis:

This letter is submitted on behalf of 05 Ranch Investments, LLC (“Client”) to withdraw a Request for Hearing and Request for Reconsideration (the “Reconsideration Request”) wrongfully submitted by David J. Tuckfield on the above-referenced permit, under the guise of representing Client, when Mr. Tuckfield does not represent Client. Client and the applicant, Prairie Crossing, LLC (“Prairie Crossing”), are related through common ownership via parent companies and subsidiaries owned by the Tiemann family. (See **Exhibits 1A and 1B**).¹ Both Client and Prairie Crossing are clients of Lloyd Gosselink Rochelle & Townsend, P.C. (the “Firm”). As evidence of the same, see **Exhibit 1C** for redacted copies of engagement letters for both Client and Prairie Crossing.² In particular, and most recently, Client engaged the Firm for representation effective December 18, 2023.³ As Client has engaged the Firm and not Mr. Tuckfield, the Reconsideration Request was submitted without authority.⁴ Given its invalidity *ab initio*, Client hereby withdraws the improperly-submitted Reconsideration Request. Accordingly, TCEQ should issue the permit as there are no live hearing requests, requests for reconsideration, or other impediments to permit issuance.

¹ Exhibit 1: Tiemann Affidavit (“Tiemann Aff.”) paras. 1 and 2.

² *Id.* at paras. 3 and 4.

³ *Id.* at para. 5.

⁴ *Id.* at paras. 7 and 8.

The relevant history demonstrating that there are no active comments on the application is as follows:

During both the Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) and Notice of Application and Preliminary Decision (“NAPD”) periods, there were only two comments submitted. One comment was submitted by representatives of Epitome Development, LLP requesting a contested case hearing. It was subsequently withdrawn on December 18, 2023, as noted in the Executive Director’s Response to Public Comment (“RTC”). (See **Exhibit 1D**).⁵ Another comment submitted by a private landowner, Gary Gola, was also subsequently withdrawn via comment to the Chief Clerk, also as noted in the RTC. (See **Exhibit 1D**).⁶ Later, after the issuance of the RTC, the Firm and Client were surprised to receive notice of the Reconsideration Request submitted by Mr. Tuckfield purportedly on behalf of Client (i.e., “COMES NOW, the 05 Ranch Investments LLC (“Landowner”) and files this Request for Hearing and Request for Reconsideration in the above-referenced matter . . .”) (See **Exhibit 1E**) when Client has never engaged Mr. Tuckfield for representation.⁷ The matter referenced in the header of the Request is TPDES Permit WQ0015850001. (See **Exhibit 1E**).

In short:

- On January 9, 2023, Prairie Crossing submitted an application to the Texas Commission on Environmental Quality (“TCEQ”) to amend TPDES Permit No. WQ0015850001 issued to its Prairie Crossing Wastewater Treatment Facility.
- A combined NORI and NAPD was published as required by the TCEQ, and the public comment period ended on September 25, 2023.
- Only two comments were received: one requesting a contested case hearing on the application submitted by Dharma Rajah and Danny G. Worrell for Epitome Development LLP, which was subsequently withdrawn, and another by landowner Gary Gola that was also later withdrawn.
- On March 1, 2024, David J. Tuckfield filed the Reconsideration Request purportedly on behalf of Client. As noted above, Client—05 Ranch Investments, LLC—is not represented by Mr. Tuckfield.

To conclude, as supported by the attached Exhibits, Client retained the Firm and only the Firm to represent its interests on the application. As such, Mr. Tuckfield was never authorized to submit the Reconsideration Request on behalf of Client. For these reasons, we respectfully ask that the Reconsideration Request be withdrawn and that the permit be expeditiously issued.

Sincerely,



Nathan E. Vassar

⁵ *Id.* at para. 6.; RTC at 5-6.

⁶ Tiemann Aff.at para. 6; RTC at 7.

⁷ Tiemann Aff.at paras. 7 and 8.

July 25, 2024

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NEV/yxw

Enclosures

Exhibit 1: Affidavit by Matthew Tiemann

Exhibit 1A: Minutes of Annual Meeting of the Board of Directors of Tiemann Land and Cattle Development, Inc., dated January 30, 2019

Exhibit 1B: Organization Chart for Tiemann Entities

Exhibit 1C: Lloyd Gosselink Engagement Letters for 05 Ranch Investments, LLC, and Prairie Crossing, LLC (redacted)

Exhibit 1D: Texas Commission on Environmental Quality Response to Public Comment

Exhibit 1E: Request for Hearing submitted by David Tuckfield on March 1, 2024

cc: David J. Tuckfield
12400 71 Highway 71 West
Suite 350-150
Austin, Texas 78738
david@allawgp.com

Matthew Tiemann
mtiemann@tlcdevelopment.com

Kyle Lucas
Alternative Dispute Resolution
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Kyle.Lucas@tceq.texas.gov

Allie Soileau
Staff Attorney
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Allie.Soileau@tceq.texas.gov

Exhibit 1

3. Prairie Crossing and 05 Ranch have engaged Lloyd Gosselink Rochelle & Townsend, P.C. (“Lloyd Gosselink”) as counsel to represent their interests. Collectively attached as Exhibit 1C are true and correct redacted copies of such engagement letters between Lloyd Gosselink and 05 Ranch and Prairie Crossing, respectively.

4. I certify that it is my signature on the engagement letters for 05 Ranch and Prairie Crossing attached hereto as Exhibit 1C. As noted in my handwriting below my signatures, I signed the engagement letters in my official capacity to enter into such agreements for both entities.

5. 05 Ranch is represented solely by Lloyd Gosselink and has not retained additional legal counsel to represent its interests on the application.

6. To my knowledge, any public comments on the application were subsequently withdrawn. Exhibit 1D is a true and correct copy of the Executive Director’s Response to Public Comment.

7. I was surprised to receive notice in March 2024 that an attorney that does not represent 05 Ranch submitted a Request for Hearing and Request for Reconsideration (the “Reconsideration Request”) on its behalf.

8. 05 Ranch in no way requested or authorized David J. Tuckfield to submit the Reconsideration Request in the matter of the application for amendment to permit no. WQ0015850001. Exhibit 1E is a true and correct copy of the Reconsideration Request wrongfully submitted by Mr. Tuckfield.”

FURTHER AFFIANT SAYETH NOT

By: 
MATTHEW TIEMANN

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on July 23, 2024 by Matthew Tiemann, on behalf of 05 Ranch and Prairie Crossing.


Notary Public, State of Texas

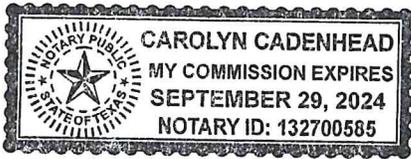


Exhibit 1A

Tiemann Land and Cattle Development, Inc.

MINUTES OF ANNUAL MEETING OF THE BOARD OF DIRECTORS
January 30, 2019

Pursuant to the bylaws of the corporation, the annual meeting of the board of directors of Tiemann Land and Cattle Development, Inc., was held at held at the corporation's offices located at 4421 Rowe Lane, Pflugerville, Texas, 78660, on January 30, 2019.

Robert M. Tiemann, being the President and sole director on the Board of Directors, was present and presided at the meeting. Carrie Parker Tiemann being the Vice President and Secretary, was present and served as secretary of the meeting. Also present at the meeting was Matthew R. Tiemann.

The President then stated that he would entertain nominations for officers to serve for the ensuing year and until their successors shall have been elected and qualified. The following persons were then nominated for the positions indicated:

Matthew R. Tiemann – President
Robert M. Tiemann – Vice President, Chairman, and Assistant Secretary
Carrie Parker Tiemann – Secretary

Such nominations were seconded. There were no other nominations.

Upon vote, the nominees were then duly elected to serve as the officers of the corporation for the ensuing year and until their successors shall have been elected and qualified. Matthew, Robert, and Carrie each accepted to serve in these positions.

On motion duly made, seconded, and carried, it was:

RESOLVED, that the corporation will have quarterly board meetings when possible.

