

Jennifer Cox

From: PUBCOMMENT-OCC
Sent: Friday, August 30, 2024 2:48 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016274001
Attachments: 2024.08.30 Request for Reconsideration_Contested Case Hearing (WQ0016274001) (1).pdf

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From: alira@lglawfirm.com <alira@lglawfirm.com>
Sent: Friday, August 30, 2024 2:31 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016274001

REGULATED ENTY NAME MOORE FARMS WCID NO 1 WWTF

RN NUMBER: RN111620209

PERMIT NUMBER: WQ0016274001

DOCKET NUMBER:

COUNTY: KAUFMAN

PRINCIPAL NAME: MOORE FARM WCID 1

CN NUMBER: CN603248667

NAME: David Klein

EMAIL: alira@lglawfirm.com

COMPANY: Lloyd Gosselink

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 5123225800

FAX:

COMMENTS: See attached



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Mr. Klein's Direct Line: (512) 322-5818
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August 29, 2024

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

*Via Electronic Filing and
First-Class Mail*

Re: Request for Contested Case Hearing and/or Reconsideration of the Executive Director's Decision

Application by Moore Farm Water Control and Improvement District No. 1 (CN603248667; RN111620209) for New Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016274001 (EPA I.D. No. TX0143952)

Dear Ms. Gharis:

On behalf of the City of Terrell, Texas (the "**City**"), my client, please accept this request ("**Request**") for a contested case hearing and/or reconsideration of the decision of the Executive Director ("**ED**") of the Texas Commission on Environmental Quality ("**TCEQ**") regarding the application ("**Application**") by Moore Farm Water Control and Improvement District No. 1 ("**Applicant**") for a new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016274001 (the "**Draft Permit**"). The City respectfully submits the following letter renewing its objections to the Application and the Executive Director's ("**ED**") preliminary decision on the Draft Permit. The City hereby renews its request for a contested case hearing on the Application and Draft Permit. The City submitted its initial written comments and contested case hearing request and delivered oral public comments (collectively, the "**Public Comments**") in person at the public meeting for the Application and Draft Permit held on January 25, 2024. Additionally, please update the following contact information for the representative of the City in the official mailing list for this matter to the following:

David J. Klein
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, TX 78701
dklein@lglawfirm.com
Telephone: (512) 322-5800
Facsimile: (512) 472-0532

I. REQUEST FOR CONTESTED CASE HEARING

The City hereby respectfully requests that TCEQ deny the Application and decline to issue the Draft Permit based on the relevant and timely filed Public Comments, none of which have been withdrawn, and all of which are hereby reasserted and incorporated herein for all purposes as **Attachment A**. Alternatively, if the Application is not denied or, at least, remanded back to the ED for further technical review, then the City requests a contested case hearing. The City has significant interest in the Applicant and Draft Permit, based on its authority as a Texas home-rule city, in the general health, safety, and welfare of the residents within its corporate limits and extraterritorial-territorial jurisdiction ("*ETJ*"). Additionally, the wastewater treatment facility ("*Proposed Plant*"), outfall, discharge route, and service area proposed by the Application and Draft Permit are all in close proximity to the City's corporate limits, ETJ, and wastewater system. As such, these unique and justiciable interests adversely affect the City, and the City submits this Request in compliance with the requirements of the Texas Water Code ("*TWC*") and the Texas Administrative Code ("*TAC*") as an affected person with standing to make such a request.

A. This Request satisfies all procedural requirements for a hearing request of a TPDES permit application.

The City has met all procedural requirements for requesting a contested case hearing on the Application and Draft Permit. The TCEQ's procedural requirements for requesting a contested case hearing for a TPDES permit application are contained in 30 TAC § 55.201, which requires that a request for reconsideration or a contested case hearing be (1) submitted in writing; (2) by an affected person; (3) timely filed with the chief clerk; (4) no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing; and (5) must be based only on the requestor's timely, and not withdrawn, comments. Additionally, a hearing request must also substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application, and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request, specifying, to the extent possible, any of the ED's responses to the

requestor's comments that the requestor disputes, the factual basis of the dispute, and any disputed issues of law; and

(5) provide any other information specified in the public notice of application.¹

The TCEQ Chief Clerk's letter regarding the Decision of the Executive Director on the Draft Permit, Response to Comments, and instructions for requesting reconsideration or a hearing was dated July 31, 2024, and therefore this written Request is timely filed. The required contact information for the City has been provided on the first page of this Request.

As stated in the City's Public Comments, the City is located in close proximity to the Applicant in that they share a fence line. In fact, the City's corporate limits are adjacent to a portion of the Proposed Plat's service area, which also overlaps with a portion of the City's ETJ. Also stated above briefly is the City's personal justiciable interest affected by the Application and why the City will be affected in a manner not common to the general public. Additionally, the subject line and opening sentence of this Request explicitly request a contested case hearing. The subsection below will demonstrate the City's affected person status, and further sections will specifically address issues raised by the City in its Public Comments and the responses of the ED that the City disputes.

B. The City is an affected person with standing to request a contested case hearing.

The City is an affected person and therefore has standing to request a contested case hearing on the Application and Draft Permit. Pursuant to 30 TAC § 55.203(a), an "affected person" is one who has a "personal justiciable interest in the application not common to members of the general public." In determining whether a person is an affected person, the TCEQ may consider:

- (1) whether the interest claimed is protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interests;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of their regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) the requestor timely submitted comments on the application that were not withdrawn; and

¹ 30 Tex. Admin. Code § 55.201.

- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.²

TCEQ may also consider:

- (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.³

The City is an affected person with a unique interest in the issues relevant to the Application. As mentioned in its Public Comments, the nearest boundary of the City's corporate limits is much closer to the Proposed Plant than the Applicant's misstated 1.5 miles. Instead, a portion of the City's corporate limits abut a portion of the Proposed Plant's service area and the City has sewer facilities located approximately 2.8 miles from the Proposed Plant. Thus, such facilities are within the 3-mile radius of the State's Regionalization Policy.⁴ Should the Application and Draft Permit not adequately protect the state's natural resources, the result will negatively impact the public health, safety, and welfare of the City's residents within its jurisdiction downstream of the Proposed Plant. Additionally, because as a home-rule municipality, the City has an interest in providing and maintaining wastewater treatment services to the area within its corporate limits and ETJ which overlaps with the service area proposed in the Application.⁵ This interest is directly related to the TCEQ's regulation of wastewater permitting. Therefore, the City is an affected person entitled to a contested case hearing on the issues raised in its timely filed Public Comments and reiterated in this timely filed Request.

II. DISPUTED ISSUES

As noted in its Public Comments and reasserted below, the Application has not met the state laws or TCEQ regulations and policies applicable to a TPDES permit application, and the Application and Draft Permit should be denied. Alternatively, the City should be granted a contested case hearing for the Application.

² 30 Tex. Admin. Code § 55.203(c).

³ 30 Tex. Admin. Code § 55.203(d).

⁴ TCEQ-10054 (06/01/2017) Domestic Wastewater Permit Application, Domestic Technical Report 1.1, Section 1.B.3.

⁵ Tex. Loc. Gov't Code § 552.001 (a municipality has statutory authority to purchase, construct, or operate a utility system, including a sewer system, inside or outside its municipal boundaries and may regulate the system in a manner that protects the interests of the municipality).

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

The Application and Draft Permit should be denied as they contravene the State's Regionalization Policy under TWC §§ 26.003, 26.0282, and 26.081, and implemented through Domestic Technical Report 1.1, Section 1.B.3. Such Policy exists to encourage and promote the regionalization of area-wide wastewater infrastructure. Section 1.B.3 of the Domestic Technical Report 1.1 of TCEQ's TPDES permit application form requires an applicant to address this issue. Specifically, the third question in Section 1.B.3 asks, "[a]re there any domestic permitted wastewater treatment facilities or collection systems located within a three mile radius of the proposed facility." Here, the Applicants answered that there were not any domestic permitted wastewater treatment facilities or collection systems located within a three mile radius of the proposed facility. With that answer, the Applicant and the TCEQ's review of the Application failed to take this issue into consideration, as the City's wastewater collection system extends within that critical 3-mile radius. The Applicant provided no evidence of any correspondence to the City with the Application regarding regionalization, claiming that no facilities existed within the 3-mile radius. So, by failing to undertake the required analysis of determining the wastewater infrastructure expenditures required to connect to the City's sewer system and then comparing such costs with the costs to construct the Proposed Plant, the Application is incomplete and should be denied.

Such failure is further evidenced and supported through the ED's RTC No. 4 response, where it states that, "[a]pplicants are required to provide copies of all correspondence with the owners of existing plants within 3 miles of the proposed plant regarding regionalization with their system." Again, the Applicant provided no evidence of any correspondence to the City with the Application regarding regionalization, claiming that no facilities existed within the 3-mile radius. The ED's response, while understandable given the representation by the Application, is simply incorrect and incomplete, as the City has facilities within 3 miles of the Proposed Plant. The City disputes the ED's conclusion that such communications are not required given the facts in this matter and contends that the Application should be denied or the City should be entitled to a contested case hearing on this issue.

Further, such required analysis is corroborated by the ED in its RTC No. 3, "[i]f an existing wastewater facility has the capacity and is willing to accept the proposed wastewater the applicant must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion." However, the ED incorrectly concluded that such an analysis was not required despite the City's Public Comments regarding its willingness to work with Applicant on an expansion of the City's wastewater system. The City also disagrees with this conclusion of the ED and believes that either the Application should be denied for a failure to conduct the required regionalization analysis or the City should be granted a contested case hearing on this issue.

B. The Application raises concerns that the proposed discharge will not comply with TCEQ's antidegradation policy.

The Application and Draft Permit raise concerns that the proposed discharge will not comply with the antidegradation policy. As written, the Draft Permit authorizes the discharge of effluent to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence

to Kings Creek, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As stated in the City's Public Comments, Kings Creek is included in the 303(d) List for bacteria in water, and Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH. The proposed discharge may unnecessarily further degrade the water quality of the segment if all requirements for antidegradation and stream standards are not met.

Further, The City disagrees that TCEQ staff and ED's conclusion that "[e]xisting uses will be maintained and protected" is sufficient to uphold the antidegradation policy.⁶ The antidegradation policy defines "degradation" as "a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired".⁷ The City disagrees that the final phase effluent limitations established in the Draft Permit will be stringent enough to prevent a lowering of water quality in Segment No. 0818 by more than a de minimis amount. The Draft Permit, if issued, may lower the water quality of the already impaired receiving waters by more than a de minimis amount, which will in turn impair existing uses. As such, a more stringent review than TCEQ staff's preliminary determinations should be undertaken. Therefore, the City renews its concerns related to antidegradation.

C. The Application contains numerous factual inaccuracies and deficiencies that are all referable issues and merit a contested case hearing in this matter.

The Application and Draft Permit contain numerous factual inaccuracies and deficiencies warranting denial of the Draft Permit, or, alternatively, a contested case hearing on the same. The City maintains all issues raised in its Public Comments regarding the inaccuracies and deficiencies of the Application and Draft Permit, renews all such Public Comments, and disputes all ED RTC to the contrary. Additionally, the City would like to reiterate the following in this Request:

1. The Applicant does not own the Proposed Plant site nor does the Application indicate a legal right to operate the Proposed Plant. The location of the Proposed Plant is currently owned by HWY 205 FARM, LTD, not Applicant. As such, a lease agreement or easement should have been included in the Application or alternatively, HWY 205 FARM, LTD should have been included as a co-applicant, as required by Administrative Report 1.0 of the TPDES permit application form.
2. The Application and Draft Permit inconsistently and inaccurately classify the Proposed Plant as a minor facility. A facility in which the final flow is less than 1.0 MGD, is generally classified as a minor facility.⁸ Applicants have sought authorization to discharge 1.6 MGD and therefore should not be classified as a minor facility, but rather as a major facility. Despite this and classification as a major facility by TCEQ staff elsewhere throughout the Draft Permit, the Check List for Admin Review classifies the Proposed Plant as a minor facility. Further, the ED's RTC No. 8 clarifies that the Environmental Protection Agency ("*EPA*") reviewed the Draft Permit as a minor facility. As clarified in

⁶See RTC No. 5; *see also* WATER QUALITY DIVISION Fact Sheet and Executive Director's Preliminary Decision Permit No. WQ0016274001, 8 (TEX. COMM'N ON ENV'T QUALITY August 28, 2023).

