

## Vincent Redondo

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, March 1, 2024 5:19 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0015850001  
**Attachments:** 20240301 Req for Hearing and Reconsideration2.pdf

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RFR

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** david@allawgp.com <david@allawgp.com>  
**Sent:** Friday, March 1, 2024 4:59 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0015850001

**REGULATED ENTY NAME** PRARIE CROSSING WWTP

**RN NUMBER:** RN110939188

**PERMIT NUMBER:** WQ0015850001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** PRAIRIE CROSSING WASTEWATER LLC

**CN NUMBER:** CN605742261

**NAME:** David J Tuckfield

**EMAIL:** [david@allawgp.com](mailto:david@allawgp.com)

**COMPANY:** The AL Law Group, PLLC

**ADDRESS:** 12400 W HIGHWAY 71 Suite 350-150  
BEE CAVE TX 78738-6517

**PHONE:** 5125762481

**FAX:**

**COMMENTS:** Please see attached

**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 1<sup>st</sup> 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](http://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](mailto:nvassar@lglawfirm.com)

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

Allie Soileau, Staff Attorney  
Environmental Law Division  
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FOR PUBLIC INTEREST COUNSEL via electronic mail and first class mail:

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/s/ David J. Tuckfield

# EXHIBIT A



Mr. Vassar's Direct Line: (512) 322-5867  
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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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>1</sup> Tex. Water Code § 26.081-.087.

<sup>2</sup> Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

<sup>3</sup> Domestic Technical Report 1.1 at 22.

<sup>4</sup> Domestic Technical Report 1.1 at 22.

<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>6</sup> Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

### **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

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<sup>8</sup> Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

<sup>9</sup> Instructions for Completing Domestic Wastewater Permit Applications at 46.

<sup>10</sup> Application Attachment B.

<sup>11</sup> Application Attachment B.

Ms. Laurie Gharis  
April 7, 2023  
Page 6

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,

A handwritten signature in black ink, appearing to read "Nathan E. Vassar". The signature is fluid and cursive, with the first name "Nathan" and last name "Vassar" clearly distinguishable.

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. Michaela Dietrick, Tiemann Land and Cattle Development, Inc.

## Misty Botello

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**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, August 30, 2023 11:16 AM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0015850001  
**Attachments:** 2023.08.30 Request for Contested Case Hearing Final.pdf

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**From:** austinesg@bakerbotts.com <austinesg@bakerbotts.com>  
**Sent:** Wednesday, August 30, 2023 10:30 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0015850001

**REGULATED ENTY NAME** PRARIE CROSSING WWTP

**RN NUMBER:** RN110939188

**PERMIT NUMBER:** WQ0015850001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** PRAIRIE CROSSING WASTEWATER LLC

**CN NUMBER:** CN605742261

**NAME:** Danny Worrell

**EMAIL:** [austinesg@bakerbotts.com](mailto:austinesg@bakerbotts.com)

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**ADDRESS:** 401 S 1ST ST Suite 1300  
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**COMMENTS:** Epitome Development LLC's Public Comments and Request for Hearing

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August 30, 2023

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

Danny G. Worrell  
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FAX: 5123228361  
danny.worrell@bakerbotts.com

RE: Request for Public Meeting, Request for Contested Case Hearing, and Request for Reconsideration on Application by Prairie Crossing Wastewater, LLC for a major amendment to Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0015850001

Dear Ms. Gharis:

Epitome Development LLC ("Epitome") submits this letter to the Texas Commission on Environmental Quality ("TCEQ" or the "Commission"), providing formal public comments, requesting a public meeting, requesting reconsideration, and requesting a contested case hearing on the application by Prairie Crossing Wastewater, LLC ("Prairie Crossing") for a major amendment to TPDES Permit No. WQ0015850001 (the "Application") and the corresponding amended draft permit (the "Draft Permit").

## **I. Epitome is an "Affected Person" and Requests a Contested Case Hearing**

Epitome requests a contested case hearing as an affected person.<sup>1</sup> Epitome has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application.<sup>2</sup>

In determining whether a person is an affected person, TCEQ rules provide that the following factors shall be considered:<sup>3</sup>

- (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) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

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<sup>1</sup> 30 TEX. ADMIN. CODE § 55.201(b)(4).

<sup>2</sup> See 30 TEX. ADMIN. CODE § 55.203(a).