On motion duly made, seconded, and carried, it was:

RESOLVED, that the corporation hereby ratifies and approves, as the act of the corporation, all acts taken and agreements signed by the officers of the corporation on behalf of the corporation as of the date of this meeting of the Board of Directors, and the corporation acknowledges that it is legally bound by such acts and agreements.

No further business coming before the meeting, upon motion duly made, seconded, and unanimously approved, the meeting duly adjourned.


Carrie Parker Tiemann, Secretary

Exhibit 1B

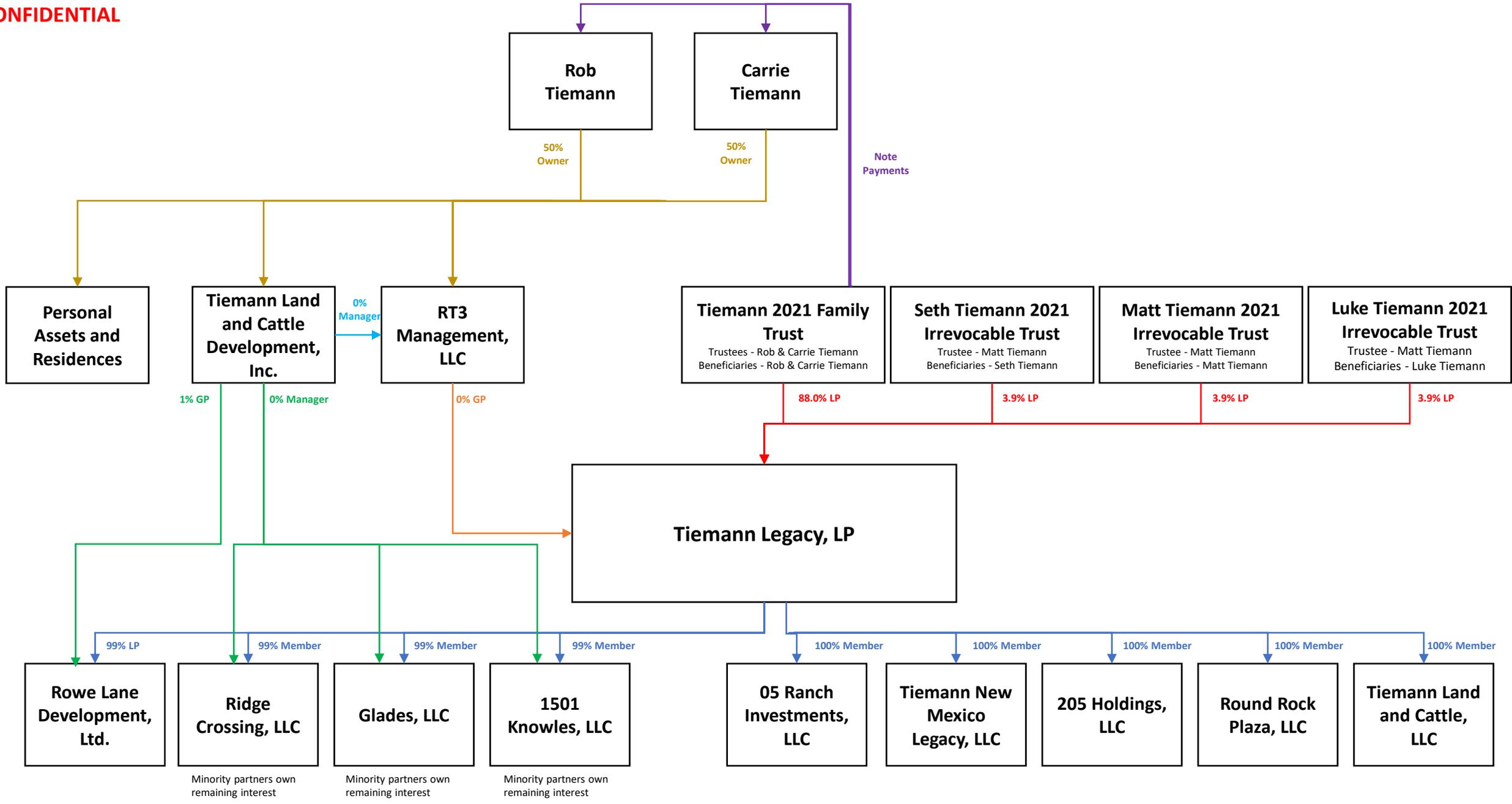


Exhibit 1C

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

December 18, 2023

05 Ranch Investments, LLC
Attn.: Mr. Matthew Tiemann
21100 Carries Ranch Road
Pflugerville, TX 78660

VIA ELECTRONIC MAIL

Re: Engagement Letter – [REDACTED]
Billing File Number: 4516-00

Dear Mr. Tiemann:

We want to express our appreciation for the opportunity you have given our firm to work with you. The purpose of this letter is to set forth our understanding of the legal services to be performed by us for this engagement and the basis upon which we will be paid for those services. This letter confirms that Lloyd Gosselink Rochelle & Townsend, P.C. ("Lloyd Gosselink") will represent 05 Ranch Investments, LLC ("05 Ranch") with respect to [REDACTED] at the Texas Commission on Environmental [REDACTED]. Our acceptance of this representation (the "Representation") becomes effective upon our receipt of an executed copy of this agreement.

Terms of Engagement

This letter sets out the terms of our engagement in the Representation. Certain of those terms are included in the body of this letter, and additional terms are contained in the attached document, entitled *Additional Terms of Engagement*, dated October 2, 2018. That document is expressly incorporated into this letter, and it should be read carefully. The execution and return of the enclosed copy of this letter constitutes an agreement to all the terms set forth in this letter and in the attached *Additional Terms of Engagement*.

It is understood and agreed that our engagement is limited to the Representation, and our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in this letter.

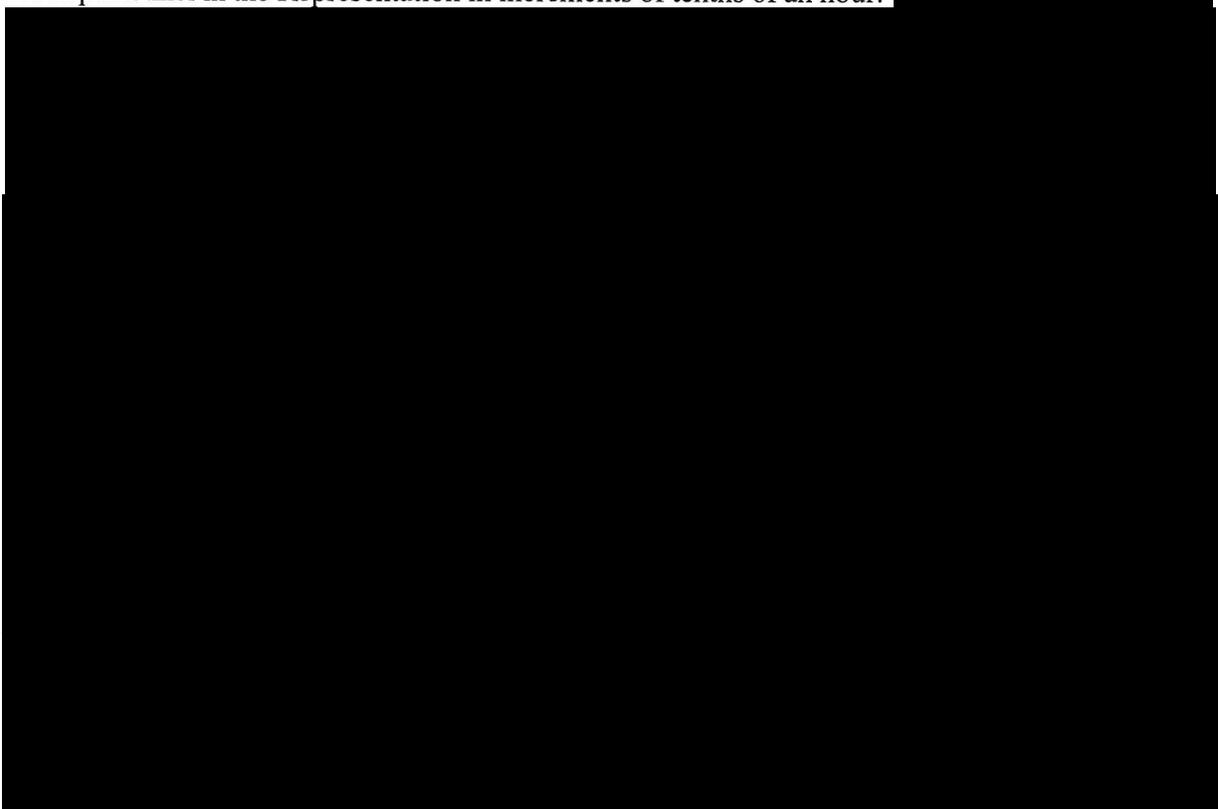
Personnel Who Will Be Working on the Matter

[REDACTED]

Other firm personnel, including firm lawyers and paralegals, will participate in the Representation if, in our judgment, their participation is necessary or appropriate.