⁷30 Tex. Admin. Code § 307.5.

⁸Check List for Admin Review of Municipal Application for Permit, Permit No. WQ0016274001, 1 (TEX. COMM'N ON ENV'T QUALITY December 23, 2022).

the City's Public Comments and above, this is inaccurate and the City disputes EPA's review under such misclassification.

3. The Proposed Plant is likely to create nuisance odors. An additional, unneeded wastewater treatment and disposal facility, if not operated properly, may result in nuisance odors that will unnecessarily and adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken at the proposed facility. Applicant has not prepared a noise and odor abatement plan nor does Applicant own the land necessary for the creation of a buffer zone. It is not in the public interest to issue a new discharge authorization that may result in nuisance odors when regionalized wastewater services may be made available.

III. REQUEST FOR RECONSIDERATION

The City requests that the ED reconsider its decision to grant the Application and issue the Draft Permit. Under TCEQ rules, a request for reconsideration must be filed no later than 30 days after the chief clerk mails the ED's decision and RTC.⁹ Unlike a contested case hearing request, which must be filed by an affected person, any person other than a state agency that is prohibited by law from contesting the issuance of a permit or license may file a request for reconsideration of the ED's decision.¹⁰ Like a request for a contested case hearing, a request for reconsideration should also contain the contact information of the person who files the request.¹¹ The request must also expressly request reconsideration of the ED's decision and give the reason why the decision should be reconsidered.¹²

Here, the City's representative/contact information for this request for reconsideration is the same representative noted on page 1 of this document. Further, the City reasserts and incorporates its Public Comments and Disputed Issues in Section II of this Request, above, as the reasons why the ED's decision to grant the Application and issue the Draft Permit should be reconsidered.

IV. CONCLUSION AND PRAYER

For these reasons, the City of Terrell requests that the TCEQ deny the Application and Draft Permit, or alternatively, refer this Application to the State Office of Administrative Hearings for a contested case hearing on the issues raised in the initial Public Comments and this hearing request.

⁹ 30 Tex. Admin. Code § 55.201(a).

¹⁰ 30 Tex. Admin. Code § 55.201(e).

¹¹ *Id.*

¹² *Id.*

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Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Klein', written in a cursive style.

David J. Klein

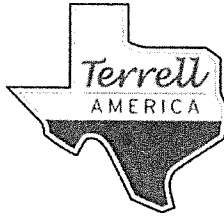
DJK/dsr
Enclosures

cc: (via electronic mail Only)
Mr. Mike Sims, City Manager, City of Terrell
Ms. Danielle Lam, Lloyd Gosselink Rochelle & Townsend, P. C.
Ms. Chloe Daniels, Lloyd Gosselink Rochelle & Townsend, P. C.

August 29, 2024
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Attachment A

City of Terrell's Public Comments



Rick Carmona
Mayor

Mayrani Velazquez
Mayor Pro Tem
District 3

Stephanie Thomas
Deputy Mayor Pro Tem
District 4

Grady Simpson
Council Member
District 2

Phil Robison
Council Member
District 5

Mike Sims
City Manager

January 25, 2024

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

Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

Re: **Public Comments and Request for a Contested Case Hearing**

Application by Moore Farm Water Control and Improvement District No. 1 (CN603248667, RN105348403, Water Districts Registration No. 5863500) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016274001 (EPA I.D. No. TX0143952)

Dear Ms. Gharis:

On behalf of the City of Terrell, Texas ("**City**"), please accept these timely filed public comments ("**Public Comments**") and request for a contested case hearing ("**Hearing Request**") regarding the application ("**Application**") by Moore Farm Water Control and Improvement District No. 1 ("**Applicant**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016274001 ("**Draft Permit**"). Please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Mike Sims, City Manager
City of Terrell
P. O. Box 310
Terrell, TX 75160

I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("**TCEQ**") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to technical review, the City further requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, Hearing Request, and any and all supplements and/or amendments thereto.

II. BACKGROUND

A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from a proposed partially prefabricated wastewater treatment facility ("**Proposed Plant**") at an annual average flow not to exceed 1.6 million gallons per day ("**MGD**"). The Proposed Plant is intended to serve areas within the City's extraterritorial jurisdiction ("**ETJ**") from a plant site ("**Plant Site**") located approximately 0.35 miles southwest of the intersection of County Road 243 and County Road 245 in Kaufman County, Texas 75160. The Plant Site is less than 0.5 miles from the City's nearest corporate boundary and less than three miles from the City's nearest existing wastewater infrastructure. According to the Combined Notice of Public Meeting and Notice of Application and Preliminary Decision ("**Combined PM/NAPD**"), the proposed discharge route for the wastewater effluent is to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 2022 Integrated Report—Texas 303(d) List ("**303(d) List**") of impaired and threatened waters for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH.

B. Procedural History

The Application was received by TCEQ on December 14, 2022, and TCEQ's Executive Director ("**ED**") declared it administratively complete on January 11, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit ("**NORP**") was issued that same day, and then published in English in *The Dallas Morning News* and in Spanish in *Al Día* on January 18, 2023. The Combined PM/NAPD was issued on December 12, 2023, and the next day, TCEQ's Chief Clerk ("**Chief Clerk**") filed it for publication in the *Texas Register*, where it appeared in English on December 22, 2023. Applicant published the Combined PM/NAPD in English in *The Dallas Morning News* and in Spanish in *Al Día* on December 20, 2023. As formally requested by State Representative Keith Bell, the ED has scheduled a public meeting, pursuant to 30 Texas Administrative Code ("**TAC**") § 55.154, to provide an opportunity for the public to submit comments and/or ask questions about the Application and TCEQ to obtain public input thereon. Consequently, the current deadline to file public comments regarding the Application is January 25, 2024, at the close of said public meeting. Therefore, these Public Comments are timely filed.

III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) Applicant does not own the proposed Plant Site, but the owner of the Plant Site is not a co-applicant and the Application

lacks any documentation to demonstrate that Applicant has sufficient legal rights to operate the Proposed Plant at that location; (2) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code (“*TWC*”); (3) inconsistencies regarding the location of the proposed outfall give rise to concerns that the conditions in the Draft Permit will not adequately protect against nuisance odors or the negative impacts of the Proposed Plant on water quality, antidegradation, and stream standards; and (4) the Application contains numerous other deficiencies creating substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

A. The Application inaccurately indicates that Applicant owns the Plant Site and is deficient because it lacks the requisite co-applicant or deed recorded easement providing Applicant with adequate rights to operate the Proposed Plant thereon.

TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application (“*Instructions*”) provide as follows regarding ownership of the land where a proposed treatment facility is to be located:

Important Note: More than one entity may be required to apply for the permit as co-applicant. . . . If the facility is considered a fixture of the land (e.g., ponds, units half-way in the ground), there are two options. The owner of the land can apply for the permit as a co-applicant or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give the facility owner sufficient rights to the land for the operation of the treatment facility.¹

Similarly, TCEQ’s TPDES permit application form includes Administrative Report 1.0, which states “[i]f the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement.”² Here, the Proposed Plant will be a fixture of the land,³ yet the owner of the Plant Site is HWY. 205 FARM, LTD. (“*Developer*”),⁴ not Applicant. Nevertheless, Applicant misrepresented that fact in Section 9.D. of Administrative Report 1.0, claiming to be the “[o]wner of land where the treatment facility is or will be” and indicating that a

¹ Instructions at 30.

² TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report [hereinafter *Application Administrative Report*] at 8.

³ See, e.g., Fact Sheet and Executive Director’s Preliminary Decision at 2; Application Administrative Report at 19 – 20; TCEQ-10054 (Jun. 1, 2007) Domestic Wastewater Permit Application, Technical Reports [hereinafter *Application Technical Reports*] at 1; Application Attachment I – Supplemental Technical Report; Application Attachment J – Flow Schematics.

⁴ Special Warranty Deed recorded on September 15, 2022, as Document Number 2022-0035103 in Volume 7808, Page 37 of the Official Public Records of Kaufman County, Texas; accord Kaufman Property Search, <https://research.kaufman-cad.org/> (click the green “By ID” button, type “3755” in the box beneath the “Property ID” heading, then hit “enter” on your keyboard or click the “Search” button in the bottom right corner of the navy blue search form; alternatively, click the “Interactive Map” hyperlink at the top of the Kaufman Property Search webpage, click the “I AGREE” button on the Kaufman County Appraisal District disclaimer, type any set of coordinates listed in the Application into the “Search Here:” box at the top left corner of the map, then hit “enter” on your keyboard or click the magnifying glass icon immediately to the right of the “Search Here:” box at the top left corner of the map).

lease agreement or deed recorded easement was “N/A,” as shown by the following excerpt from the Application:

D. Owner of land where treatment facility is or will be:	
Prefix (Mr., Ms., Miss):	
First and Last Name: <u>Moore Farm WCID No. 1</u>	
Mailing Address: <u>14755 Preston Rd, Suite 600</u>	
City, State, Zip Code: <u>Dallas, TX 75254</u>	
Phone No.: <u>972-788-1600</u>	E-mail Address: <u>mkoehne@coatsrose.com</u>
If the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement. See instructions.	
Attachment: <u>N/A</u>	

Applicant similarly misrepresented the facts in the Supplemental Permit Information Form (“*SPIF*”) received by TCEQ on December 14, 2022, which states “[p]roperty owner is the permittee.”⁵ Given that Applicant does not own the Plant Site, and because the Application contains no documentation evidencing that Applicant has sufficient legal rights to operate the Proposed Plant thereon, Developer should be a co-applicant. Nevertheless, Applicant not only falsely indicated that it owns the Plant Site but is also the sole entity applying for the Draft Permit. Consequently, the Application is inaccurate and deficient and should not be granted.

B. Approval of the Application and issuance of the Draft Permit would violate Texas’ legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.

The Application should be denied because issuance of the Draft Permit would contravene TCEQ’s statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas’s regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared “that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” In addition, the TWC contains numerous other

⁵ Application Administrative Report at 19.

provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it “is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater,” authorizes TCEQ, “[i]n considering the issuance, amendment, or renewal of a permit to discharge waste,” to “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” without regard to whether a given system has been “designated as such by [TCEQ] order.”
- TWC § 13.183(c), which provides that the Public Utility Commission (“*PUC*”) or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services “to encourage regionalization.”
- TWC § 13.241(d), which requires an applicant to “demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible” in order for PUC to grant “a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system.”⁶
- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in the Instructions, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”⁷ For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES applicants to justify the need for such a permit.⁸ As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.⁹ Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicant’s responses thereto are shown by the following excerpt from the Application:

⁶ Accord TWC § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that “regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).”).

⁷ Instructions at 67.

⁸ *Id.* at 54 – 55.

⁹ Application Technical Reports at 21–22.

3. Nearby WWTPs or collection systems

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☐ No ☒

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: N/A

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: N/A

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

Yes ☐ No ☐

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment: N/A

The Applicants' foregoing responses are inaccurate and incomplete. Specifically, the Application incorrectly indicates that there is no existing wastewater infrastructure within a three-mile radius of the Proposed Plant. The City's nearest wastewater collection facilities are located approximately 2.8 miles from the proposed Plant Site. As such, Applicant should have contacted the City to determine whether it could provide the proposed 1.6 MGD of wastewater treatment capacity, and if so, under what terms. Not only did Applicant decline to do so, but, to date, Developer has also failed to respond to the City's request for a meeting to discuss potential alternative means of providing service to the proposed service area contemplated by the Application. Likely as a consequence of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicant also failed to include copies of any communications with the City on that subject, let alone any analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application.

Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy.

C. The Application raises concerns that the proposed discharge will impair existing uses and/or quality of the receiving waters in contravention of TCEQ's antidegradation policy.

As indicated above, the Draft Permit authorizes the discharge of wastewater effluent to Little High Point Creek, thence to High Point Creek, thence to Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 303(d) List for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH. Thus, the City has concerns that the proposed discharge into Segment No. 0818 from a likely unnecessary treatment plant would impact water quality in that watercourse.