<sup>3</sup> 30 TEX. ADMIN. CODE § 55.203(c).

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely 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.

Under these enumerated factors, Epitome satisfies the requirements for affected person status.

Epitome's own draft TPDES permit, and permit application, are explicitly discussed in the Application.<sup>4</sup> In fact, Epitome's proposed facility, as well as that of Cielo Ranch, are cited as Prairie Crossing's rationale for the major amendment application: "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. . . . This permit application is being submitted consistent with the TCEQ Regionalization regulations to include all presently known potential developments."<sup>5</sup>

Epitome has been issued a draft permit, Permit No. WQ0016226001 (the "Epitome Permit") authorizing the discharge of treated domestic wastewater from its facility which will be located 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas 76574 (the "Epitome Location"). The Epitome Location is only 1.4 miles away from Prairie Crossing's proposed facility under the Application.

Prairie Crossing requested, and was granted, a contested case hearing on Epitome's application and the Epitome Permit (the "Epitome Proceeding"). Among the issues referred by this Commission to SOAH is "[w]hether the draft permit complies with TCEQ's regionalization policy, and whether [Epitome] has demonstrated a need for the facility in accordance with Texas Water Code §§ 26.081 and 26.0282."<sup>6</sup> Prairie Crossing, as "further evidence[]" of its regionalization argument in the Epitome Proceeding, cited "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."<sup>7</sup>

Put simply, Prairie Crossing's protest of the Epitome Permit hinges upon its receipt of the Draft Permit at issue here. Without it, the Prairie Crossing facility, on which construction has not yet began, may very well not have the capacity to service Epitome's Taylor Tract Service Area, and certainly not both "the Cielo Ranch and Taylor Tract Service Areas" as Prairie Crossing claims it will be able to do under this Draft Permit.<sup>8</sup> As currently permitted, Prairie Crossing's proposed

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<sup>4</sup> See Application, Attachment N: Explanation of Need for Permit.

<sup>5</sup> See *Id.*

<sup>6</sup> Texas Commission on Environmental Quality, An Interim Order Concerning the Application by Epitome Development LLP for TPDES Permit No. WQ0016226001; TCEQ Docket No. 2023-0571-MWD. Attachment A.

<sup>7</sup> Prairie Crossing Wastewater, LLC, Public Comments, Request for Public Meeting, and Hearing Request Application for Proposed TPDES Permit No. WQ001622001, Jan. 20, 2023, at 3. Attachment B.

<sup>8</sup> See Application, Attachment N: Explanation of Need for Permit.



facility has a final phase flow limit of 0.990 MGD.<sup>9</sup> This is less than half of the combined final phase flow limits under Epitome's<sup>10</sup> (0.30 MGD) and Cielo Ranch's<sup>11</sup> (2.0 MGD) draft permits.

Because Prairie Crossing intends to use the issuance of the Draft Permit to argue that Epitome must not receive its own TPDES permit, Epitome has "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application" and certainly one that is not "common to members of the general public."<sup>12</sup>

Epitome bases its hearing request on its timely filed public comments, discussed below. These issues are disputed questions of fact or law and are relevant and material to the Commission's decision on the application.<sup>13</sup>

## **II. Public Comments**

### *a. Prairie Crossing has not provided a sufficient explanation of need for its final phase.*

Prairie Crossing has not provided sufficient justification regarding the need for its proposed final phase. Such a deficiency can be fatal, as it "may result in the Executive Director recommending denial of the proposed phase(s) or permit."<sup>14</sup>

Prairie Crossing bases its request for a final phase on the claim that it will service not only the Prairie Crossing Service Area, but also those of Cielo Ranch and the Taylor Tract Service Area.<sup>15</sup> According to the Application, "the total flow generated from the three (3) service areas totals 4.5 mgd," matching the proposed final phase limit.<sup>16</sup> Crucially, neither Cielo Ranch nor Epitome have agreed to have Prairie Crossing service their respective tracts. In fact, Prairie Crossing has requested a contested case hearing regarding the draft permits of Cielo Ranch and Epitome. The resolution reached by each of those proceedings may very well be a TPDES permit issued to Epitome and to Cielo Ranch, which would entirely obviate the need for Prairie Crossing's proposed final phase.