Legal Fees and Other Charges

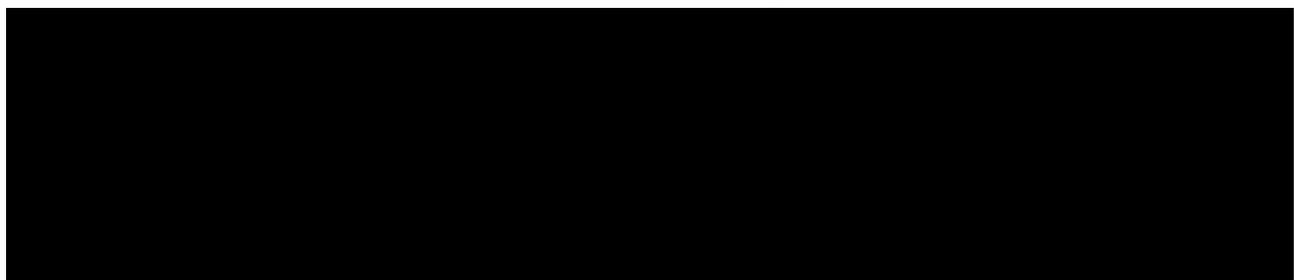
Our fees in the Matter will be based on the time spent by firm personnel, primarily firm lawyers or paralegals, who participate in the Representation. We will charge for all time spent by such personnel in the Representation in increments of tenths of an hour. [REDACTED]



Conflicts of Interest

Before accepting the Representation, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would bar our firm from representing you in the Matter. Based on the information available to us, we are not aware of any potential disqualification. We reviewed that issue in accordance with the rules of professional responsibility adopted in Texas.

Cloud-Based Software



Document Retention



Conclusion

This letter and the attached *Additional Terms of Engagement* constitute the entire terms of the engagement of Lloyd Gosselink Rochelle & Townsend, P.C. in the Representation. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written agreement signed both by you and Lloyd Gosselink Rochelle & Townsend, P.C. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either you or Lloyd Gosselink Rochelle & Townsend, P.C.

Please carefully review this document, which includes this letter and the attached *Additional Terms of Engagement*. If there are any questions about these terms of engagement, or if these terms are inaccurate in any way, please let me know immediately. If acceptable, we would appreciate you signing and returning the enclosed duplicate original of this document.

Sincerely,



David J. Klein

DJK/dsr
Attachment

05 Ranch Investments, LLC
December 18, 2023
Page 4

AGREED AND ACCEPTED:

05 RANCH INVESTMENTS, LLC

By: 
Signature

MATTHEW TIDMAN
Printed Name

PRESIDENT, LLC, MANAGER
Title

12-18-23
Date

OF RSI MANAGEMENT, LLC,
MANAGER OF TIDMAN LEGACY.
OWNER OF 05 RANCH INVESTMENTS, LLC

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

May 10, 2022

Prairie Crossing Wastewater, LLC
Attn.: Mr. Matthew Tiemann
21100 Carries Ranch Road
Pflugerville, TX 78660

VIA ELECTRONIC MAIL

Re: Engagement Letter – [REDACTED]
Billing File Number: 4380-00

Dear Mr. Tiemann:

We want to express our appreciation for the opportunity you have given our firm to work with you. The purpose of this letter is to set forth our understanding of the legal services to be performed by us for this engagement and the basis upon which we will be paid for those services. This letter confirms that Lloyd Gosselink Rochelle & Townsend, P.C. ("Lloyd Gosselink") will represent Prairie Crossing Wastewater, LLC with respect to [REDACTED]

[REDACTED] Our acceptance of this representation (the "Representation") becomes effective upon our receipt of an executed copy of this agreement.

Terms of Engagement

This letter sets out the terms of our engagement in the Representation. Certain of those terms are included in the body of this letter, and additional terms are contained in the attached document, entitled *Additional Terms of Engagement*, dated October 2, 2018. That document is expressly incorporated into this letter, and it should be read carefully. The execution and return of the enclosed copy of this letter constitutes an agreement to all the terms set forth in this letter and in the attached *Additional Terms of Engagement*.

It is understood and agreed that our engagement is limited to the Representation, and our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in this letter.

Personnel Who Will Be Working on the Matter

[REDACTED]

[REDACTED] Other firm personnel, including firm lawyers and paralegals, will participate in the Representation if, in our judgment, their participation is necessary or appropriate.

Legal Fees and Other Charges

Our fees in the Matter will be based on the time spent by firm personnel, primarily firm lawyers or paralegals, who participate in the Representation. We will charge for all time spent by such personnel in the Representation in increments of tenths of an hour. [REDACTED]

[REDACTED]

[REDACTED]

Conflicts of Interest

Before accepting the Representation, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would bar our firm from representing you in the Matter. Based on the information available to us, we are not aware of any potential disqualification. We reviewed that issue in accordance with the rules of professional responsibility adopted in Texas.

Cloud-Based Software

[REDACTED]

Document Retention

Conclusion

This letter and the attached *Additional Terms of Engagement* constitute the entire terms of the engagement of Lloyd Gosselink Rochelle & Townsend, P.C. in the Representation. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written agreement signed both by you and Lloyd Gosselink Rochelle & Townsend, P.C. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either you or Lloyd Gosselink Rochelle & Townsend, P.C.

Please carefully review this document, which includes this letter and the attached *Additional Terms of Engagement*. If there are any questions about these terms of engagement, or if these terms are inaccurate in any way, please let me know immediately. If acceptable, we would appreciate you signing and returning the enclosed duplicate original of this document.

Sincerely,



David J. Klein

DJK/dsr
Attachment

Prairie Crossing Wastewater, LLC
May 10, 2022
Page 4

AGREED AND ACCEPTED:

PRAIRIE CROSSING WASTEWATER, LLC

By: 
Signature

MATT TREMANN
Printed Name

PRESIDENT
Title

5-10-2022
Date

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

September 30, 2022

Prairie Crossing Wastewater, LLC
Attn.: Mr. Matthew Tiemann
21100 Carries Ranch Road
Pflugerville, TX 78660

VIA ELECTRONIC MAIL

Re: Engagement Letter – [REDACTED]
Billing File Number: 4380-01

Dear Mr. Tiemann:

We appreciate the confidence you have shown in us by recently requesting additional legal services from our firm. For various reasons it is necessary for our firm to specifically enumerate those matters on which we are working. The purpose of this letter is to set forth our understanding of the legal services to be performed by us and is a Supplement to the original Engagement Letter. This letter confirms that Lloyd Gosselink Rochelle & Townsend, P.C. ("Lloyd Gosselink") will represent Prairie Crossing Wastewater, LLC with respect [REDACTED]

[REDACTED] Furthermore, this letter is our notice to you regarding our acceptance of this representation (the "Representation").

Terms of Engagement

Our original Engagement Letter and the *Additional Terms of Engagement* attached thereto, dated May 10, 2022, set out the terms of our engagement in the Representation. This letter is expressly incorporated into that document. It is understood and agreed that our engagement is limited to the Representation, and our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in the original Engagement Letter and all Supplements thereof.