Specifically, the Application and Draft Permit raise concerns with the City that the proposed discharge will neither be in compliance with TCEQ's antidegradation policy nor maintain its current stream standard in the receiving water described by Applicant as having "exceptional" clarity.¹⁰ Pursuant to 30 TAC § 307.5, the proposed discharge is subject to said antidegradation policy and implementation procedures under Tier 1 and Tier 2. Therefore, before approving the Application, TCEQ must ensure that antidegradation will not occur as a result of the proposed discharge. Additionally, because Segment No. 0818 is an impaired water body on TCEQ's 303(d) List, the proposed discharge may unnecessarily further downgrade the segment's water quality if statutory and regulatory requirements for antidegradation and stream standards are not met. Thus, due to these additional concerns and the currently "exceptional" quality of the receiving water, the Application should be denied and the Draft Permit, in its present state, should not be issued.

Furthermore, the foregoing concerns are exacerbated by significant uncertainty as to the location of the proposed outfall and, as a consequence, the proper characterization of the receiving waters. Specifically, the precise location of the proposed outfall is not discernible from the Application. The "Receiving Water Assessment Determination Form for new and amended TPDES permit applications" (the "*RWA Determination Form*") states "coordinates are correct" and identifies the "Outfall Coordinates" as 32.804411, -96.309061. Those coordinates are also used to identify the latitude and longitude of the proposed outfall in Section 10.B. of Administrative Report 1.0 and the "Adjacent and Downstream Landowners" map, both received by the Water Quality Applications Team on December 14, 2022. However, the Core Data Form identifies such coordinates as the location for the Plant Site, and the Application materials include

¹⁰ Application Technical Reports at 32.

a screenprint from TCEQ's "Surface Water Quality Viewer" that shows such coordinates as being approximately 0.35 miles southwest of the stated intersection, which is consistent with the description of the Plant Site in the NORI and Combined NAPD. Furthermore, a one-page "Central Registry Internal Reporting" document included with the Application materials lists both 32.804444, -96.309166 and 32.804411, -96.30906 as coordinates for the Proposed Plant, and neither of those coordinates matches those shown by an electronic map of the general location of the Proposed Plant, accessible via a hyperlink provided in the NORI, which indicates that the coordinates for the Plant Site are 32.804859, -96.309166. Given the foregoing inconsistencies, the location of the proposed outfall, and thus the intended location of the immediate receiving waters for the proposed discharge, are unclear, which creates uncertainty as to the proper characterization of such receiving waters. As a result, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements.

D. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

The Application should be denied, or at a minimum, remanded to technical review as a result of the following additional deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

1. It is unclear whether Applicant complied with the general notice provisions set forth in 30 TAC § 39.405(g). According to the NORI and Combined PM/NAPD, the Application should be "available for viewing and copying at Riter C. Hulsey Public Library, 301 North Rockwall Avenue, Terrell, Texas." This is consistent with 30 TAC § 39.405(g)(1) – (2), which provide as follows: "The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. . . . A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of [the NORI] and remain available for the publications' designated comment period . . . A copy of the complete application (including any subsequent revisions to the application) and [the ED]'s preliminary decision must be available for review and copying beginning on the first day of newspaper publication . . . and remain available until the commission has taken action on the application or the commission refers issues to [SOAH]."¹¹ Though the public comment period closes on January 25, 2024, and TCEQ's commissioners are not yet scheduled to act on the Application, on January 4, 2024, when the City contacted the Riter C. Hulsey Public Library regarding the Application, it was not available for viewing or copying. Therefore, there is reason to believe that Applicant failed to comply with the foregoing notice requirements imposed by TCEQ.

¹¹ Accord 30 Tex. Admin. Code § 39.411(b)(8) (the NORI must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying"), 39.411(c)(5) (the NAPD must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying").

2. Given the uncertainty as to the locations of the Proposed Plant and associated outfall, the Application should have been made available for public review in both Kaufman and Rockwall Counties. As shown by the “Service Area Map” included as Attachment K to the Application, the service area for the Proposed Plant extends into both Kaufman and Rockwall Counties. According to Section 8.D. of Administrative Report 1.0, “[i]f the facility or outfall is located in more than one county, a public viewing place for each county must be provided.” Similarly, the Check List for Admin Review of Municipal Application for Permit (the “*Admin Review Check List*”) states “[i]f discharge is directly into water body that borders two counties, application must be placed in a public facility in both counties and the notice must be published in both counties.” Here, since it is unclear whether the facility or outfall is located in more than one county, as described above, but there is no doubt that the service area for the Proposed Plant includes areas in two counties, a copy of the Application should have been available for review in both such counties (Rockwall and Kaufman).
3. The Application materials are inconsistent with regard to whether the Proposed Plant is a major or minor facility. According to the Admin Review Check List, “[a] minor facility is generally one in which the final flow is less than 1.0 MGD.” That is consistent with the criteria reiterated on pages 73, 88, and 98 of the Instructions, all of which clarify that a facility with a treatment capacity of less than 1.0 MGD is considered minor. Here, however, despite the fact that the Admin Review Check List correctly indicates that Applicants have requested authorization to discharge up to 1.6 MGD, that same document describes the Proposed Plant as a minor facility. Conversely, the “MUNICIPAL MAJOR/MINOR DETERMINATION” document dated August 26, 2023, classifies the Proposed Plant as a major facility. As such, it is unclear whether the Proposed Plant is a major or minor facility, and TCEQ may not have had accurate information upon which to base its decisions related to the Application.
4. The Admin Review Check List contains additional deficiencies and inconsistencies. As shown by the following excerpt, and even though the Application seeks authorization for a new surface water discharge, the Admin Review Check List indicates that a receiving water assessment determination was not completed as part of the Application review process.

<input type="checkbox"/> For new and major amendment applications that propose surface water discharge, the standards review for RWA comments is included.
--

Nevertheless, an RWA Determination Form was completed by Standards Reviewer B. M. Lee on December 29, 2022, and is included among the Application materials. Given such discrepancy and the fact that the RWA Determination Form creates confusion as to the location of the Proposed Plant and outfall, there is reason to believe that neither the Admin Review Check List nor the RWA Determination Form may be reasonably relied upon. Similarly, the Admin Review Check List incorrectly provides as follows:

SECTION 3 FACILITY OWNER (APPLICANT) AND CO-APPLICANT

- ☒ Legal name of applicant is listed (*the owner of the facility must apply for the permit*)
- ☐ Legal name of co-applicant is listed (*if required to apply with facility owner*)
- ☒ Core Data Form (CDF) is provided. A separate CDF is required for each customer.

The foregoing excerpt not only demonstrates that the Application was deemed administratively complete despite the fact that Developer, a required co-applicant in this instance, is not listed in the Application but also incorrectly indicates that a Core Data Form was provided for "each customer" when such form was only submitted for Applicant. The Admin Review Checklist also incorrectly indicates that the owner of the land where the Proposed Plant will be located "is the **SAME** as the [A]pplicant." As described in more detail above, this simply is not the case. Rather, the owner of the site for the Proposed Plant is Developer, not Applicant. As such, the Admin Review Check List dictates that "[a] copy of a lease agreement or easement, with a term for the duration of the permit, between applicant and landowner" should have been provided or the Developer should have applied as a co-permittee, neither of which is the case in this instance.

5. It is unclear whether the EPA approved the Draft Permit as required by a TCEQ/EPA Memorandum of Understanding referenced in a letter from Mr. Firoj Vahora, Leader of TCEQ's Municipal Permits Team, to Ms. Evelyn Rosborough of EPA's Region 6 office. According to such letter, Ms. Rosborough was to "provide any written comments, objections (general or interim) or recommendations with respect to the [D]raft [P]ermit within forty-five days from the receipt" thereof. However, because the Draft Permit was transmitted to Ms. Rosborough via the above-referenced letter, which is undated, and TCEQ's file for this Application contains no responsive communications from Ms. Rosborough, the City is concerned that EPA approval of the Draft Permit may not have been obtained as required.
6. Similarly, it is unclear whether TCEQ's Region 4 office responded to the Request for Comments on Draft Permit included in TCEQ's Application files. Such request contradictorily states: "Comment Deadline: Within 7 days" as well as "Please return comments ASAP, but no later than the comments deadline, which is 10 days from the submittal date." As said Request for Comments on Draft Permit is undated and TCEQ's file for this Application contains no responsive communications from its Region 4 offices, the City is concerned that Region 4 may not have commented on the Draft Permit as required.
7. Information provided in additional documentation transmitted to Ms. Rosborough via the above-referenced letter was inaccurate. Specifically, the NPDES Certification Checklist indicates that the Proposed Plant does not discharge any of the pollutants of concern identified in the 303(d) List for Segment No. 0818. This is inaccurate, though consistent with the Municipal EPA Review Checklist, where it is incorrectly indicated that the proposed discharge does not have the potential to discharge any pollutant that is causing or contributing to the impairment of a segment on the 303(d) List. Instead, Kings Creek, in

Segment No. 0818C, is impaired by bacteria in the water, and Cedar Creek Reservoir, in Segment No. 0818, is impaired by pH. The ED's Decision Document even includes comments stating that the Proposed Plant "should not" contribute to "the bacterial impairment" of Kings Creek or "the pH impairment of the segment." Having been denied that information, EPA lacked the notice necessary to ensure it could complete a sufficiently comprehensive review of the Draft Permit.

8. The Fact Sheet and Executive Director's Preliminary Decision document ("**Decision Document**") relies upon outdated information, calling into question the determinations therein. Specifically, the Decision Document states that "[t]he 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," and explains that "[t]his determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update)" ("**Biological Opinion**"). With respect to whether the proposed discharge would affect endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat, the Biological Opinion is out of date. New information and changed circumstances regarding the Barton Springs Salamander require that EPA and the United States Fish and Wildlife Service fulfill their duty to reinstate formal consultation regarding the approval of the State of Texas's application to administer the National Pollutant Discharge Elimination System program in accordance with 50 Code of Federal Regulations § 402.16. The range of the Barton Springs Salamander is now known to be more extensive than considered at the time of delegation, which demonstrates that the exercise of NPDES permitting authority by TCEQ will impact the Barton Springs Salamander in a manner, and to an extent, not previously considered. As such, the City is concerned that, issuance of the Draft Permit has the potential to negatively affect threatened or endangered species.
9. Information in the SPIF, received by TCEQ on December 14, 2022, is inaccurate. As noted above, in response to the third question in the SPIF, Applicant indicated that "[p]roperty owner is the permittee" even though Developer owns the Plant Site and is not a co-applicant. In addition, the fifth question in the SPIF requires TPDES permit applicants to indicate whether their proposed project includes any of the following:

- proposed access roads, utility lines, construction easements;
- additional phases of development that are planned for the future;
- vibration effects during construction or as a result of project design; and
- disturbance of vegetation or wetlands.

The Application indicates that installation of the Proposed Plant includes only the first two of the foregoing effects, but there is no reason to believe that the development of an entirely

new residential subdivision and an “[a]pproximately 10 acre” Proposed Plant would not also involve the other two items in that list.¹²

10. Applicant failed to provide the information required by Section 8 of Domestic Technical Report 1.0.¹³ According to page 62 of the Instructions, Applicant should have “[p]rovide[d] the name, operator certification number, and class for the facility operator as listed in the Central Registry,” or “[i]f the operation of the facility is provided by an operations company, provide[d] the name of the company and company’s certificate number.” Here, Applicant provided no operator information whatsoever, stating only that an operator “will be selected prior to construction.” The lack of operator information is also at odds with other Application materials that indicate Applicant will be the operator of the Proposed Plant.¹⁴
11. There may be no need for the Proposed Plant. Because Applicant thwarted the required regionalization analysis by failing to indicate that City wastewater facilities already exist within less than three miles of the Proposed Plant, the Application lacks the communications and cost analyses necessary for TCEQ to adequately determine whether there is a need for the Proposed Plant.
12. The potentially unnecessary Proposed Plant is likely to create equally unnecessary nuisance odors. As the proposed development may be able to receive regionalized wastewater services, any nuisance odors emanating from the Proposed Plant would unnecessarily adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken, but 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.
13. Applicant indicated that buffer zone requirements will be met through ownership of the required buffer zone area,¹⁵ but, as described in more detail above; that area is not owned by Applicant, so that is not possible. The Application also fails to include the requisite buffer zone map for the Final phase of the Draft Permit.¹⁶

For the above-cited reasons, among others, the City requests that TCEQ deny the Application and decline to issue the Draft Permit.