At a minimum then, Prairie Crossing has not presently shown the requisite need, and the Commission should suspend further action on the Application until the resolution of the proceedings involving the TPDES applications of Epitome and Cielo Ranch.

### *b. The Application fails to contain a solids management plan.*

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<sup>9</sup> TPDES Permit No. WQ0015850001 to Prairie Crossing Wastewater, LLC.

<sup>10</sup> Draft TPDES Permit No. WQ0016226001 to Epitome Development LLC.

<sup>11</sup> Draft TPDES Permit No. WQ0016146001 to Wilco MUD 45 WWTP, LLC.

<sup>12</sup> 30 TEX. ADMIN. CODE § 55.203(a).

<sup>13</sup> 30 TEX. ADMIN. CODE § 55.209(e).

<sup>14</sup> Domestic Technical Report 1.1, Section 1.A.

<sup>15</sup> See Application, Attachment N: Explanation of Need for Permit.

<sup>16</sup> See *id.*

The Application does not contain an adequate sewage sludge solids management plan and is thus deficient. Domestic Technical Report 1.1 requires a sewage sludge solids management plan that contains:

- Treatment units and processes dimensions and capacities
- Solids generated at 100, 75, 50, and 25 percent of design flow
- Mixed liquor suspended solids operating range at design and projected actual flow
- Quantity of solids to be removed and a schedule for solids removal
- Identification and ownership of the ultimate sludge disposal site
- For facultative lagoons, design life calculations, monitoring well locations and depths, and the ultimate disposal method for the sludge from the facultative lagoon<sup>17</sup>

This information is not included in the Application.

*c. The Application fails to contain the requisite map and associated depictions.*

The Application does not contain a USGS quadrangle topographic map. Further, the Application nowhere provides a map with a one-mile radius clearly drawn around the proposed Prairie Crossing facility. Information is not provided for indicating three miles downstream from the point of discharge, and the discharge route is nowhere highlighted in the Application.<sup>18</sup>

*d. The Application contains other deficiencies.*

The Application does not contain a wind rose, as is required by Domestic Technical Report 1.1.

### **III. Request for Public Meeting**

Epitome requests a public meeting. The Executive Director or the Office of the Chief Clerk “shall hold a public meeting if” among other possibilities, “the executive director determines that there is a substantial or significant degree of public interest in an application.”<sup>19</sup> A public meeting would be especially beneficial given the pieces of missing information, discussed above. Further, as Prairie Crossing points out in the Application, there has been “explosive growth” that is “unprecedented” for the area.<sup>20</sup> Given the connection between the permit applications of Epitome, Prairie Crossing, and Cielo Ranch, the public is likely to take a keen interest in the resolution of these matters.

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<sup>17</sup> Domestic Technical Report 1.1, Section 7.

<sup>18</sup> Texas Commission on Environmental Quality, Instructions for Completing Domestic Wastewater Permit Applications, at 39, Oct. 2022, available at

[https://www.tceq.texas.gov/permitting/wastewater/municipal/WQ\\_Domestic\\_Wastewater\\_Permits\\_Steps.html](https://www.tceq.texas.gov/permitting/wastewater/municipal/WQ_Domestic_Wastewater_Permits_Steps.html).

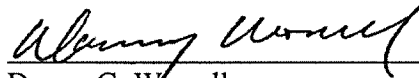
<sup>19</sup> 30 TEX. ADMIN. CODE § 55.154(c)(1). This provision applies to the Application, as it was filed under Texas Water Code, Chapter 26. 30 TEX. ADMIN. CODE § 55.150.

<sup>20</sup> See Application, Attachment N: Explanation of Need for Permit.

**IV. Conclusion**

Epitome appreciates the opportunity to submit these public comments, and the accompanying requests for a contested case hearing and for a public meeting.

Respectfully Submitted,



Danny G. Worrell  
State Bar No. 22002000  
Cole Lempke  
State Bar No. 24131455  
Baker Botts L.L.P.  
401 South 1st Street  
Suite 1300  
Austin, Texas 78704  
512.322.2500 (phone)  
512.322.2501 (fax)

***ATTORNEYS FOR EPITOME  
DEVELOPMENT LLC***

## **ATTACHMENT A**

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 9, 2023

TO: Persons on the attached mailing list

RE: Epitome Development LLP  
TCEQ Docket No. 2023-0571-MWD; TPDES Permit No. WQ0016226001

Enclosed is a copy of an interim order issued by the Commission regarding the above-referenced matter.