Personnel Who Will Be Working on the Matter

[REDACTED] Other firm personnel, including firm lawyers and paralegals, will participate in the Representation if, in our judgment, their participation is necessary or appropriate.

Legal Fees and Other Charges

Our fees in the Matter will be based on the time spent by firm personnel, primarily firm lawyers or paralegals, who participate in the Representation. We will charge for all time spent by such personnel in the Representation in increments of tenths of an hour. [REDACTED]



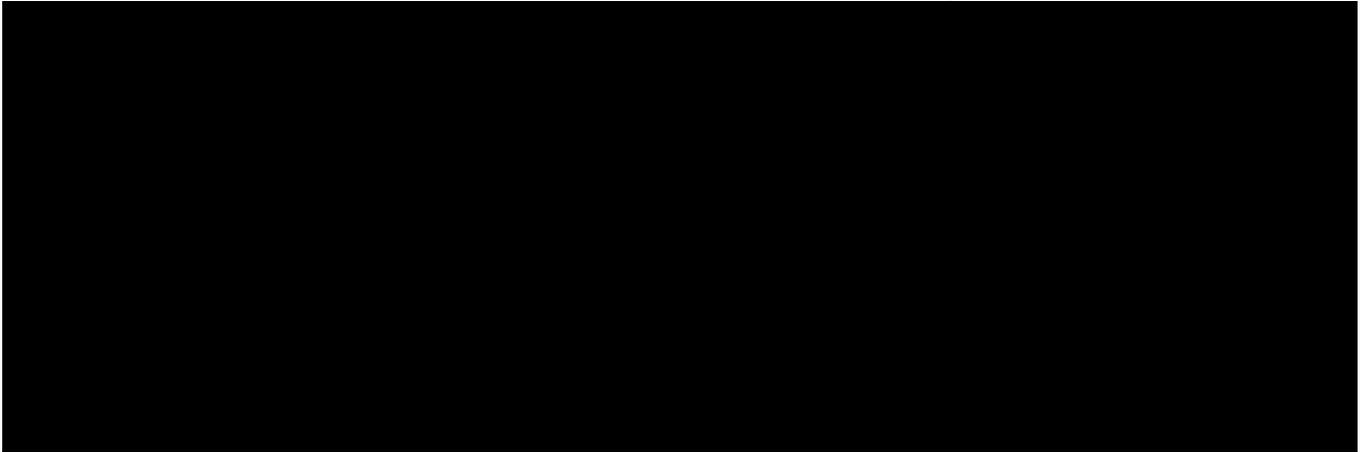
Conflicts of Interest

Before accepting this Representation, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would bar our firm from representing you in the Matter. Based on the information available to us, we are not aware of any potential disqualification. We reviewed the issue of potential conflicts in accordance with the rules of professional responsibility adopted in Texas.

Cloud-Based Software



Document Retention



Conclusion

This letter is appended to, and made a part of, our original Engagement Letter and the *Additional Terms of Engagement* attached thereto, and together with all other Supplements constitute the entire terms of the engagement of Lloyd Gosselink Rochelle & Townsend, P.C. in the Representation. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written Supplement. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either you or Lloyd Gosselink Rochelle & Townsend, P.C. If you agree to these terms of engagement, please sign in the space provided below and return a scanned copy of the executed Supplement to Engagement Letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Klein", is written in black ink.

David J. Klein

DJK/dsr

Prairie Crossing Wastewater, LLC
September 30, 2022
Page 4

AGREED AND ACCEPTED:

PRAIRIE CROSSING WASTEWATER, LLC

By: 
Signature

MATTHEW TIDMAN
Printed Name

PRESIDENT, TLED-MANAWA
Title

10-4-22
Date

Exhibit 1D

TPDES PERMIT NO. WQ0015850001

**APPLICATION BY THE
PRAIRIE CROSSING WASTEWATER,
LLC FOR TPDES PERMIT NO.
WQ0015850001**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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 the application by Prairie Crossing Wastewater, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015850001 and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk received timely comments from Dharma Rajah, Danny G. Worrell and Nathan Vassar on behalf of Epitome Development LLP, Vijay Kasireddy Group TX, Poonuru Kamalakar, David J, Tuckfield, Garry Gola, and Eric Allmon. This response addresses all timely public comments received, whether withdrawn or not. For 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 on the TCEQ web site at <http://www.tceq.texas.gov>.

BACKGROUND

The Applicant applied for a major amendment of TPDES permit No. WQ0015850001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.99 million gallons per day (MGD) to an annual average flow not to exceed 4.5 MGD (proposed discharge) from the Applicant's Wastewater Treatment Facility (WWTF), Prairie Crossing WWTP (Prairie Crossing facility). The draft permit authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

Description of Facility/Discharge Route

If this permit is ultimately issued, the Prairie Crossing facility will be located approximately 5,300 feet northeast of the intersection of County Road 485 and Farm-to-Market Road 973, in Williamson County, Texas 76574 and will be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase will include a bar screen, an aeration basin, a final clarifier, a sludge holding tank, disk filter, and a chlorine contact chamber. Treatment units in the Interim II phase will include a bar screen, two aeration basins, two final clarifiers, two sludge holding tanks, and two chlorine contact chambers. Treatment units in the Final phase will include a bar screen, four aeration basins, three final clarifiers, four sludge holding tanks, and an Ultraviolet Light (UV) disinfection system. The discharge route for the proposed discharge is via pipe to Boggy Creek, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin (proposed discharge route).

Technical Review

The TCEQ has primary authority over water quality in Texas and also federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies (“water in the state”). The Texas Water Code (TWC) § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the TWC and TCEQ rules. Specifically, the ED’s technical review evaluates impacts from the proposed discharge on the receiving waters, starting at the discharge point (an unnamed tributary), according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS), and the TCEQ’s *Implementation Procedures for the Texas Surface Water Quality Standards*-June 2010 (IPs).

The unclassified receiving water use is limited aquatic life use for Boggy Creek. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. 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. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The technical review process for surface water quality is conducted by staff in the ED’s Water Quality Division (WQD staff) on the Standards Implementation Team (Standards Team) and WQD staff in the Water Quality Assessment Section (Modeling Team). With the goal of the technical review being to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ’s IPs.

The first component of the ED’s technical review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. Along with other available information, reviewing the receiving waters for the proposed discharge allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge’s possible impact and assign the corresponding minimum DO criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ’s IPs. For applications for new/amended discharges, the Standards Team performs an antidegradation analysis of the proposed discharge, and per 30 TAC § 307.5 (TSWQS) and the TCEQ’s IPs, an antidegradation review of the receiving waters was performed that included nutrient screenings. The applicant would like to increase the flow to 4.5 MGD in the final phase. The 0.99 MGD phase will be replaced with 4.5 MGD. The remaining phases will stay the same. The previous TP Screen indicated that phosphorus monitoring was needed in the Interim II and Final phases at 0.99 MGD. This monitoring, however, did not make it into the permit. A new TP screen was conducted for the 4.5 MGD phase and determined best professional judgement should be used. Using the resources available via aerial imagery and street images, algal influence within the stream can be at street crossings. During

the critical index period the stream flow will become predominantly effluent flow which could impact the pools without consistent flow from additional sources. To ensure water quality is protected and maintained a 0.5 mg/L total phosphorus limit is warranted for the final phase at 4.5 MGD.

As with all determinations, reviews, or analyses related to the technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

The second component of the ED's technical review involved WQD staff on the Modeling Team performing water quality modeling to assess effluent limits required to protect the aquatic life uses of the receiving waterbodies. The proposed permit's water quality-related effluent limits, established by the Modeling Team's QUAL-TX modeling results, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as minimum dissolved oxygen (DO), Five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), Ammonia Nitrogen (NH₃-N), and Total Phosphorus (TP), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on model results, the following effluent limits of are predicted to be adequate to maintain dissolved oxygen levels above the criteria stipulated by the Standards Implementation Team for Boggy Creek (3.0 mg/L) and Brushy Creek (5.0 mg/L):

**Interim I (0.25 MGD), Interim II (0.50 MGD) and Final (4.5 MGD) phases:
5.0 mg/L CBOD₅, 5.0 mg/L TSS, 2.0 mg/L NH₃-N, and 4.0 mg/L DO**

The Standards Implementation Team recommends a 1.0 mg/l total phosphorus (TP) limit for the Interim I and Interim II phases, and 0.5 mg/L TP limit for the final phase (4.5 MGD) to protect and maintain water quality within the receiving streams.