IV. REQUEST FOR CONTESTED CASE HEARING

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by

¹² Application Administrative Report at 20.

¹³ Application Technical Reports at 12.

¹⁴ Application Attachment A – Core Data Form at 1 (Applicant indicated its role would be “Owner & Operator”); Compliance History Report at 1 (Applicant is twice identified as the “Owner/Operator”).

¹⁵ Application Administrative report at 17; Application technical Reports at 5.

¹⁶ Application Attachment F – Buffer Zone Maps.

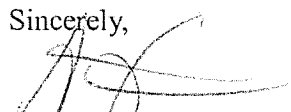
30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ 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; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.”¹⁷ TCEQ may also consider “the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance.”¹⁸ All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

V. CONCLUSION

Given that additional information may become apparent through the public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City’s Public Comments or Hearing Request.

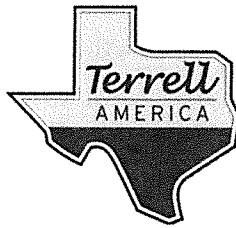
Sincerely,



Mike Sims
City Manager

¹⁷ 30 TAC § 55.203(c).

¹⁸ *Id.* § 55.203(d).



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2024 JAN 30 AM 10:05

CHIEF CLERKS OFFICE

REVIEWED
2024
JAN 30 2023
By Gau H

Rick Carmona
Mayor

Mayrani Velazquez
Mayor Pro Tem
District 3

Stephanie Thomas
Deputy Mayor Pro Tem
District 4

Grady Simpson
Council Member
District 2

Phil Robison
Council Member
District 5

Mike Sims
City Manager

January 25, 2024

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

Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

Re: Public Comments and Request for a Contested Case Hearing

Application by Moore Farm Water Control and Improvement District No. 1 (CN603248667, RN105348403, Water Districts Registration No. 5863500) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016274001 (EPA I.D. No. TX0143952)

Dear Ms. Gharis:

On behalf of the City of Terrell, Texas ("**City**"), please accept these timely filed public comments ("**Public Comments**") and request for a contested case hearing ("**Hearing Request**") regarding the application ("**Application**") by Moore Farm Water Control and Improvement District No. 1 ("**Applicant**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016274001 ("**Draft Permit**"). Please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Mike Sims, City Manager
City of Terrell
P. O. Box 310
Terrell, TX 75160

I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("**TCEQ**") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to technical review, the City further requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, Hearing Request, and any and all supplements and/or amendments thereto.

II. BACKGROUND

A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from a proposed partially prefabricated wastewater treatment facility (“**Proposed Plant**”) at an annual average flow not to exceed 1.6 million gallons per day (“**MGD**”). The Proposed Plant is intended to serve areas within the City’s extraterritorial jurisdiction (“**ETJ**”) from a plant site (“**Plant Site**”) located approximately 0.35 miles southwest of the intersection of County Road 243 and County Road 245 in Kaufman County, Texas 75160. The Plant Site is less than 0.5 miles from the City’s nearest corporate boundary and less than three miles from the City’s nearest existing wastewater infrastructure. According to the Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (“**Combined PM/NAPD**”), the proposed discharge route for the wastewater effluent is to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 2022 Integrated Report—Texas 303(d) List (“**303(d) List**”) of impaired and threatened waters for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH.

B. Procedural History

The Application was received by TCEQ on December 14, 2022, and TCEQ’s Executive Director (“**ED**”) declared it administratively complete on January 11, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (“**NORI**”) was issued that same day, and then published in English in *The Dallas Morning News* and in Spanish in *Al Día* on January 18, 2023. The Combined PM/NAPD was issued on December 12, 2023, and the next day, TCEQ’s Chief Clerk (“**Chief Clerk**”) filed it for publication in the *Texas Register*, where it appeared in English on December 22, 2023. Applicant published the Combined PM/NAPD in English in *The Dallas Morning News* and in Spanish in *Al Día* on December 20, 2023. As formally requested by State Representative Keith Bell, the ED has scheduled a public meeting, pursuant to 30 Texas Administrative Code (“**TAC**”) § 55.154, to provide an opportunity for the public to submit comments and/or ask questions about the Application and TCEQ to obtain public input thereon. Consequently, the current deadline to file public comments regarding the Application is January 25, 2024, at the close of said public meeting. Therefore, these Public Comments are timely filed.

III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) Applicant does not own the proposed Plant Site, but the owner of the Plant Site is not a co-applicant and the Application

lacks any documentation to demonstrate that Applicant has sufficient legal rights to operate the Proposed Plant at that location; (2) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code (“*TWC*”); (3) inconsistencies regarding the location of the proposed outfall give rise to concerns that the conditions in the Draft Permit will not adequately protect against nuisance odors or the negative impacts of the Proposed Plant on water quality, antidegradation, and stream standards; and (4) the Application contains numerous other deficiencies creating substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

A. The Application inaccurately indicates that Applicant owns the Plant Site and is deficient because it lacks the requisite co-applicant or deed recorded easement providing Applicant with adequate rights to operate the Proposed Plant thereon.

TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application (“*Instructions*”) provide as follows regarding ownership of the land where a proposed treatment facility is to be located:

Important Note: More than one entity may be required to apply for the permit as co-applicant. . . . If the facility is considered a fixture of the land (e.g., ponds, units half-way in the ground), there are two options. The owner of the land can apply for the permit as a co-applicant or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give the facility owner sufficient rights to the land for the operation of the treatment facility.¹

Similarly, TCEQ’s TPDES permit application form includes Administrative Report 1.0, which states “[i]f the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement.”² Here, the Proposed Plant will be a fixture of the land,³ yet the owner of the Plant Site is HWY. 205 FARM, LTD. (“*Developer*”),⁴ not Applicant. Nevertheless, Applicant misrepresented that fact in Section 9.D. of Administrative Report 1.0, claiming to be the “[o]wner of land where the treatment facility is or will be” and indicating that a

¹ Instructions at 30.

² TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report [hereinafter *Application Administrative Report*] at 8.

³ See, e.g., Fact Sheet and Executive Director’s Preliminary Decision at 2; Application Administrative Report at 19 – 20; TCEQ-10054 (Jun. 1, 2007) Domestic Wastewater Permit Application, Technical Reports [hereinafter *Application Technical Reports*] at 1; Application Attachment I – Supplemental Technical Report; Application Attachment J – Flow Schematics.

⁴ Special Warranty Deed recorded on September 15, 2022, as Document Number 2022-0035103 in Volume 7808, Page 37 of the Official Public Records of Kaufman County, Texas; accord Kaufman Property Search, <https://esearch.kaufman-cad.org/> (click the green “By ID” button, type “3755” in the box beneath the “Property ID” heading, then hit “enter” on your keyboard or click the “Search” button in the bottom right corner of the navy blue search form; alternatively, click the “Interactive Map” hyperlink at the top of the Kaufman Property Search webpage, click the “I AGREE” button on the Kaufman County Appraisal District disclaimer, type any set of coordinates listed in the Application into the “Search Here:” box at the top left corner of the map, then hit “enter” on your keyboard or click the magnifying glass icon immediately to the right of the “Search Here:” box at the top left corner of the map).

lease agreement or deed recorded easement was “N/A,” as shown by the following excerpt from the Application:

D. Owner of land where treatment facility is or will be:

Prefix (Mr., Ms., Miss):

First and Last Name: Moore Farm WCID No. 1

Mailing Address: 14755 Preston Rd, Suite 600

City, State, Zip Code: Dallas, TX 75254

Phone No.: 972-788-1600

E-mail Address: mkoehne@coatsrose.com

If the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement. See instructions.

Attachment: N/A

Applicant similarly misrepresented the facts in the Supplemental Permit Information Form (“*SPIF*”) received by TCEQ on December 14, 2022, which states “[p]roperty owner is the permittee.”⁵ Given that Applicant does not own the Plant Site, and because the Application contains no documentation evidencing that Applicant has sufficient legal rights to operate the Proposed Plant thereon, Developer should be a co-applicant. Nevertheless, Applicant not only falsely indicated that it owns the Plant Site but is also the sole entity applying for the Draft Permit. Consequently, the Application is inaccurate and deficient and should not be granted.

B. Approval of the Application and issuance of the Draft Permit would violate Texas' legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.

The Application should be denied because issuance of the Draft Permit would contravene TCEQ's statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas's regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared “that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” In addition, the TWC contains numerous other

⁵ Application Administrative Report at 19.

provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it “is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater,” authorizes TCEQ, “[i]n considering the issuance, amendment, or renewal of a permit to discharge waste,” to “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” without regard to whether a given system has been “designated as such by [TCEQ] order.”
- TWC § 13.183(c), which provides that the Public Utility Commission (“*PUC*”) or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services “to encourage regionalization.”
- TWC § 13.241(d), which requires an applicant to “demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible” in order for PUC to grant “a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system.”⁶
- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in the Instructions, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”⁷ For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES applicants to justify the need for such a permit.⁸ As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.⁹ Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicant’s responses thereto are shown by the following excerpt from the Application:

⁶ Accord TWC § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that “regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).”).

⁷ Instructions at 67.

⁸ *Id.* at 54 – 55.

⁹ Application Technical Reports at 21–22.

3. *Nearby WWTPs or collection systems*

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☐ No ☒

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: N/A

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: N/A

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

Yes ☐ No ☐

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment: N/A

The Applicants' foregoing responses are inaccurate and incomplete. Specifically, the Application incorrectly indicates that there is no existing wastewater infrastructure within a three-mile radius of the Proposed Plant. The City's nearest wastewater collection facilities are located approximately 2.8 miles from the proposed Plant Site. As such, Applicant should have contacted the City to determine whether it could provide the proposed 1.6 MGD of wastewater treatment capacity, and if so, under what terms. Not only did Applicant decline to do so, but, to date, Developer has also failed to respond to the City's request for a meeting to discuss potential alternative means of providing service to the proposed service area contemplated by the Application. Likely as a consequence of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicant also failed to include copies of any communications with the City on that subject, let alone any analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application.

Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy.

C. The Application raises concerns that the proposed discharge will impair existing uses and/or quality of the receiving waters in contravention of TCEQ's antidegradation policy.

As indicated above, the Draft Permit authorizes the discharge of wastewater effluent to Little High Point Creek, thence to High Point Creek, thence to Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 303(d) List for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH. Thus, the City has concerns that the proposed discharge into Segment No. 0818 from a likely unnecessary treatment plant would impact water quality in that watercourse.

Specifically, the Application and Draft Permit raise concerns with the City that the proposed discharge will neither be in compliance with TCEQ's antidegradation policy nor maintain its current stream standard in the receiving water described by Applicant as having "exceptional" clarity.¹⁰ Pursuant to 30 TAC § 307.5, the proposed discharge is subject to said antidegradation policy and implementation procedures under Tier 1 and Tier 2. Therefore, before approving the Application, TCEQ must ensure that antidegradation will not occur as a result of the proposed discharge. Additionally, because Segment No. 0818 is an impaired water body on TCEQ's 303(d) List, the proposed discharge may unnecessarily further downgrade the segment's water quality if statutory and regulatory requirements for antidegradation and stream standards are not met. Thus, due to these additional concerns and the currently "exceptional" quality of the receiving water, the Application should be denied and the Draft Permit, in its present state, should not be issued.

Furthermore, the foregoing concerns are exacerbated by significant uncertainty as to the location of the proposed outfall and, as a consequence, the proper characterization of the receiving waters. Specifically, the precise location of the proposed outfall is not discernible from the Application. The "Receiving Water Assessment Determination Form for new and amended TPDES permit applications" (the "*RWA Determination Form*") states "coordinates are correct" and identifies the "Outfall Coordinates" as 32.804411, -96.309061. Those coordinates are also used to identify the latitude and longitude of the proposed outfall in Section 10.B. of Administrative Report 1.0 and the "Adjacent and Downstream Landowners" map, both received by the Water Quality Applications Team on December 14, 2022. However, the Core Data Form identifies such coordinates as the location for the Plant Site, and the Application materials include

¹⁰ Application Technical Reports at 32.

a screenprint from TCEQ's "Surface Water Quality Viewer" that shows such coordinates as being approximately 0.35 miles southwest of the stated intersection, which is consistent with the description of the Plant Site in the NORI and Combined NAPD. Furthermore, a one-page "Central Registry Internal Reporting" document included with the Application materials lists both 32.804444, -96.309166 and 32.804411, -96.30906 as coordinates for the Proposed Plant, and neither of those coordinates matches those shown by an electronic map of the general location of the Proposed Plant, accessible via a hyperlink provided in the NORI, which indicates that the coordinates for the Plant Site are 32.804859, -96.309166. Given the foregoing inconsistencies, the location of the proposed outfall, and thus the intended location of the immediate receiving waters for the proposed discharge, are unclear, which creates uncertainty as to the proper characterization of such receiving waters. As a result, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements.

D. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

The Application should be denied, or at a minimum, remanded to technical review as a result of the following additional deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

1. It is unclear whether Applicant complied with the general notice provisions set forth in 30 TAC § 39.405(g). According to the NORI and Combined PM/NAPD, the Application should be "available for viewing and copying at Riter C. Hulsey Public Library, 301 North Rockwall Avenue, Terrell, Texas." This is consistent with 30 TAC § 39.405(g)(1) – (2), which provide as follows: "The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. . . . A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of [the NORI] and remain available for the publications' designated comment period . . . A copy of the complete application (including any subsequent revisions to the application) and [the ED]'s preliminary decision must be available for review and copying beginning on the first day of newspaper publication . . . and remain available until the commission has taken action on the application or the commission refers issues to [SOAH]."¹¹ Though the public comment period closes on January 25, 2024, and TCEQ's commissioners are not yet scheduled to act on the Application, on January 4, 2024, when the City contacted the Riter C. Hulsey Public Library regarding the Application, it was not available for viewing or copying. Therefore, there is reason to believe that Applicant failed to comply with the foregoing notice requirements imposed by TCEQ.

¹¹ Accord 30 Tex. Admin. Code § 39.411(b)(8) (the NORI must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying"), 39.411(c)(5) (the NAPD must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying").

2. Given the uncertainty as to the locations of the Proposed Plant and associated outfall, the Application should have been made available for public review in both Kaufman and Rockwall Counties. As shown by the “Service Area Map” included as Attachment K to the Application, the service area for the Proposed Plant extends into both Kaufman and Rockwall Counties. According to Section 8.D. of Administrative Report 1.0, “[i]f the facility or outfall is located in more than one county, a public viewing place for each county must be provided.” Similarly, the Check List for Admin Review of Municipal Application for Permit (the “*Admin Review Check List*”) states “[i]f discharge is directly into water body that borders two counties, application must be placed in a public facility in both counties and the notice must be published in both counties.” Here, since it is unclear whether the facility or outfall is located in more than one county, as described above, but there is no doubt that the service area for the Proposed Plant includes areas in two counties, a copy of the Application should have been available for review in both such counties (Rockwall and Kaufman).
3. The Application materials are inconsistent with regard to whether the Proposed Plant is a major or minor facility. According to the Admin Review Check List, “[a] minor facility is generally one in which the final flow is less than 1.0 MGD.” That is consistent with the criteria reiterated on pages 73, 88, and 98 of the Instructions, all of which clarify that a facility with a treatment capacity of less than 1.0 MGD is considered minor. Here, however, despite the fact that the Admin Review Check List correctly indicates that Applicants have requested authorization to discharge up to 1.6 MGD, that same document describes the Proposed Plant as a minor facility. Conversely, the “MUNICIPAL MAJOR/MINOR DETERMINATION” document dated August 26, 2023, classifies the Proposed Plant as a major facility. As such, it is unclear whether the Proposed Plant is a major or minor facility, and TCEQ may not have had accurate information upon which to base its decisions related to the Application.
4. The Admin Review Check List contains additional deficiencies and inconsistencies. As shown by the following excerpt, and even though the Application seeks authorization for a new surface water discharge, the Admin Review Check List indicates that a receiving water assessment determination was not completed as part of the Application review process.

<input type="checkbox"/> For new and major amendment applications that propose surface water discharge, the standards review for RWA comments is included.
--

Nevertheless, an RWA Determination Form was completed by Standards Reviewer B. M. Lee on December 29, 2022, and is included among the Application materials. Given such discrepancy and the fact that the RWA Determination Form creates confusion as to the location of the Proposed Plant and outfall, there is reason to believe that neither the Admin Review Check List nor the RWA Determination Form may be reasonably relied upon. Similarly, the Admin Review Check List incorrectly provides as follows:

SECTION 3 FACILITY OWNER (APPLICANT) AND CO-APPLICANT

- ☒ Legal name of applicant is listed (*the owner of the facility must apply for the permit*)
- ☐ Legal name of co-applicant is listed (*if required to apply with facility owner*)
- ☒ Core Data Form (CDF) is provided. A separate CDF is required for each customer.

The foregoing excerpt not only demonstrates that the Application was deemed administratively complete despite the fact that Developer, a required co-applicant in this instance, is not listed in the Application but also incorrectly indicates that a Core Data Form was provided for "each customer" when such form was only submitted for Applicant. The Admin Review Checklist also incorrectly indicates that the owner of the land where the Proposed Plant will be located "is the **SAME** as the [A]pplicant." As described in more detail above, this simply is not the case. Rather, the owner of the site for the Proposed Plant is Developer, not Applicant. As such, the Admin Review Check List dictates that "[a] copy of a lease agreement or easement, with a term for the duration of the permit, between applicant and landowner" should have been provided or the Developer should have applied as a co-permittee, neither of which is the case in this instance.

5. It is unclear whether the EPA approved the Draft Permit as required by a TCEQ/EPA Memorandum of Understanding referenced in a letter from Mr. Firoj Vahora, Leader of TCEQ's Municipal Permits Team, to Ms. Evelyn Rosborough of EPA's Region 6 office. According to such letter, Ms. Rosborough was to "provide any written comments, objections (general or interim) or recommendations with respect to the [D]raft [P]ermit within forty-five days from the receipt" thereof. However, because the Draft Permit was transmitted to Ms. Rosborough via the above-referenced letter, which is undated, and TCEQ's file for this Application contains no responsive communications from Ms. Rosborough, the City is concerned that EPA approval of the Draft Permit may not have been obtained as required.
6. Similarly, it is unclear whether TCEQ's Region 4 office responded to the Request for Comments on Draft Permit included in TCEQ's Application files. Such request contradictorily states: "Comment Deadline: Within 7 days" as well as "Please return comments ASAP, but no later than the comments deadline, which is 10 days from the submittal date." As said Request for Comments on Draft Permit is undated and TCEQ's file for this Application contains no responsive communications from its Region 4 offices, the City is concerned that Region 4 may not have commented on the Draft Permit as required.
7. Information provided in additional documentation transmitted to Ms. Rosborough via the above-referenced letter was inaccurate. Specifically, the NPDES Certification Checklist indicates that the Proposed Plant does not discharge any of the pollutants of concern identified in the 303(d) List for Segment No. 0818. This is inaccurate, though consistent with the Municipal EPA Review Checklist, where it is incorrectly indicated that the proposed discharge does not have the potential to discharge any pollutant that is causing or contributing to the impairment of a segment on the 303(d) List. Instead, Kings Creek, in

Segment No. 0818C, is impaired by bacteria in the water, and Cedar Creek Reservoir, in Segment No. 0818, is impaired by pH. The ED's Decision Document even includes comments stating that the Proposed Plant "should not" contribute to "the bacterial impairment" of Kings Creek or "the pH impairment of the segment." Having been denied that information, EPA lacked the notice necessary to ensure it could complete a sufficiently comprehensive review of the Draft Permit.

8. The Fact Sheet and Executive Director's Preliminary Decision document ("**Decision Document**") relies upon outdated information, calling into question the determinations therein. Specifically, the Decision Document states that "[t]he 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," and explains that "[t]his determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update)" ("**Biological Opinion**"). With respect to whether the proposed discharge would affect endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat, the Biological Opinion is out of date. New information and changed circumstances regarding the Barton Springs Salamander require that EPA and the United States Fish and Wildlife Service fulfill their duty to reinstate formal consultation regarding the approval of the State of Texas's application to administer the National Pollutant Discharge Elimination System program in accordance with 50 Code of Federal Regulations § 402.16. The range of the Barton Springs Salamander is now known to be more extensive than considered at the time of delegation, which demonstrates that the exercise of NPDES permitting authority by TCEQ will impact the Barton Springs Salamander in a manner, and to an extent, not previously considered. As such, the City is concerned that, issuance of the Draft Permit has the potential to negatively affect threatened or endangered species.
9. Information in the SPIF, received by TCEQ on December 14, 2022, is inaccurate. As noted above, in response to the third question in the SPIF, Applicant indicated that "[p]roperty owner is the permittee" even though Developer owns the Plant Site and is not a co-applicant. In addition, the fifth question in the SPIF requires TPDES permit applicants to indicate whether their proposed project includes any of the following:
 - proposed access roads, utility lines, construction easements;
 - additional phases of development that are planned for the future;
 - vibration effects during construction or as a result of project design; and
 - disturbance of vegetation or wetlands.

The Application indicates that installation of the Proposed Plant includes only the first two of the foregoing effects, but there is no reason to believe that the development of an entirely

new residential subdivision and an “[a]pproximately 10 acre” Proposed Plant would not also involve the other two items in that list.¹²

10. Applicant failed to provide the information required by Section 8 of Domestic Technical Report 1.0.¹³ According to page 62 of the Instructions, Applicant should have “[p]rovide[d] the name, operator certification number, and class for the facility operator as listed in the Central Registry,” or “[i]f the operation of the facility is provided by an operations company, provide[d] the name of the company and company’s certificate number.” Here, Applicant provided no operator information whatsoever, stating only that an operator “will be selected prior to construction.” The lack of operator information is also at odds with other Application materials that indicate Applicant will be the operator of the Proposed Plant.¹⁴
11. There may be no need for the Proposed Plant. Because Applicant thwarted the required regionalization analysis by failing to indicate that City wastewater facilities already exist within less than three miles of the Proposed Plant, the Application lacks the communications and cost analyses necessary for TCEQ to adequately determine whether there is a need for the Proposed Plant.
12. The potentially unnecessary Proposed Plant is likely to create equally unnecessary nuisance odors. As the proposed development may be able to receive regionalized wastewater services, any nuisance odors emanating from the Proposed Plant would unnecessarily adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken, but 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.
13. Applicant indicated that buffer zone requirements will be met through ownership of the required buffer zone area,¹⁵ but, as described in more detail above, that area is not owned by Applicant, so that is not possible. The Application also fails to include the requisite buffer zone map for the Final phase of the Draft Permit.¹⁶

For the above-cited reasons, among others, the City requests that TCEQ deny the Application and decline to issue the Draft Permit.

IV. REQUEST FOR CONTESTED CASE HEARING

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by

¹² Application Administrative Report at 20.

¹³ Application Technical Reports at 12.

¹⁴ Application Attachment A – Core Data Form at 1 (Applicant indicated its role would be “Owner & Operator”); Compliance History Report at 1 (Applicant is twice identified as the “Owner/Operator”).

¹⁵ Application Administrative report at 17; Application technical Reports at 5.

¹⁶ Application Attachment F – Buffer Zone Maps.

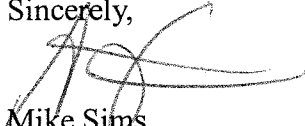
30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ 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; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.”¹⁷ TCEQ may also consider “the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance.”¹⁸ All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

V. CONCLUSION

Given that additional information may become apparent through the public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City’s Public Comments or Hearing Request.

Sincerely,



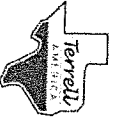
Mike Sims
City Manager

¹⁷ 30 TAC § 55.203(c).

¹⁸ *Id.* § 55.203(d).