Should you have any questions, please contact Mehgan Taack of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3313.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis  
Chief Clerk

LG/mt

Enclosure

Jon Niermann, *Presidente*  
Emily Lindley, *Comisionada*  
Bobby Janecka, *Comisario*  
Kelly Keel, *Directora Ejecutiva Interina*



COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

*Protegiendo a Texas reduciendo y previniendo la contaminación*

agosto 9, 2023

PARA: Personas en la lista de correo adjunta

RE: Epitome Development LLP  
TCEQ Expediente N.º 2023-0571-MWD; TPDES Permiso N.º WQ0016226001

Se adjunta copia de una orden provisional dictada por la Comisión en relación con el asunto antes mencionado.

Si tiene alguna pregunta, comuníquese con Mehgan Taack de la Oficina del Secretario Principal de la Comisión de Calidad Ambiental de Texas (MC 105) al (512) 239-3313.

Atentamente,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis  
Secretaria Principal

LG/mt

Recinto

MAILING LIST/LISTA DE CORREO

Epitome Development LLC

TCEQ Docket No./TCEQ Expediente N.º 2023-0571-MWD;

TPDES Permit No./TPDES Permiso N.º WQ0016226001

FOR THE APPLICANT/PARA EL  
SOLICITANTE:

Danny Worrell, Senior Counsel  
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Epitome Development, LLC  
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INTERESTED PERSON(S)/PERSONA(S)  
INTERESADA(S):

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Nathan E. Vassar  
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Yvette Wilkerson  
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Austin, Texas 78701

FOR THE EXECUTIVE  
DIRECTOR/PARA EL DIRECTOR  
EJECUTIVO

via electronic mail/por correo electrónico:

Aubrey Pawelka, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711

Sonia Bhuiya, Technical Staff  
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Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program, MC-108  
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FOR PUBLIC INTEREST COUNSEL/  
PARA ABOGADOS DE INTERÉS  
PÚBLICO

via electronic mail/por correo electrónico:

Pranjal Mehta, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE  
RESOLUTION/PARA LA RESOLUCIÓN  
ALTERNATIVA DE DISPUTAS

via electronic mail/por correo electrónico:

Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711

FOR THE CHIEF CLERK/PARA EL  
SECRETARIO OFICIAL

via eFilings/vía eFilings:

Docket Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the application by Epitome Development LLP for TPDES Permit No. WQ0016226001; TCEQ Docket No. 2023-0571-MWD.

On August 2, 2023, the Texas Commission on Environmental Quality (Commission) considered during its open meeting requests for hearing filed by several entities and an individual concerning the application by Epitome Development LLP (Applicant) for TPDES Permit No. WQ0016226001. The permit application seeks authorization to treat and discharge wastes at a daily average flow not to exceed 300,000 gallons per day from the Taylor Tract Wastewater Treatment Facility, which is proposed to be located 0.72 mile southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street in Williamson County, Texas. The hearing requests were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the requests for hearing filed by the Executive Director, Office of Public Interest Counsel, and Applicant; all timely public comment; and the Executive Director's Response to Comment.

After evaluation of all relevant filings, the Commission determined that Patricia Daffin and Prairie Crossing Wastewater, LLC are affected persons under applicable law and that their hearing requests should be granted. The Commission also determined that the hearing requests of Prairie Crossing Municipal Utility District Nos. 1 and 2 and 05 Ranch Investments should be denied.

The Commission next determined whether the requests for hearing raised disputed issues of fact or mixed questions of fact and law that were raised by an affected person during the comment period, and which are relevant and material to the decision on the application. The Commission determined that the following issues met those requirements and directed that they be referred to the State Office of Administrative Hearings (SOAH) for contested case hearing:

- A) Whether the draft permit is adequately protective of water quality, including the existing uses of surface water, aquatic life, and livestock, in accordance with applicable regulations, including the Texas Surface Water Quality Standards;
- B) Whether the draft permit complies with floodplain requirements in accordance with 30 Texas Administrative Code § 309.13(a);
- C) Whether the draft permit complies with TCEQ's regionalization policy, and whether the Applicant has demonstrated a need for the facility in accordance with Texas Water Code §§ 26.081 and 26.0282;
- D) Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13(e);
- E) Whether the application is complete and accurate;
- F) Whether the draft permit complies with TCEQ's antidegradation policy in accordance with 30 Texas Administrative Code § 307.5;
- G) Whether the draft permit complies with the applicable buffer zone requirements in 30 TAC § 309.13; and
- H) Whether the Applicant substantially complied with all applicable notice requirements.