Coefficients and kinetics used in the model are a combination of site-specific, standardized default, and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

In all phases of the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per week by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Additionally, in Interim I and Interim II phases of the proposed permit, the effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/after a detention time of at least 20 minutes (based on peak flow) and must be monitored five time per week in the Interim I and daily in the Interim II phase by grab sample. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual for the Interim II phase. An equivalent method of disinfection may be substituted only with prior approval of the ED. For the Final (4.5 MGD) phase, the permittee shall utilize an Ultraviolet Light (UV) system for disinfection purposes. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

Segment No. 1244 is currently listed on the State's inventory of impaired and threatened waters (2022 Clean Water Act Section 303(d) list). The listing is for elevated

bacteria levels from the confluence of the San Gabriel River upstream to the confluence of Mustang Creek [Assessment Unit (AU) 1244_01] and from the confluence of Cottonwood Creek upstream to the confluence of Lake Creek (AU 1244_03).

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Procedural Background

The TCEQ received the application on January 9, 2023, and declared it administratively complete on February 9, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Taylor Press* in English on February 26, 2023, and in the *El Mundo Newspaper* in Spanish on February 23, 2023. The ED completed the technical review of the application on June 2, 2023, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the combined Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) in *Taylor Press* in English on August 20, 2023, and in *El Mundo Newspaper* in Spanish on August 24, 2023. The public comment period ended on September 25, 2023.

Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if you would like to file a complaint about the Prairie Crossing facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 11) in Austin, Texas at (512) 339-2929 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the fourth subsection 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 Prairieview facility is out of compliance with TCEQ rules, enforcement actions may arise.

Access to Rules, Laws, and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov

- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- Environmental or citizen complaints may be filed electronically at:
<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select “use our online form”) or by sending an email to the following address: complaint@TCEQ.texas.gov

Commission records for the Prairie Crossing facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at Taylor Public Library, 801 Vance Street, Taylor, Texas, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are now available for viewing and copying at the same location since publication of the NAPD.

COMMENTS AND RESPONSES

Comment 1:

Dharma Rajah and Danny G. Worrell, on behalf of Epitome Development LLP, requested for a contested case hearing for this application.

Response 1:

The ED acknowledges the hearing requests.

To request a contested case hearing, the parties must follow the hearing request procedures found in title 30, chapter 55, subchapter F of the Texas Administrative Code. Under section 55.201(a), a hearing request must be 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 section 55.203. The hearing request itself must meet the requirements found in section 55.201(c) and (d). This includes providing the hearing requestor’s name and contact information, listing all relevant and material disputed issues of fact that were raised during the public comment period and are the basis for the hearing request, and identifying the requestor’s personal justiciable interest affected by the application. Under section 55.201(d)(2), the latter should include the requestor’s location and distance relative to the proposed facility or activity and an explanation as to how the requestor will be adversely impacted by the facility or activity in a manner not in common with the general public. 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.

In a letter to the TCEQ Chief Clerk, dated December 18, 2023, Dharma Rajah on behalf of Epitome Development LLP has withdrawn their hearing request saying: “Epitome Development LLP unconditionally withdraws its protest of the above

referenced application and is no longer requesting a contested case hearing”.

Comment 2:

Danny G. Worrell, Vijay Kasireddy, Kamalakar Poonuru, David J. Tuckfield, and Eric Allmon requested their mailing address to be added in the TCEQ mailing list for this application.

Response 2:

The ED acknowledges these requests.

According to the TCEQ’s Office of Chief Clerk, every person who has submitted a comment on this application was automatically added to the mailing list to receive all filings related to this permit application. Any persons interested in this application, who did not submit a comment during the public comment period, can also request to be added to the mailing list by submitting a request to the TCEQ’s Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, Texas 78711-3087.

Comment 3:

Danny G. Worrell, on behalf of Epitome Development LLP, requested a public meeting for this application.

Response 3:

The ED acknowledges this request.

Title 30, Texas Administrative Code § 55.154(c) provides that a public meeting is to be held if: (1) the Executive Director determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law. Based on these factors, the Executive Director determined that a public meeting shall not be held in this case. A public meeting denial letter was sent to Mr. Worrell on February 13, 2024.

Comment 4:

Gary Gola commented that his public road access to his property from the south side of this facility will be closed. Also, he is concerned with this proposed 4.5 MGD of discharge that the creek might never be dry enough, or low enough to allow him to access the north side of his property.

Response 4:

The ED acknowledges Mr. Gary Gola’s concern.

TCEQ regulations and the registration require the Applicant to comply with detailed management practices that are designed to be protective of public health, livestock, and wildlife. The Applicant must operate the site in a manner that prevents public health nuisances. The Applicant cannot allow uncontrolled public access, so as to protect the public from potential health and safety hazards. The registration prohibits animals from grazing on the land for at least 30 days after the date septage is land applied. The registration also requires the Applicant to monitor for ten metals (arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc), and reduce pathogens and vector attraction in accordance with 30 TAC § 312.46(b). If the Applicant operates the facility in accordance with applicable TCEQ regulations and the provisions in the registration, the beneficial land application of domestic septage

should not have an adverse impact on public health, livestock, or wildlife.

If any members of the public experience public health nuisance conditions from the facility location area, they may contact the TCEQ Regional Office (Region 11) in Austin, Texas at (512) 339-2929 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. Citizen complaints may also be filed online at <http://www.tceq.texas.gov/compliance/complaints>. On a complaint basis, regional investigators will investigate the site. If the regional investigator documents a violation of TCEQ regulations or the registration, then appropriate action may be taken, which may include referral for an enforcement action. The registration does not limit the ability to seek legal remedies for any potential nuisance or other causes of action in response to activities that may result in injury to human health or property, or that interfere with the normal use and enjoyment of the property.

In a comment to the Chief Clerk, Gary Gola withdrawn his comment saying: “The comment I entered on March 17, 2023, has been addressed and resolved and should no longer be considered an issue pertaining to the issuance of a permit for this project”.

Comment 5:

Danny G. Worrell and Nathan E. Vassar, on behalf of Epitome Development LLP, commented that the proposed discharge does not comply with TCEQ’s regionalization policy, Prairieview Crossing has not provided a sufficient explanation of need for its Final phase, and the application fails to contain a solids management plan and requisite map and associated depictions.

Response 5:

Under section 26.081 of the Texas Water Code, the TCEQ must “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 prevent pollution and maintain and enhance the quality of the water in the state.” Additionally, section 26.0282 of the Texas Water Code provides the following:

In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

The ED evaluates regionalization inquiries when an applicant files an application for a new permit or an application for a major amendment to an existing permit to increase flow. In these instances, if there is a wastewater treatment facility or collection system within three miles of the proposed facility, the applicant is required to provide information to the ED as to whether the nearby facility has sufficient existing capacity to accept the additional volume of wastewater proposed in the application. If such a facility exists and it is willing to accept the proposed waste, the applicant must provide an analysis of expenditures required to connect to the existing wastewater treatment facility. Additionally, the applicant is required to provide copies of all correspondence with the owners of the existing facilities within three miles of the proposed facility regarding connecting to their systems.

The TCEQ’s policy on regionalization does not require the agency to deny a

wastewater discharge application on the basis that there is a pending application for a regional plant within three miles of a proposed facility. Additionally, the fact that a facility or collection system is located within three miles of a proposed facility is not an automatic basis to deny an application. For example, the ED has approved new discharges or major amendments to increase flow in situations where the applicant has provided an economic justification by demonstrating that connecting to the existing facility would be prohibitively expensive.

Prairie Crossing Wastewater LLC has stated in its application (Domestic Technical Report, Page 21) that there is no WWTP within three miles of this proposed facility which can provide service to Prairie Crossing. Additionally, ED staff verified there is no other TCEQ approved WWTP within three miles of Prairie Crossing facility.