City of Terrell

201 E. Nash
Terrell, TX 75160



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COMMISSION
ON ENVIRONMENTAL
QUALITY

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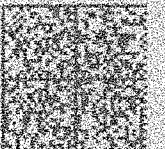
RECEIVED OFFICE

RECEIVED

JAN 30 2024

TCEQ MAIL CENTER
BC

Attn: Ms. Laurie Charis
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087



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0000390635 JAN 26 2024

Renee Lyle

From: PUBCOMMENT-OCC
Sent: Monday, January 29, 2024 11:31 AM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016274001
Attachments: Terrell comments Re Moore Farm WCID No. 1 WQ00162740011.pdf

H

From: humanrelations@cityofterrell.org <humanrelations@cityofterrell.org>
Sent: Thursday, January 25, 2024 4:53 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016274001

REGULATED ENTY NAME MOORE FARMS WCID NO 1 WWTF

RN NUMBER: RN111620209

PERMIT NUMBER: WQ0016274001

DOCKET NUMBER:

COUNTY: KAUFMAN

PRINCIPAL NAME: MOORE FARM WCID 1

CN NUMBER: CN603248667

NAME: John Godwin

EMAIL: humanrelations@cityofterrell.org

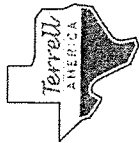
COMPANY:

ADDRESS: 201 E NASH ST HR
TERRELL TX 75160-2741

PHONE: 2145029169

FAX:

COMMENTS: Comments attached as a PDF file.



Rick Garmon
Mayor

January 25, 2024

Mayrani Velazquez
Mayor Pro Tem
District 3

Stephanie Thomas
Deputy Mayor Pro Tem
District 4

Grady Simpson
Council Member
District 2

Phil Robinson
Council Member
District 5

Mike Sims
City Manager

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

Via e-Comment to <https://www.tceq.texas.gov/cpic/cComment/>

Re: **Public Comments and Request for a Contested Case Hearing**

Application by Moore Farm Water Control and Improvement District No. 1 (CN603248667, RN105348403, Water Districts Registration No. 5863500) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016274001 (EPA I.D. No. TX0143952)

Dear Ms. Gharis:

On behalf of the City of Terrell, Texas ("City"), please accept these timely filed public comments ("Public Comments") and request for a contested case hearing ("Hearing Request") regarding the application ("Application") by Moore Farm Water Control and Improvement District No. 1 ("Applicant") for proposed new Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0016274001 ("Draft Permit"). Please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Mike Sims, City Manager
City of Terrell
P. O. Box 310
Terrell, TX 75160

I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("TCEQ") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to technical review, the City further requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, Hearing Request, and any and all supplements and/or amendments thereto.

II. BACKGROUND

A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from a proposed partially prefabricated wastewater treatment facility ("Proposed Plant") at an annual average flow not to exceed 1.6 million gallons per day ("MGD"). The Proposed Plant is intended to serve areas within the City's extrajurisdictional jurisdiction ("ETJ") from a plant site ("Plant Site") located approximately 0.35 miles southwest of the intersection of County Road 243 and County Road 245 in Kaufman County, Texas 75160. The Plant Site is less than 0.5 miles from the City's nearest corporate boundary and less than three miles from the City's nearest existing wastewater infrastructure. According to the Combined Notice of Public Meeting and Notice of Application and Preliminary Decision ("Combined PM/NAPD"), the proposed discharge route for the wastewater effluent is to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 2022 Integrated Report—Texas 303(d) List ("303(d) List") of impaired and threatened waters for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH.

B. Procedural History

The Application was received by TCEQ on December 14, 2022, and TCEQ's Executive Director ("ED") declared it administratively complete on January 11, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit ("NORP") was issued that same day, and then published in English in *The Dallas Morning News* and in Spanish in *Al Dia* on January 18, 2023. The Combined PM/NAPD was issued on December 12, 2023, and the next day, TCEQ's Chief Clerk ("Chief Clerk") filed it for publication in the *Texas Register*, where it appeared in English on December 22, 2023. Applicant published the Combined PM/NAPD in English in *The Dallas Morning News* and in Spanish in *Al Dia* on December 20, 2023. As formally requested by State Representative Keith Bell, the ED has scheduled a public meeting, pursuant to 30 Texas Administrative Code ("TAC") § 55.154, to provide an opportunity for the public to submit comments and/or ask questions about the Application and TCEQ to obtain public input thereon. Consequently, the current deadline to file public comments regarding the Application is January 25, 2024, at the close of said public meeting. Therefore, these Public Comments are timely filed.

III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) Applicant does not own the proposed Plant Site, but the owner of the Plant Site is not a co-applicant and the Application

lacks any documentation to demonstrate that Applicant has sufficient legal rights to operate the Proposed Plant at that location; (2) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code ("TWC"); (3) inconsistencies regarding the location of the proposed outfall give rise to concerns that the conditions in the Draft Permit will not adequately protect against nuisance odors or the negative impacts of the Proposed Plant on water quality, antidegradation, and stream standards; and (4) the Application contains numerous other deficiencies creating substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

- A. **The Application inaccurately indicates that Applicant owns the Plant Site and is deficient because it lacks the requisite co-applicant or deed recorded easement providing Applicant with adequate rights to operate the Proposed Plant thereon.**

TCEQ Form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application ("Instructions") provide as follows regarding ownership of the land where a proposed treatment facility is to be located:

Important Note: More than one entity may be required to apply for the permit as co-applicant. . . . If the facility is considered a fixture of the land (e.g., ponds, units half-way in the ground), there are two options. The owner of the land can apply for the permit as a co-applicant or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give the facility owner sufficient rights to the land for the operation of the treatment facility.¹

Similarly, TCEQ's TPDES permit application form includes Administrative Report 1.0, which states "[i]f the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement."² Here, the Proposed Plant will be a fixture of the land,³ yet the owner of the Plant Site is HWY. 205 FARM, LTD. ("Developer"),⁴ not Applicant. Nevertheless, Applicant misrepresented that fact in Section 9.D. of Administrative Report 1.0, claiming to be the "[o]wner of land where the treatment facility is or will be" and indicating that a

¹ Instructions at 30.

² TCEQ-10053, (06/28/2022) Municipal Wastewater Application Administrative Report [hereinafter *Application Administrative Report*] at 8.

³ See, e.g., Fael Sheet and Executive Director's Preliminary Decision at 2; Application Administrative Report at 19–20; TCEQ-10054 (Jan. 1, 2007) Domestic Wastewater Permit Application, Technical Reports [hereinafter *Application Technical Reports*] at 1; Application Attachment 1 – Supplemental Technical Report: Application Attachment J – Flow Schematics.

⁴ Special Warranty Deed recorded on September 15, 2022, as Document Number 2022-0635103 in Volume 7808, Page 37 of the Official Public Records of Kaufman County, Texas, as *recorded* Kaufman Property Search <https://search.kaufman-county.com>; (click the green "By ID" button, type "3755" in the box beneath the "Property ID" heading, then hit "enter" on your keyboard or click the "Search" button in the bottom right corner of the navy blue search form; alternatively, click the "Interactive Map" hyperlink at the top of the Kaufman Property Search webpage, click the "I AGREE" button on the Kaufman County Appraisal District disclaimer, type any set of coordinates listed in the Application into the "Search Here" box at the top left corner of the map, then hit "enter" on your keyboard or click the magnifying glass icon immediately to the right of the "Search Here" box at the top left corner of the map).

lease agreement or deed recorded easement was "N/A," as shown by the following excerpt from the Application:

D. Owner of land where treatment facility is or will be:

Prefix (Mr., Ms., Miss):

First and Last Name: Moore Farm WCID No. 1

Mailing Address: 14755 Preston Rd., Suite 600

City, State, Zip Code: Dallas, TX 75245

Phone No.: 972-788-1600 E-mail Address: info@moorefarmwcid.com

If the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement. See instructions.

Attachment: N/A

Applicant similarly misrepresented the facts in the Supplemental Permit Information Form ("SPIF") received by TCEQ on December 14, 2022, which states "[p]roperty owner is the permittee."⁵ Given that Applicant does not own the Plant Site, and because the Application contains no documentation evidencing that Applicant has sufficient legal rights to operate the Proposed Plant thereon, Developer should be a co-applicant. Nevertheless, Applicant not only falsely indicated that it owns the Plant Site but is also the sole entity applying for the Draft Permit. Consequently, the Application is inaccurate and deficient and should not be granted.

- B. **Approval of the Application and issuance of the Draft Permit would violate Texas' legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.**

The Application should be denied because issuance of the Draft Permit would contravene TCEQ's statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas's regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared "that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In addition, the TVC contains numerous other

⁵ Application Administrative Report at 19.

provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it "is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater," authorizes TCEQ, "[i]n considering the issuance, amendment, or renewal of a permit to discharge waste," to "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" without regard to whether a given system has been "designated as such by [TCEQ] order."
- TWC § 13.183(c), which provides that the Public Utility Commission ("PUC") or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services "to encourage regionalization."
- TWC § 13.241(d), which requires an applicant to "demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible" in order for PUC to grant "a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system."⁶
- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an "assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed."

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over "the state's responsibilities relating to regional waste disposal." This mandate is clearly acknowledged in the Instructions, which state "TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."⁷ For purposes of "implementing regionalization," the Instructions also indicate that TCEQ "will" require TPDES applicants to justify the need for such a permit.⁸ As part of its commitment to do so, TCEQ's TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.⁹ Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicant's responses thereto are shown by the following excerpt from the Application:

⁶ Accord TWC § 13.245(c)-(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that "regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).").

⁷ Instructions at 67.

⁸ *Id.* at 54 - 55.

⁹ Application Technical Reports at 21-22.

3. Nearby WWTPs or collection systems

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☐

No ☒

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: N/A

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: N/A

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

Yes ☐

No ☐

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment: N/A

The Applicants' foregoing responses are inaccurate and incomplete. Specifically, the Application incorrectly indicates that there is no existing wastewater infrastructure within a three-mile radius of the Proposed Plant. The City's nearest wastewater collection facilities are located approximately 2.8 miles from the proposed Plant Site. As such, Applicant should have contacted the City to determine whether it could provide the proposed 1.6 MGD of wastewater treatment capacity, and if so, under what terms. Not only did Applicant decline to do so, but, to date, Developer has also failed to respond to the City's request for a meeting to discuss potential alternative means of providing service to the proposed service area contemplated by the Application. Likely as a consequence of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicant also failed to include copies of any communications with the City on that subject, let alone any analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application.

Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutory mandated regionalization policy.

- C. **The Application raises concerns that the proposed discharge will impair existing uses and/or quality of the receiving waters in contravention of TCEQ's antidegradation policy.**

As indicated above, the Draft Permit authorizes the discharge of wastewater effluent to Little High Point Creek, thence to High Point Creek, thence to Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 303(d) List for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH. Thus, the City has concerns that the proposed discharge into Segment No. 0818 from a likely unnecessary treatment plant would impact water quality in that watercourse.

Specifically, the Application and Draft Permit raise concerns with the City that the proposed discharge will neither be in compliance with TCEQ's antidegradation policy nor maintain its current stream standard in the receiving water described by Applicant as having "exceptional" clarity.¹⁰ Pursuant to 30 TAC § 307.5, the proposed discharge is subject to said antidegradation policy and implementation procedures under Tier 1 and Tier 2. Therefore, before approving the Application, TCEQ must ensure that antidegradation will not occur as a result of the proposed discharge. Additionally, because Segment No. 0818 is an impaired water body on TCEQ's 303(d) List, the proposed discharge may unnecessarily further downgrade the segment's water quality if statutory and regulatory requirements for antidegradation and stream standards are not met. Thus, due to these additional concerns and the currently "exceptional" quality of the receiving water, the Application should be denied and the Draft Permit, in its present state, should not be issued.

Furthermore, the foregoing concerns are exacerbated by significant uncertainty as to the location of the proposed outfall and, as a consequence, the proper characterization of the receiving waters. Specifically, the precise location of the proposed outfall is not discernible from the Application. The "Receiving Water Assessment Determination Form for new and amended TPDES permit applications" (the *"RWA Determination Form"*) states "coordinates are correct" and identifies the "Outfall Coordinates" as 32.804411, -96.309061. Those coordinates are also used to identify the latitude and longitude of the proposed outfall in Section 10.B. of Administrative Report 1.0 and the "Adjacent and Downstream Landowners" map, both received by the Water Quality Applications Team on December 14, 2022. However, the Core Data Form identifies such coordinates as the location for the Plant Site, and the Application materials include

¹⁰ Application Technical Reports at 32.

a screenshot from TCEQ's "Surface Water Quality Viewer" that shows such coordinates as being approximately 0.35 miles southwest of the stated intersection, which is consistent with the description of the Plant Site in the NORI and Combined NAPP. Furthermore, a one-page "Central Registry Internal Reporting" document included with the Application materials lists both 32.804444, -96.309166 and 32.804411, -96.30906 as coordinates for the Proposed Plant, and neither of those coordinates matches those shown by an electronic map of the general location of the Proposed Plant, accessible via a hyperlink provided in the NORI, which indicates that the coordinates for the Plant Site are 32.804839, -96.309166. Given the foregoing inconsistencies, the location of the proposed outfall, and thus the intended location of the immediate receiving waters for the proposed discharge, are unclear, which creates uncertainty as to the proper characterization of such receiving waters. As a result, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements.