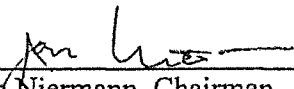
The Commission also determined to initially refer the matter to the TCEQ's Alternative Dispute Resolution (ADR) Program, concurrent with the SOAH preliminary hearing scheduling process. Finally, the Commission specified that the maximum duration of the contested case hearing shall be 180 days from the date of the preliminary hearing until the proposal for decision is issued by SOAH.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- 1) The hearing requests of Patricia Daffin and Prairie Crossing Wastewater, LLC are hereby GRANTED;
- 2) The hearing requests of Prairie Crossing Municipal Utility District Nos. 1 and 2 and 05 Ranch Investments are hereby DENIED;
- 3) The matter is hereby REFERRED to the TCEQ's ADR Program concurrent with the SOAH preliminary hearing scheduling process;
- 4) The Chief Clerk shall REFER this matter to SOAH for a contested case hearing on the following issues:
  - A) Whether the draft permit is adequately protective of water quality, including the existing uses of surface water, aquatic life, and livestock, in accordance with applicable regulations, including the Texas Surface Water Quality Standards;
  - B) Whether the draft permit complies with floodplain requirements in accordance with 30 Texas Administrative Code § 309.13(a);
  - C) Whether the draft permit complies with TCEQ's regionalization policy, and whether the Applicant has demonstrated a need for the facility in accordance with Texas Water Code §§ 26.081 and 26.0282;
  - D) Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13(e);
  - E) Whether the application is complete and accurate;
  - F) Whether the draft permit complies with TCEQ's antidegradation policy in accordance with 30 Texas Administrative Code § 307.5;
  - G) Whether the draft permit complies with the applicable buffer zone requirements in 30 TAC § 309.13; and
  - H) Whether the Applicant substantially complied with all applicable notice requirements;

- 5) The maximum duration of the hearing is set at 180 days from the date of the preliminary hearing until the date the proposal for decision is issued by SOAH; and
- 6) If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Jon Niemann, Chairman

8/7/23  
\_\_\_\_\_  
Date Signed

## **ATTACHMENT B**



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

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
512.322.5800 p  
512.472.0532 f  
lglawfirm.com

January 20, 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  
Application for Proposed TPDES Permit No. WQ0016226001  
Applicant: Epitome Development LLC  
Site Name: Taylor Tract WWTP

Dear Ms. Gharis:

Prairie Crossing Wastewater, LLC ("Prairie Crossing") through its manager Matthew Tiemann, hereby submits this letter 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 Epitome Development LLC ("Epitome" 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.

I represent Prairie Crossing regarding the Application and Draft Permit. Please include me on the TCEQ's mailing list for all filings in the above-reference 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**

Prairie Crossing is a Texas Limited Liability Company incorporated in 2019. Prairie Crossing is the holder of existing TPDES Permit No. WQ0015850001 (the "PC Permit"). 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.

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The Applicant has applied to TCEQ for proposed TPDES Permit No. WQ0016226001 to authorize the discharge of treated wastewater at a volume not to exceed an annual average flow of 300,000 gallons per day from the Taylor Tract Wastewater Treatment Plant ("TTWWTP"). The TCEQ received the application on September 27, 2022. The proposed TTWWTP will be located approximately 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas. The discharge route will be from the TTWWTP site to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. As noted below, the Applicant's proposed discharge is less than two miles from Prairie Crossing's existing outfall.

Below are Prairie Crossing's 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's 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 requests that the TCEQ deny the Application and corresponding Draft Permit because they fail to: (1) meet the TCEQ's regionalization requirements; (2) justify a need for the final phase of 0.3 MGD; (3) satisfy water quality and antidegradation standard requirements; and (4) include all of the information required in TCEQ application forms. Accordingly, Prairie Crossing hereby requests a contested case hearing.