In the application, Domestic Technical Report 1.1, Section A: Justification for permit, the applicant mentioned in attachment N, The Prairie Crossing Wastewater Treatment Plant (WWTP) major amendment permit application for 4.5 MGD (Final phase) is being submitted to meet the additional wastewater demands in the area. This WWTP will be a regional WWTP by consolidating flows from the area, including the Prairie Crossing WWTP service area as well as tracts identified in the other proposed wastewater facilities being proposed in the vicinity (i.e., the Cielo Ranch and Taylor Tract service areas).

Prairie Crossing has the ability to provide regional wastewater service tied to the planned expansion of its wastewater plant. As such, the Cielo Ranch and Taylor Tract Service Areas are proposed to be covered as a part of the Prairie Crossing application, along with the Prairie Crossing Service Area. The statutory state regionalization policy exists 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 citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” (Texas Water Code § 26.081(a)).

In Domestic Technical Report 1.1, Section 7: Sewage Sludge Management Plan, the applicant mentioned in attachment M, the applicant attached a solid management plan.

Applicant explained solid generated at 100%, 75%, 50%, and 25% design flows separately for Interim I, Interim II and Final phases.

On January 16, 2024, TCEQ received a message from Ms. Ashley Rich of Lloyd Gosselink Rochelle & Townsend, P.C., saying: “Nathan Vassar (copied here) and I serve as legal counsel for Prairie Crossing Wastewater, LLC (“Prairie Crossing”) and Darren forwarded us your below email. We have copied legal counsel for Epitome Development LLP (“Epitome”), which withdrew its protest on the application pursuant to an agreement with Prairie Crossing. Mr. Danny Worrell (also copied here) serves as counsel for Epitome and is aware of the Epitome withdrawal and can answer any questions as they relate to Epitome.”

Comment 6:

Nathan E. Vassar, on behalf of Epitome Development LLP, commented that proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

Response 6:

The technical review process for surface water quality is conducted by staff in the ED’s Water Quality Division (WQD staff) on the Standards Implementation Team (Standards Team) and WQD staff in the Water Quality Assessment Section (Modeling

Team). With the goal of the technical review being to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ's IPs.

The first component of the ED's technical review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. Along with other available information, reviewing the receiving waters for the proposed discharge allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge's possible impact and assign the corresponding minimum DO criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ's IPs. For applications for new/amended discharges, the Standards Team performs an antidegradation analysis of the proposed discharge, and per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs, an antidegradation review of the receiving waters was performed that included nutrient screenings. The applicant would like to increase the flow to 4.5 MGD in the final phase. The 0.99 MGD phase will be replaced with 4.5 MGD. The remaining phases will stay the same. The previous TP Screen indicated that phosphorus monitoring was needed in the Interim II and Final phases at 0.99 MGD. This monitoring, however, did not make it into the permit. A new TP screen was conducted for the 4.5 MGD phase and determined best professional judgement should be used. Using the resources available via aerial imagery and street images, algal influence within the stream can be at street crossings. During the critical index period the stream flow will become predominantly effluent flow which could impact the pools without consistent flow from additional sources. To ensure water quality is protected and maintained a 0.5 mg/L total phosphorus limit is warranted for the final phase at 4.5 MGD.

As with all determinations, reviews, or analyses related to the technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

On January 16, 2024, TCEQ received a message from Ms. Ashley Rich of Lloyd Gosselink Rochelle & Townsend, P.C., saying: "Nathan Vassar (copied here) and I serve as legal counsel for Prairie Crossing Wastewater, LLC ("Prairie Crossing") and Darren forwarded us your below email. We have copied legal counsel for Epitome Development LLP ("Epitome"), which withdrew its protest on the application pursuant to an agreement with Prairie Crossing. Mr. Danny Worrell (also copied here) serves as counsel for Epitome and is aware of the Epitome withdrawal and can answer any questions as they relate to Epitome."

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

The ED did not make any changes to the draft permit in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Allie Soileau, Staff Attorney
Environmental Law Division
State Bar No. 24137200
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239-6033
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Exhibit 1E

TPDES PERMIT WQ0015850001

**APPLICATION BY
PRAIRIE CROSSING
WASTEWATER LLC
FOR TPDES PERMIT
NO. WQ0015850001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

**REQUEST FOR HEARING
AND
REQUEST FOR RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the 05 Ranch Investments LLC (“Landowner”) and files this Request for Hearing and Request for Reconsideration in the above-referenced matter, and would respectfully show as follows:

1. The Applicant in this case, Prairie Crossing Wastewater, LLC (“Applicant”) is proposing to build a TPDES wastewater treatment plant on property to serve property under the jurisdiction of Prairie Crossing Municipal Utility Districts 1 & 2 (“Prairie Crossing MUDs”).
2. The Prairie Crossing MUDs have submitted a request for a Contested Case Hearing in the matter of the Cielo Ranch WWTP (TPDES Permit No. WQ0016146001). The Cielo Ranch WWTP will be constructed on land owned by the Landowner. A copy of the Hearing Request is attached at Exhibit A.
3. In their request for a contested case hearing for the Cielo Ranch permit, the Prairie Crossing MUDs assert that “the appropriate antidegradation analysis to determine [that there will not be an impairment of water quality greater than a de minimis amount] has not been included in the permit application.” See Exhibit A at page 4. For applications for new/amended discharges, the TCEQ Standards Team performs an antidegradation analysis

of the proposed discharge, and per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs, an antidegradation review of the receiving waters is performed that includes nutrient screenings. The antidegradation analysis is conducted by the Agency. It is not part of the application. If the Prairie Crossing MUDs are correct, however, that the application must include this analysis, then this application (which applies to the service area for the Prairie Crossing MUDs is also found wanting and the permit should not be granted without a contested case hearing. The question of whether this permit complies with TCEQ's antidegradation policy was raised during the comment period and addressed in the Response to Comments (Response No. 6). The Executive Director, however, did not address the issue of whether, as alleged by the Prairie Crossing MUDs, that the antidegradation review must be included in the application. In this case, the antidegradation review was not included in the application. The permit, therefore, should be referred for a contested case hearing or the Agency should reconsider its decision and reject the permit.

4. In their request for a contested case hearing for the Cielo Ranch permit, the Prairie Crossing MUDs assert that the failure to include a noise and odor abatement plan in the application should result in the denial of the permit. Exhibit A at 4. In this case, no noise and odor abatement plan was included in the application. The permit, therefore, should be referred for a contested case hearing or the Agency should reconsider its decision and reject the permit.
5. Landowner is an affected person in this case. Landowner owns land that is immediately adjacent to the development that will be built under the jurisdiction of Prairie Crossing Municipal Utility Districts. Landowner's property is less than one mile west of the

wastewater plant and the discharge point. To the extent that Applicant has not adequately addressed a noise and odor abatement plan, Landowner is affected differently from members of the general public because it will affect the use of enjoyment of the Landowner's property. Furthermore, the receiving stream for the discharge (Boggy Creek) runs through Landowner's land. To the extent that this Applicant fails to comply with antidegradation requirements for Boggy Creek, Landowner will be prevented from utilizing the stream for its own uses. This also is an interest protected under the law the is different from members of the general public.

6. Landowner asked to be placed on the mailing list for the Applicant's permit by having through its representatives David Tuckfield, Kamalakar Poonuru, and Vijay Kasireddy placed on the mailing list, yet these individuals did not receive any correspondence regarding the Applicant's permit after having asked to be placed on the mailing list.
7. Landowner should not be penalized for Applicant's business settlement with other hearing requesters (resulting in their withdrawal of their hearing requests), thus depriving Applicant the opportunity to intervene in a contested case hearing, so Landowner seeks its own contested case hearing.