- D. **The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.**

The Application should be denied, or at a minimum, remanded to technical review as a result of the following additional deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

1. It is unclear whether Applicant complied with the general notice provisions set forth in 30 TAC § 39.405(g). According to the NORI and Combined PM/NAPD, the Application should be "available for viewing and copying at Riter C. Hulsey Public Library, 301 North Rockwall Avenue, Terrell, Texas." This is consistent with 30 TAC § 39.405(g)(1) - (2), which provide as follows: "The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. . . . A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of [the NORI] and remain available for the publications' designated comment period A copy of the complete application (including any subsequent revisions to the application) and [the ED]'s preliminary decision must be available for review and copying beginning on the first day of newspaper publication . . . and remain available until the commission has taken action on the application or the commission refers issues to [SOAII]."¹¹ Though the public comment period closes on January 25, 2024, and TCEQ's commissioners are not yet scheduled to act on the Application, on January 4, 2024, when the City contacted the Riter C. Hulsey Public Library regarding the Application, it was not available for viewing or copying. Therefore, there is reason to believe that Applicant failed to comply with the foregoing notice requirements imposed by TCEQ.

¹¹ *Arcond 30 Tex. Admin. Code* § 39.411(b)(8) (the NORI must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying"), 39.411(c)(3) (the NAPP must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying").

2. Given the uncertainty as to the locations of the Proposed Plant and associated outfall, the Application should have been made available for public review in both Kaufman and Rockwall Counties. As shown by the "Service Area Map" included as Attachment K to the Application, the service area for the Proposed Plant extends into both Kaufman and Rockwall Counties. According to Section 8.D. of Administrative Report 1.0, "[i]f the facility or outfall is located in more than one county, a public viewing place for each county must be provided." Similarly, the Check List for Admin Review of Municipal Application for Permit (the "Admin Review Check List") states "[i]f discharge is directly into water body that borders two counties, application must be placed in a public facility in both counties and the notice must be published in both counties." Here, since it is unclear whether the facility or outfall is located in more than one county, as described above, but there is no doubt that the service area for the Proposed Plant includes areas in two counties, a copy of the Application should have been available for review in both such counties (Rockwall and Kaufman).

3. The Application materials are inconsistent with regard to whether the Proposed Plant is a major or minor facility. According to the Admin Review Check List, "[a] minor facility is generally one in which the final flow is less than 1.0 MGD." That is consistent with the criteria reiterated on pages 73, 88, and 98 of the Instructions, all of which clarify that a facility with a treatment capacity of less than 1.0 MGD is considered minor. Here, however, despite the fact that the Admin Review Check List correctly indicates that Applicants have requested authorization to discharge up to 1.6 MGD, that same document describes the Proposed Plant as a minor facility. Conversely, the "MUNICIPAL MAJOR/MINOR DETERMINATION" document dated August 26, 2023, classifies the Proposed Plant as a major facility. As such, it is unclear whether the Proposed Plant is a major or minor facility, and TCEQ may not have had accurate information upon which to base its decisions related to the Application.

4. The Admin Review Check List contains additional deficiencies and inconsistencies. As shown by the following excerpt, and even though the Application seeks authorization for a new surface water discharge, the Admin Review Check List indicates that a receiving water assessment determination was not completed as part of the Application review process.

☐ For new and existing nonpoint applications that propose surface water discharge, the standards review by RWA comments is included.

Nevertheless, an RWA Determination Form was completed by Standards Reviewer B. M. Lee on December 29, 2022, and is included among the Application materials. Given such discrepancy and the fact that the RWA Determination Form creates confusion as to the location of the Proposed Plant and outfall, there is reason to believe that neither the Admin Review Check List nor the RWA Determination Form may be reasonably relied upon. Similarly, the Admin Review Check List incorrectly provides as follows:

SECTION 3 FACILITY OWNER (APPLICANT) AND CO-APPLICANT

- ☒ Legal name of applicant is listed (the owner of the facility must apply for the permit)
☐ Legal name of co-applicant is listed (if required to apply with facility owner)
☒ Core Data Form (CDF) is provided. A separate CDF is required for each customer.

The foregoing excerpt not only demonstrates that the Application was deemed administratively complete despite the fact that Developer, a required co-applicant in this instance, is not listed in the Application but also incorrectly indicates that a Core Data Form was provided for "each customer" when such form was only submitted for Applicant. The Admin Review Checklist also incorrectly indicates that the owner of the land where the Proposed Plant will be located "is the SAME as the [A]pplicant." As described in more detail above, this simply is not the case. Rather, the owner of the site for the Proposed Plant is Developer, not Applicant. As such, the Admin Review Check List dictates that "[a] copy of a lease agreement or encumbrance, with a term for the duration of the permit, between applicant and landowner" should have been provided or the Developer should have applied as a co-permittee, neither of which is the case in this instance.

5. It is unclear whether the EPA approved the Draft Permit as required by a TCEQ/EPA Memorandum of Understanding referenced in a letter from Mr. Firoj Vahora, Leader of TCEQ's Municipal Permits Team, to Ms. Evelyn Rosborough of EPA's Region 6 office. According to such letter, Ms. Rosborough was to "provide any written comments, objections (general or interim) or recommendations with respect to the [D]raft [P]ermit within forty-five days from the receipt" thereof. However, because the Draft Permit was transmitted to Ms. Rosborough via the above-referenced letter, which is undated, and TCEQ's file for this Application contains no responsive communications from Ms. Rosborough, the City is concerned that EPA approval of the Draft Permit may not have been obtained as required.

6. Similarly, it is unclear whether TCEQ's Region 4 office responded to the Request for Comments on Draft Permit included in TCEQ's Application files. Such request contradictorily states: "Comment Deadline: Within 7 days" as well as "Please return comments ASAP, but no later than the comments deadline, which is 10 days from the submittal date." As said Request for Comments on Draft Permit is undated and TCEQ's file for this Application contains no responsive communications from its Region 4 offices, the City is concerned that Region 4 may not have commented on the Draft Permit as required.

7. Information provided in additional documentation transmitted to Ms. Rosborough via the above-referenced letter was inaccurate. Specifically, the NPDES Certification Checklist indicates that the Proposed Plant does not discharge any of the pollutants of concern identified in the 303(d) List for Segment No. 0818. This is inaccurate, though consistent with the Municipal EPA Review Checklist, where it is incorrectly indicated that the proposed discharge does not have the potential to discharge any pollutant that is causing or contributing to the impairment of a segment on the 303(d) List. Instead, Kings Creek, in

Segment No. 0818C, is impaired by bacteria in the water, and Cedar Creek Reservoir, in Segment No. 0818, is impaired by pH. The ED's Decision Document even includes comments stating that the Proposed Plant "should not" contribute to "the bacterial impairment" of Kings Creek or "the pH impairment of the segment." Having been denied that information, EPA lacked the notice necessary to ensure it could complete a sufficiently comprehensive review of the Draft Permit.

8. The Fact Sheet and Executive Director's Preliminary Decision document ("*Decision Document*") relies upon outdated information, calling into question the determinations therein. Specifically, the Decision Document states that "[t]he 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," and explains that "[t]his determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update)" ("*Biological Opinion*"). With respect to whether the proposed discharge would affect endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat, the Biological Opinion is out of date. New information and changed circumstances regarding the Barton Springs Salamander require that EPA and the United States Fish and Wildlife Service fulfill their duty to reinstate formal consultation regarding the approval of the State of Texas's application to administer the National Pollutant Discharge Elimination System program in accordance with 50 Code of Federal Regulations § 402.16. The range of the Barton Springs Salamander is now known to be more extensive than considered at the time of delegation, which demonstrates that the exercise of NPDES permitting authority by TCEQ will impact the Barton Springs Salamander in a manner, and to an extent, not previously considered. As such, the City is concerned that, issuance of the Draft Permit has the potential to negatively affect threatened or endangered species.

9. Information in the SPIF, received by TCEQ on December 14, 2022, is inaccurate. As noted above, in response to the third question in the SPIF, Applicant indicated that "[p]roperty owner is the permittee" even though Developer owns the Plant Site and is not a co-applicant. In addition, the fifth question in the SPIF requires TPDES permit applicants to indicate whether their proposed project includes any of the following:

- proposed access roads, utility lines, construction easements;
- additional phases of development that are planned for the future;
- vibration effects during construction or as a result of project design; and
- disturbance of vegetation or wetlands.

The Application indicates that installation of the Proposed Plant includes only the first two of the foregoing effects, but there is no reason to believe that the development of an entirely

new residential subdivision and an "[a]pproximately 10 acre" Proposed Plant would not also involve the other two items in that list.¹²

10. Applicant failed to provide the information required by Section 8 of Domestic Technical Report 1.0.¹³ According to page 62 of the Instructions, Applicant should have "[p]rovide[d] the name, operator certification number, and class for the facility operator as listed in the Central Registry," or "[i]f the operation of the facility is provided by an operations company, provide[d] the name of the company and company's certificate number." Here, Applicant provided no operator information whatsoever, stating only that an operator "will be selected prior to construction." The lack of operator information is also at odds with other Application materials that indicate Applicant will be the operator of the Proposed Plant.¹⁴

11. There may be no need for the Proposed Plant. Because Applicant thwarted the required regionalization analysis by failing to indicate that City wastewater facilities already exist within less than three miles of the Proposed Plant, the Application lacks the communications and cost analyses necessary for TCEQ to adequately determine whether there is a need for the Proposed Plant.

12. The potentially unnecessary Proposed Plant is likely to create equally unnecessary nuisance odors. As the proposed development may be able to receive regionalized wastewater services, any nuisance odors emanating from the Proposed Plant would unnecessarily adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken, but 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.

13. Applicant indicated that buffer zone requirements will be met through ownership of the required buffer zone area,¹⁵ but, as described in more detail above, that area is not owned by Applicant, so that is not possible. The Application also fails to include the requisite buffer zone map for the Final phase of the Draft Permit.¹⁶

For the above-cited reasons, among others, the City requests that TCEQ deny the Application and decline to issue the Draft Permit.

IV. REQUEST FOR CONTESTED CASE HEARING

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by

¹² Application Administrative Report at 20.

¹³ Application Technical Reports at 12.

¹⁴ Application Attachment A – Core Data Form at 1 (Applicant indicated its role would be "Owner & Operator"); Compliance History Report at 1 (Applicant is twice identified as the "Owner/Operator").

¹⁵ Application Administrative report at 17; Application technical Reports at 5.

¹⁶ Application Attachment F – Buffer Zone Maps.

30 TAC § 55.203. The City has a personal justiciable interest related 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 issued. In determining whether a person is an affected person, 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; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application."¹⁷ TCEQ may also consider "the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance."¹⁸ All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

V. CONCLUSION

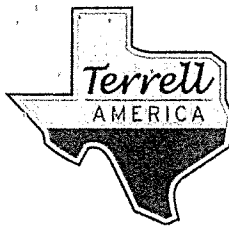
Given that additional information may become apparent through the public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City's Public Comments or Hearing Request.

Sincerely,


Mike Sims
City Manager

¹⁷ 30 TAC § 55.203(c).
¹⁸ *Id.* § 55.203(d).