## **II. PUBLIC COMMENTS**

As provided in further detail below, Prairie Crossing asserts 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 requirements for wastewater treatment plants; (4) the Application fails to adequately protect against the TTWWTP's negative impacts on water quality and antidegradation policy; (5) Epitome has not secured ownership/possession of the real property interests necessary to properly construct and operate the TTWWTP; (6) the Application fails to include other required elements, such as a sufficient Sewage Sludge Solids Management Plan; and (7) nuisance odors will result from the permitting of the TTWWTP (especially given Epitome's failure to satisfy all buffer zone requirements).

### **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."<sup>1</sup> 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

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<sup>1</sup> Tex. Water Code § 26.081-.087.

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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.<sup>2</sup> The third regionalization question in Section 1.B is relevant to Epitome's Application, and Epitome 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> In its Application, Epitome indicated that a permitted facility which "ha[s] the capacity to accept or are willing to expand to accept the volume of wastewater proposed" is located within three miles, but that "no connection fee has been provided yet."<sup>6</sup> While Epitome disclosed its plans to build the TTWWTP to the City of Taylor and Prairie Crossing in April of 2022, its Application only includes a copy of the certified letter to City of Taylor. Following receipt of the certified letter, Prairie Crossing informed Epitome of its willingness to provide service and correspondence occurred between Prairie Crossing and Epitome in which Prairie Crossing attempted to determine Epitome's needs in order to provide service. Epitome included this correspondence as a part of the Application and it reveals that Epitome would not share necessary information to identify the costs associated with the option to send its flows to Prairie Crossing.<sup>7</sup> At no point did Prairie Crossing state it was not willing or able to provide service, or consent to Epitome building a 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. Because this Application cannot meet the standard required by Section 1.B.3 and is contrary to TCEQ regionalization policy, the Application and Draft Permit should be denied.

**B. The Application fails to sufficiently demonstrate need for the final phase.**

Prairie Crossing contends that the Application and Draft Permit should be denied because the Final Phase of the proposed TTWWTP is not needed. In conjunction with the TCEQ's regionalization policy, Section 1 of Domestic Technical Report 1.1 requires a TPDES permit applicant to "[p]rovide a detailed discussion regarding the need for any phase(s) not currently permitted."<sup>8</sup> The Instructions further clarify this requirement, stating:

Provide justification for the proposed flows. . . provide an anticipated construction start date and operation schedule for each phase being

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<sup>2</sup> Application for a Domestic Wastewater Permit Technical Report 1.1 at 21-22.

<sup>3</sup> Domestic Technical Report 1.1 at 22.

<sup>4</sup> Domestic Technical Report 1.1 at 22.

<sup>5</sup> Domestic Technical Report 1.1 at 22.

<sup>6</sup> Domestic Technical Report 1.1 at 22.

<sup>7</sup> Application Attachment M.

<sup>8</sup> Domestic Technical Report 1.1 at 21.



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proposed. If construction is dependent upon housing/commercial development, provide information from the developer. Provide information such as the size of the development (number of lots), the date construction on the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year.)

Attach population estimates and/or projections used to derive the flow estimates and anticipated growth rates for developments. Provide the source and basis upon which populations figures were derived (census and/or other methodology). Also, provide population projections at the end of the design life of the treatment facility (usually 50+ years) and the source and basis upon which figures were derived.”<sup>9</sup>

Per the Instructions, “[f]ailure to provide sufficient justification for the continued need for the permit and/or each proposed phase may result in a recommendation for denial of the application or proposed phases.”<sup>10</sup>

In response, the Application includes an ambitious early 2024 number of connections, then projects rampant growth up to a totally of 300,000 GPD (from a mere 7,500 GPD in 2024).<sup>11</sup> Prairie Crossing contends that this schedule, including a ramp-up of 40 times the base flows in just four years is not feasible. Furthermore, the lack of detail in the development plans included fails to provide sufficient justification for such expansion. Thus, the Application does not demonstrate the need for the Draft Permit’s Final Phase authorization to discharge up to 0.3 MGD of treated effluent, and the Application and Draft Permit, as proposed, should be denied.