Respectfully submitted,

THE AL LAW GROUP, PLLC

/s/ David J. Tuckfield

DAVID J. TUCKFIELD
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March 1, 2024 a true and correct copy of the foregoing document was filed with the Office of the Chief Clerk at www.tceq.texas.gov/goto/efilings and was served on the following by email (where indicated) and first-class mail (where indicated) as follows:

FOR THE APPLICANT via electronic mail and first class mail:

Nathan Vassar
Lloyd Gosselink
816 Congress Ave., Suite 1900
Austin, TX 78701
nvassar@lglawfirm.com

FOR THE EXECUTIVE DIRECTOR via electronic mail and first class mail:

Allie Soileau, Staff Attorney
Environmental Law Division
State Bar No. 24137200
P.O. Box 13087, MC 173
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FOR PUBLIC INTEREST COUNSEL via electronic mail and first class mail:

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FOR ALTERNATIVE DISPUTE RESOLUTION via electronic mail:

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/s/ David J. Tuckfield

EXHIBIT A

April 7, 2023

Ms. Laurie Gharis
Office of the Chief Clerk, MC 105
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

**VIA FIRST-CLASS MAIL
AND ELECTRONIC FILING**

RE: Public Comments, Request for Public Meeting, and Hearing Request for
Application for Proposed TPDES Permit No. WQ0016146001
Applicant: Wilco MUD 45 WWTP LLC
Site Name: Cielo Ranch WWTP

Dear Ms. Gharis:

We hereby submit this letter on behalf of Prairie Crossing Municipal Utility Districts 1 & 2 ("Prairie Crossing MUDs") to the Texas Commission on Environmental Quality ("TCEQ"), providing formal public comments and requesting a public meeting and a contested case hearing regarding the above-referenced application ("Application") of Wilco MUD 45 WWTP LLC ("Wilco MUD" or the "Applicant") for a new Texas Pollutant Discharge Elimination System ("TPDES") permit, and the proposed draft permit for such Application ("Draft Permit"). These comments are timely filed.

Please include me on the TCEQ's mailing list for all filings in the above-referenced Application. My mailing/contact information as follows:

Mr. Nathan E. Vassar
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5867
Fax: 512-472-0532

I. BACKGROUND

The Prairie Crossing MUDs are political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County. Prairie Crossing Wastewater, LLC ("Prairie Crossing") is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit") which authorizes the building of a wastewater treatment plant within the area of the Prairie Crossing MUDs. The PC Permit authorizes Prairie Crossing to treat and discharge wastewater from the Prairie Crossing Wastewater Treatment Facility located approximately one mile northeast of the intersection of County Road 485 and Farm-to-Market Road 9, in Williamson County, Texas. Its discharge route runs via pipe to Boggy Creek, then to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The PC Permit allows for a daily average flow of effluent not

to exceed 0.990 MGD. On January 6, 2023, Prairie Crossing submitted an application for an Amendment to the PC Permit to expand its capacity in order to have greater ability to provide regional wastewater treatment service.

The Applicant originally applied to TCEQ for proposed TPDES Permit No. WQ0016146001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 3,000,000 gallons per day from the Cielo Ranch Wastewater Treatment Plant (“CRWWTP”). The TCEQ received the application on April 11, 2022. On March 17, 2023, a combined Noticed of Receipt of Application and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was issued to correct the annual average flow authorization to a volume not to exceed an annual average flow of 2,000,000 gallons per day from CRWWTP. The proposed CRWWTP will be located approximately 1.56 miles southeast of the intersection of Farm-to-Market Road 3349 and County Road 404, in Williamson County, Texas. The discharge route will be from the CRWWTP site to Boggy Creek; thence to Brushy Creek. As noted below, the Applicant’s proposed discharge is less than two miles from Prairie Crossing’s permitted outfall.

As the political subdivisions of the State of Texas authorized by the TCEQ to provide wastewater services within an area of Williamson County, the Prairie Crossing MUDs adopt Prairie Crossing’s concerns submitted separately and restated below in regard to proposed TPDES Permit No. WQ0016146001. Below are Prairie Crossing MUDs’ timely filed public comments raising significant disputed issues of fact that are relevant and material to the TCEQ’s decision on the Application and represent the basis for Prairie Crossing MUDs’ request for a public meeting and a contested case hearing, should the Application not be remanded back to technical review and/or denied.

Prairie Crossing MUDs request that the TCEQ deny the Application and corresponding Draft Permit because it fails to: (1) meet the TCEQ’s regionalization policy; (2) satisfy water quality and antidegradation standards; and (3) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing MUDs hereby request a contested case hearing.

II. PUBLIC COMMENTS

As provided in further detail below, Prairie Crossing MUDs assert that the Application and Draft Permit should be denied because: (1) the Application does not meet applicable statutory and regulatory requirements for a TPDES permit application; (2) the Draft Permit fails to meet the requirements of Texas Water Code, Chapter 26; (3) fails to meet the TCEQ’s regionalization policy for wastewater treatment plants; and (4) fails to adequately protect against CRWWTP’s probable negative impacts on water quality and comply with TCEQ antidegradation policy.

A. The Application fails to comply with the State’s Regionalization Policy

The statutory State Regionalization Policy exists 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 citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”¹ In order to implement this Policy, Section 1.B of the TCEQ’s TPDES permit application form (Domestic Technical Report 1.1) contains three questions related to the potential for regionalization of wastewater treatment plants, tailored to the identification of permitted nearby wastewater treatment facilities and/or collection systems that could provide service to the service area proposed in the TPDES permit application.² The third regionalization question in Section 1.B is relevant to Wilco MUD’s Application, and Wilco MUD has failed to complete the regionalization analysis and process.

Specifically, Section 1.B.3 concerns the existence of *permitted* domestic wastewater treatment plants or sanitary sewer collection systems located within a three-mile radius of the proposed wastewater treatment facility.³ If such permittees exist, then the applicant is required to identify them, and provide supporting documentation, regarding any such neighboring utilities’ responses to mandatory correspondence from the applicant regarding wastewater service for the proposed service area.⁴ The applicant must provide a justification for the proposed facility and a comparison of the costs to construct it against those to connect to the applicable existing facility.⁵ In its Application, Wilco MUD indicated that no such permitted facilities which “have the capacity to accept or are willing to expand to accept the volume of wastewater proposed” are located within three miles. This statement is incorrect, as Prairie Crossing’s permitted facility is to be located less than two miles from the CRWWTP site. As such, Wilco MUD should have provided the mandatory notification to Prairie Crossing regarding their need for wastewater service in the area. This notification was not provided and at no point has Prairie Crossing stated it was not willing or able to provide service to meet projected needs, nor did Prairie Crossing ever consent to Wilco MUD constructing its own separate wastewater treatment plant. Prairie Crossing’s ability to provide service is further evidenced by its own Amendment, submitted on January 6, 2023, to expand its capacity in order to provide regional wastewater treatment service, including for the area covered pursuant to the Application. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and corresponding Draft Permit should be denied.

B. The Application raises concerns that the proposed discharge will not be in compliance with the TCEQ’s antidegradation policy.

As stated above, the Application proposes the discharge of treated domestic wastewater from the proposed CRWWTP to Boggy Creek, thence to the classified segment of Brushy Creek (Segment ID 1244). A review of this discharge route reveals two ponds: Pond #1, about 2,000 ft from the proposed outfall, and Pond #2, about 1 mile downstream from the proposed outfall. It is likely that the discharge of treated domestic wastewater will impair water quality in these ponds greater than a *de minimus* amount and cause dissolved oxygen levels

¹ Tex. Water Code § 26.081-.087.

² Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

³ Domestic Technical Report 1.1 at 22.

⁴ Domestic Technical Report 1.1 at 22.

⁵ Domestic Technical Report 1.1 at 22.

to fall below minimum levels to sustain aquatic life due to the proposed CRWWTP's organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus,⁶ but the appropriate antidegradation analysis to determine this outcome has not been included in the permit application. Without this analysis, the Application cannot demonstrate that the two ponds-Pond can sustain aquatic life as effluent dominated ponds without eutrophication. To meet TCEQ antidegradation policy, such analysis should be required. Because the Application, as proposed, is not in compliance with the TCEQ's antidegradation policy, the Application and corresponding Draft Permit should be denied.

C. The Application contains a number of additional deficiencies.

After a careful review of the Application, Prairie Crossing MUDs believe that the Application contains the following additional deficiencies, and that due to these deficiencies, the Application and corresponding Draft Permit should be denied:

- 1. Nuisance Odors.** A noise and odor abatement plan has not been prepared. An additional, unneeded treatment and disposal facility, if not operated properly, may result in nuisance odors that will adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), the Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed CRWWTP. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services are available.
- 2. Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of the receiving waters.⁷ The information listed by Wilco MUD under this section is incomplete as it does not identify two existing ponds downstream of the proposed outfall. Moreover, it fails to identify that in previous drought conditions, Pond #1 ran dry and Pond #2 decreased in size. As noted, the existing ponds may drive water quality impairments.
- 3. Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This worksheet was not included in the Application. It is required by the TCEQ for a new discharge permit application, including the associated discharge route map where creek cross sections were taken for a minimum of one-half of a mile downstream from the proposed outfall locations. Wilco MUD should be required to perform field work to collect and submit this data to the TCEQ.

⁶ Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

⁷ Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 at 29-31.

4. **Buffer Zone.** Section 3 of Domestic Administrative Report 1.1 requires a TPDES permit applicant to show how the buffer zone requirements of 30 TAC § 309.13(e) will be met.⁸ The instructions further specify that “[t]he buffer zone, either 150 or 500 feet from the treatment units, . . . can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or variance to the buffer zone.”⁹ The map provided by Wilco MUD in Attachment B to the Application is unclear and does not show that these buffer zone requirements have been met.¹⁰ Additionally, the easement documents provided by Wilco MUD in Attachment B do not show that legal restrictions preventing residential structures within the buffer zone are in place.¹¹

III. REQUEST FOR PUBLIC MEETING

Prairie Crossing MUDs request a public meeting regarding the Application in light of the issues raised in this letter. The TCEQ’s regulations in 30 TAC § 55.154(c) provide that “[a]t any time, the executive director or the Office of the Chief Clerk may hold a public meeting,” and that “[t]he executive director or the Office of the Chief Clerk shall hold a public meeting if: (1) the executive director determines that there is a substantial or significant degree of public interest in an application.” Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. Accordingly, Prairie Crossing MUDs, as political subdivisions of the State of Texas authorized by the TCEQ to provide services within an area of Williamson County, have a substantial and significant degree of public interest in the Application. Prairie Crossing MUDs are willing to work with the TCEQ and Wilco MUD to determine a location for such a public meeting.

IV. REQUEST FOR CONTESTED CASE HEARING

Prairie Crossing MUDs also request a contested case hearing regarding the Application and each and every issue raised in Prairie Crossing MUDs’ public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing MUDs are affected persons, as defined by 30 TAC § 55.203. Prairie Crossing MUDs have a personal justiciable interest to a legal right, duty privilege, power or economic interest that is not common to the general public that would be adversely affected should the Application be approved. In determining whether a person is an affected person, the TCEQ may consider, among other factors, “(1) whether the interest claimed is one protected by the law under which the Application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural

⁸ Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

⁹ Instructions for Completing Domestic Wastewater Permit Applications at 46.

¹⁰ Application Attachment B.

¹¹ Application Attachment B.

Ms. Laurie Gharis
April 7, 2023
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resource by the person; (6) whether the requestor submitted comments on the Application that were not withdrawn; and, (7) for governmental entities, their statutory authority over or interest in the issues relevant to the Application.” The TCEQ may also consider “the merits of the underlying application and supporting documentation . . . , including whether the application meets the requirements for permit issuance.” Prairie Crossing MUDs are affected persons, as defined by 30 Tex. Admin. Code § 55.103 and 55.203 and the Application is serviceable within the area Prairie Crossing MUDs provide services within Williamson County. Prairie Crossing MUDs contend the Application is contrary to TCEQ regionalization policy for the reasons outlined above. Additionally, Prairie Crossing MUDs contend that Wilco MUD’s failure to provide an adequate noise and odor abatement plan, failure to adequately assess stream quality and characteristics, and failure to meet TCEQ’s buffer zone requirements likely will adversely affect the quality of life of nearby residents and the public.

V. CONCLUSION

Prairie Crossing MUDs reserve the right to supplement these public comments and this request for a contested case hearing as they learn more about the Application and corresponding Draft Permit—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing MUDs appreciate your consideration of these public comments and its requests for a public meeting and contested case hearing.

Thank you for your consideration of this important matter. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,



Nathan E. Vassar

NEV/yw

cc: (via electronic mail only)
Mr. Matt Tiemann, Tiemann Land and Cattle Development, Inc
Mr. Darren Strozewski, DCS Engineering
Ms. Michaella Dietrick, Tiemann Land and Cattle Development, Inc.

July 26, 2024

Ms. Mary Smith
General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**VIA ELECTRONIC TRANSMISSION
AND FIRST-CLASS MAIL**

Ms. Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Response to First Amended Request for Hearing and Request for Reconsideration on the Major Amendment Application for Permit No. WQ0015850001 – Prairie Crossing Wastewater Treatment Facility

Dear Ms. Smith and Ms. Gharis:

This letter is submitted on behalf of 05 Ranch Investments, LLC (“05 Ranch”) in response to Mr. Tuckfield’s letter and First Amended Request for Hearing and Request for Reconsideration (“July Request”) dated July 25, 2024, in which he attempted to correct a fatal defect in his original Request for Hearing and Request for Reconsideration (“Original Request”) submitted March 1, 2024. For the reasons detailed below, 05 Ranch reiterates its request for TCEQ to issue Prairie Crossing Wastewater, LLC’s permit, as there are no live or valid hearing requests, requests for reconsideration, or any other impediments to permit issuance.

Taylor Meadows 712, LP (“Taylor Meadows”) did not submit a timely request for reconsideration and hearing request, and accordingly, cannot now submit such requests without direct contradiction with statutes, regulations, and long-established agency practice. Section 55.201 of TCEQ’s rules provides that “[a] request for reconsideration or contested case hearing must be filed *no later than 30 days* after the chief clerk mails (or otherwise transmits) the executive director’s decision and response to comments.” 30 Tex. Admin. Code § 55.201(a) (emphasis added). Any affected person may request a contested case hearing, which must be in writing and filed with the chief clerk within the thirty-day period previously described. 30 Tex. Admin. Code § 55.201(c). A hearing request must include the “*name*” of the person filing the request and identify the person’s “*personal*” justiciable interest affected by the application.” 30 Tex. Admin. Code § 55.201(d) (emphasis added). TCEQ did not extend the applicable deadline to file requests for hearing or consideration, and tellingly, Taylor Meadows does not cite authority that would allow an extension for the purpose of curing a fundamental defect in an original filing.

July 26, 2024

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Here, the Original Request submitted by Mr. Tuckfield on March 1, 2024, did not comply with Section 55.201 because it did not properly identify the name of the affected person filing the request. The Original Request clearly identified 05 Ranch as the affected person filing the Original Request, not Taylor Meadows. This matters because it is not possible to consider the *personal* justiciable interests of an affected person if they are not correctly identified. Consequently, the defect was more than a small typographical error because it would require TCEQ to allow a complete substitution of affected persons in relation to the justiciable interests outlined in the Original Request. Given this significant defect, TCEQ should consider the Taylor Meadows July Request as the first filing and not the Original Request.

The Executive Director's Response to Public Comment was transmitted on February 13, 2024, after which Mr. Tuckfield had thirty days, or until March 14, 2024, to file requests on behalf of Taylor Meadows. Mr. Tuckfield filed the July Request on July 25, 2024, which is 164 days after the deadline. Therefore, the July Request was not timely. As such, TCEQ should issue the permit.

Please contact me at nvassar@lglawfirm.com or 512-322-5867 with any questions.

Sincerely,



Nathan E. Vassar

NEV/las

cc: Mr. David Tuckfield, *AL Law Group, LLC*
Ms. Allie Soileau *Texas Commission on Environmental Quality*
Mr. Garrett Arthur, *Texas Commission on Environmental Quality*
Mr. Kyle Lucas, *Texas Commission on Environmental Quality*
Mr. Matthew Tiemann, *Tiemann Land and Cattle Development, Inc.*
Ms. Mary Martha Murphy, *Lloyd Gosselink Rochelle & Townsend, P.C.*