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

As stated above, the Application and Draft Permit authorize the discharge of treated domestic wastewater from the proposed TTWWTP to an unnamed tributary; thence to Battleground Creek; thence to Soil Conservation Service Site 31 Reservoir; thence to Battleground Creek; then to Brushy Creek. Per the proposed location of discharge Outfall 001 in the upstream portion, eutrophication of Soil Conservation Service Site 31 will occur. The discharge of treated domestic wastewater will likely impair water quality greater than a *de minimus* amount and cause dissolved oxygen levels to fall below minimum levels to sustain aquatic life due to the proposed TTWWTP’s organic loading from BOD, TSS, ammonia-nitrogen, and phosphorus.<sup>12</sup> The appropriate antidegradation analysis has not been included in the permit application. The Application cannot demonstrate that this pond can sustain aquatic life as an effluent dominated pond without eutrophication and such analysis should be required by TCEQ. Because the

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<sup>9</sup> Instructions For Completing Domestic Wastewater Permit Applications at 67.

<sup>10</sup> Instructions at 67.

<sup>11</sup> Application Attachment K.

<sup>12</sup> Application for a Domestic Wastewater Permit Administrative Report 1.0 at 9.

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Page 5

Application and Draft Permit, as proposed, are not in compliance with TCEQ's antidegradation policy, the Application and Draft Permit should be denied.

**D. The Application contains a number of additional deficiencies.**

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

1. **Sewage Sludge Solids Management Plan.** In Domestic Technical Report 1.0, Sections 8 & 9, the TCEQ requires the applicant to select the anticipated sludge disposal method and provides sludge disposal site information, including the disposal site name, permit or registration number, and disposal site's county.<sup>13</sup> Section 9 also requires the applicant to indicate the method of transportation, hauler name, and hauler registration number.<sup>14</sup> In response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction."<sup>15</sup> Thus, Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed TTWWTP will not become a public nuisance.
2. **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.<sup>16</sup> 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 a variance to the buffer zone."<sup>17</sup> The information provided by Epitome does not show that these buffer zone requirements have been met.<sup>18</sup>
3. **Nuisance Odors.** In addition to the buffer zone issues described above, 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 TTWWTP. 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.
4. **Description of Immediate Receiving Waters.** Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant to identify the appropriate description of

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<sup>13</sup> Application for a Domestic Wastewater Permit Technical Report 1.0 at 12-13.

<sup>14</sup> Domestic Technical Report 1.0 at 13.

<sup>15</sup> Domestic Technical Report 1.0 at 12-13.

<sup>16</sup> Application for a Domestic Wastewater Permit Administrative Report 1.1 at 15.

<sup>17</sup> Instructions at 46.

<sup>18</sup> Application Attachment E.

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the receiving waters.<sup>19</sup> The information listed by Epitome under this section is incomplete as it does not identify an existing pond downstream of the proposed outfall. As noted above, the existing pond may drive water quality impairments.

5. **Description of Stream Physical Characteristics.** Domestic Worksheet 2.1 requires a description of general characteristics of the waterbody, including stream physical characteristics. This information is entirely missing from 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. Epitome should be required to perform field work to collect and submit this data to TCEQ.
6. **Discharge Creek Path.** In Epitome's Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

For the above-cited reasons, Prairie Crossing recommends that the TCEQ deny the Application and Draft Permit.

### **III. REQUEST FOR PUBLIC MEETING**

Prairie Crossing, through its manager Matthew Tiemann, requests 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, for the benefit of its customers, has a substantial and significant degree of public interest in the Application. Prairie Crossing is willing to work with the TCEQ and Epitome to determine a location for such a public meeting.

### **IV. REQUEST FOR CONTESTED CASE HEARING**

Prairie Crossing, through its manager Matthew Tiemann, also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in Prairie Crossing's public comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, Prairie Crossing is an affected person, as defined by 30 TAC § 55.203. Prairie Crossing has 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 Draft Permit be granted. 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

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<sup>19</sup> Application for a Domestic Wastewater Permit Technical Report Worksheet 2.0 29-31.

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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 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.” The first six considerations are applicable to Prairie Crossing and owner Matthew Tiemann, and, as noted in its public comments in Section II, above, Prairie Crossing has a particular interest in the issues relevant to the Application because the Application is serviceable within Prairie Crossing’s proposed service area and is contrary to TCEQ regionalization policy.

## V. CONCLUSION

Prairie Crossing reserves its right to supplement these public comments and this request for a contested case hearing as it learns more about the Application—additional information may become apparent through a public meeting (and thereby-extended comment period) regarding this Application. Prairie Crossing and its manager Matthew Tiemann appreciate your consideration of these public comments and their 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