Rick Carmona
Mayor

Mayrani Velazquez
Mayor Pro Tem
District 3

Stephanie Thomas
Deputy Mayor Pro Tem
District 4

Grady Simpson
Council Member
District 2

Phil Robison
Council Member
District 5

Mike Sims
City Manager

January 25, 2024

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

Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

RECEIVED

JAN 25 2024

AT PUBLIC MEETING

Re: **Public Comments and Request for a Contested Case Hearing**

Application by Moore Farm Water Control and Improvement District No. 1 (CN603248667, RN105348403, Water Districts Registration No. 5863500) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016274001 (EPA I.D. No. TX0143952)

Dear Ms. Gharis:

On behalf of the City of Terrell, Texas ("**City**"), please accept these timely filed public comments ("**Public Comments**") and request for a contested case hearing ("**Hearing Request**") regarding the application ("**Application**") by Moore Farm Water Control and Improvement District No. 1 ("**Applicant**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016274001 ("**Draft Permit**"). Please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Mike Sims, City Manager
City of Terrell
P. O. Box 310
Terrell, TX 75160

I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("**TCEQ**") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to technical review, the City further requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, Hearing Request, and any and all supplements and/or amendments thereto.

II. BACKGROUND

A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from a proposed partially prefabricated wastewater treatment facility (“**Proposed Plant**”) at an annual average flow not to exceed 1.6 million gallons per day (“**MGD**”). The Proposed Plant is intended to serve areas within the City’s extraterritorial jurisdiction (“**ETJ**”) from a plant site (“**Plant Site**”) located approximately 0.35 miles southwest of the intersection of County Road 243 and County Road 245 in Kaufman County, Texas 75160. The Plant Site is less than 0.5 miles from the City’s nearest corporate boundary and less than three miles from the City’s nearest existing wastewater infrastructure. According to the Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (“**Combined PM/NAPD**”), the proposed discharge route for the wastewater effluent is to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 2022 Integrated Report—Texas 303(d) List (“**303(d) List**”) of impaired and threatened waters for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH.

B. Procedural History

The Application was received by TCEQ on December 14, 2022, and TCEQ’s Executive Director (“**ED**”) declared it administratively complete on January 11, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (“**NORI**”) was issued that same day, and then published in English in *The Dallas Morning News* and in Spanish in *Al Día* on January 18, 2023. The Combined PM/NAPD was issued on December 12, 2023, and the next day, TCEQ’s Chief Clerk (“**Chief Clerk**”) filed it for publication in the *Texas Register*, where it appeared in English on December 22, 2023. Applicant published the Combined PM/NAPD in English in *The Dallas Morning News* and in Spanish in *Al Día* on December 20, 2023. As formally requested by State Representative Keith Bell, the ED has scheduled a public meeting, pursuant to 30 Texas Administrative Code (“**TAC**”) § 55.154, to provide an opportunity for the public to submit comments and/or ask questions about the Application and TCEQ to obtain public input thereon. Consequently, the current deadline to file public comments regarding the Application is January 25, 2024, at the close of said public meeting. Therefore, these Public Comments are timely filed.

III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) Applicant does not own the proposed Plant Site, but the owner of the Plant Site is not a co-applicant and the Application

lacks any documentation to demonstrate that Applicant has sufficient legal rights to operate the Proposed Plant at that location; (2) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code ("*TWC*"); (3) inconsistencies regarding the location of the proposed outfall give rise to concerns that the conditions in the Draft Permit will not adequately protect against nuisance odors or the negative impacts of the Proposed Plant on water quality, antidegradation, and stream standards; and (4) the Application contains numerous other deficiencies creating substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

A. The Application inaccurately indicates that Applicant owns the Plant Site and is deficient because it lacks the requisite co-applicant or deed recorded easement providing Applicant with adequate rights to operate the Proposed Plant thereon.

TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application ("*Instructions*") provide as follows regarding ownership of the land where a proposed treatment facility is to be located:

Important Note: More than one entity may be required to apply for the permit as co-applicant. . . . If the facility is considered a fixture of the land (e.g., ponds, units half-way in the ground), there are two options. The owner of the land can apply for the permit as a co-applicant or a copy of an executed deed recorded easement must be provided. The deed recorded easement must give the facility owner sufficient rights to the land for the operation of the treatment facility.¹

Similarly, TCEQ's TPDES permit application form includes Administrative Report 1.0, which states "[i]f the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement."² Here, the Proposed Plant will be a fixture of the land,³ yet the owner of the Plant Site is HWY. 205 FARM, LTD. ("*Developer*"),⁴ not Applicant. Nevertheless, Applicant misrepresented that fact in Section 9.D. of Administrative Report 1.0, claiming to be the "[o]wner of land where the treatment facility is or will be" and indicating that a

¹ Instructions at 30.

² TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report [hereinafter *Application Administrative Report*] at 8.

³ See, e.g., Fact Sheet and Executive Director's Preliminary Decision at 2; Application Administrative Report at 19 – 20; TCEQ-10054 (Jun. 1, 2007) Domestic Wastewater Permit Application, Technical Reports [hereinafter *Application Technical Reports*] at 1; Application Attachment I – Supplemental Technical Report; Application Attachment J – Flow Schematics.

⁴ Special Warranty Deed recorded on September 15, 2022, as Document Number 2022-0035103 in Volume 7808, Page 37 of the Official Public Records of Kaufman County, Texas; accord Kaufman Property Search, <https://esearch.kaufman-cad.org/> (click the green "By ID" button, type "3755" in the box beneath the "Property ID" heading, then hit "enter" on your keyboard or click the "Search" button in the bottom right corner of the navy blue search form; alternatively, click the "Interactive Map" hyperlink at the top of the Kaufman Property Search webpage, click the "I AGREE" button on the Kaufman County Appraisal District disclaimer, type any set of coordinates listed in the Application into the "Search Here:" box at the top left corner of the map, then hit "enter" on your keyboard or click the magnifying glass icon immediately to the right of the "Search Here:" box at the top left corner of the map).

lease agreement or deed recorded easement was “N/A,” as shown by the following excerpt from the Application:

D. Owner of land where treatment facility is or will be:	
Prefix (Mr., Ms., Miss): <u>Mr. & Mrs. [REDACTED]</u>	
First and Last Name: <u>Moore Farm WCID No. 1</u>	
Mailing Address: <u>14755 Preston Rd. Suite 600</u>	
City, State, Zip Code: <u>Dallas, TX 75254</u>	
Phone No.: <u>972-788-1600</u>	E-mail Address: <u>mkoehne@coatsrose.com</u>
If the landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement. See instructions.	
Attachment: <u>N/A</u>	

Applicant similarly misrepresented the facts in the Supplemental Permit Information Form (“*SPIF*”) received by TCEQ on December 14, 2022, which states “[p]roperty owner is the permittee.”⁵ Given that Applicant does not own the Plant Site, and because the Application contains no documentation evidencing that Applicant has sufficient legal rights to operate the Proposed Plant thereon, Developer should be a co-applicant. Nevertheless, Applicant not only falsely indicated that it owns the Plant Site but is also the sole entity applying for the Draft Permit. Consequently, the Application is inaccurate and deficient and should not be granted.

B. Approval of the Application and issuance of the Draft Permit would violate Texas’ legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.

The Application should be denied because issuance of the Draft Permit would contravene TCEQ’s statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas’s regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared “that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” In addition, the TWC contains numerous other

⁵ Application Administrative Report at 19.

provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it “is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater,” authorizes TCEQ, “[i]n considering the issuance, amendment, or renewal of a permit to discharge waste,” to “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” without regard to whether a given system has been “designated as such by [TCEQ] order.”
- TWC § 13.183(c), which provides that the Public Utility Commission (“*PUC*”) or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services “to encourage regionalization.”
- TWC § 13.241(d), which requires an applicant to “demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible” in order for PUC to grant “a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system.”⁶
- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in the Instructions, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”⁷ For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES applicants to justify the need for such a permit.⁸ As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.⁹ Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicant’s responses thereto are shown by the following excerpt from the Application:

⁶ Accord TWC § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that “regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).”).

⁷ Instructions at 67.

⁸ *Id.* at 54 – 55.

⁹ Application Technical Reports at 21–22.

3. Nearby WWTPs or collection systems

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☐

No ☒

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: N/A

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: N/A

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

Yes ☐

No ☐

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment: N/A

The Applicants' foregoing responses are inaccurate and incomplete. Specifically, the Application incorrectly indicates that there is no existing wastewater infrastructure within a three-mile radius of the Proposed Plant. The City's nearest wastewater collection facilities are located approximately 2.8 miles from the proposed Plant Site. As such, Applicant should have contacted the City to determine whether it could provide the proposed 1.6 MGD of wastewater treatment capacity, and if so, under what terms. Not only did Applicant decline to do so, but, to date, Developer has also failed to respond to the City's request for a meeting to discuss potential alternative means of providing service to the proposed service area contemplated by the Application. Likely as a consequence of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicant also failed to include copies of any communications with the City on that subject, let alone any analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application.

Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy.

C. The Application raises concerns that the proposed discharge will impair existing uses and/or quality of the receiving waters in contravention of TCEQ's antidegradation policy.

As indicated above, the Draft Permit authorizes the discharge of wastewater effluent to Little High Point Creek, thence to High Point Creek, thence to Big Brushy Creek, thence to Kings Creek in Segment No. 0818C of the Trinity River Basin, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. As an unclassified intermittent stream with perennial pools, the presumed uses for Little High Point Creek are primary contact recreation 1 and limited aquatic life use. As perennial streams, the presumed uses of High Point Creek, Big Brushy Creek, and Kings Creek are primary contact recreation 1 and high aquatic life use. Kings Creek is included in the 303(d) List for bacteria in the water. The designated uses for Cedar Creek Reservoir are primary contact recreation 1, public water supply, and high aquatic life use. Cedar Creek Reservoir is also included in the 303(d) List of impaired water bodies for pH. Thus, the City has concerns that the proposed discharge into Segment No. 0818 from a likely unnecessary treatment plant would impact water quality in that watercourse.

Specifically, the Application and Draft Permit raise concerns with the City that the proposed discharge will neither be in compliance with TCEQ's antidegradation policy nor maintain its current stream standard in the receiving water described by Applicant as having "exceptional" clarity.¹⁰ Pursuant to 30 TAC § 307.5, the proposed discharge is subject to said antidegradation policy and implementation procedures under Tier 1 and Tier 2. Therefore, before approving the Application, TCEQ must ensure that antidegradation will not occur as a result of the proposed discharge. Additionally, because Segment No. 0818 is an impaired water body on TCEQ's 303(d) List, the proposed discharge may unnecessarily further downgrade the segment's water quality if statutory and regulatory requirements for antidegradation and stream standards are not met. Thus, due to these additional concerns and the currently "exceptional" quality of the receiving water, the Application should be denied and the Draft Permit, in its present state, should not be issued.

Furthermore, the foregoing concerns are exacerbated by significant uncertainty as to the location of the proposed outfall and, as a consequence, the proper characterization of the receiving waters. Specifically, the precise location of the proposed outfall is not discernible from the Application. The "Receiving Water Assessment Determination Form for new and amended TPDES permit applications" (the "*RWA Determination Form*") states "coordinates are correct" and identifies the "Outfall Coordinates" as 32.804411, -96.309061. Those coordinates are also used to identify the latitude and longitude of the proposed outfall in Section 10.B. of Administrative Report 1.0 and the "Adjacent and Downstream Landowners" map, both received by the Water Quality Applications Team on December 14, 2022. However, the Core Data Form identifies such coordinates as the location for the Plant Site, and the Application materials include

¹⁰ Application Technical Reports at 32.

a screenprint from TCEQ's "Surface Water Quality Viewer" that shows such coordinates as being approximately 0.35 miles southwest of the stated intersection, which is consistent with the description of the Plant Site in the NORI and Combined NAPD. Furthermore, a one-page "Central Registry Internal Reporting" document included with the Application materials lists both 32.804444, -96.309166 and 32.804411, -96.30906 as coordinates for the Proposed Plant, and neither of those coordinates matches those shown by an electronic map of the general location of the Proposed Plant, accessible via a hyperlink provided in the NORI, which indicates that the coordinates for the Plant Site are 32.804859, -96.309166. Given the foregoing inconsistencies, the location of the proposed outfall, and thus the intended location of the immediate receiving waters for the proposed discharge, are unclear, which creates uncertainty as to the proper characterization of such receiving waters. As a result, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements.

D. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

The Application should be denied, or at a minimum, remanded to technical review as a result of the following additional deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

1. It is unclear whether Applicant complied with the general notice provisions set forth in 30 TAC § 39.405(g). According to the NORI and Combined PM/NAPD, the Application should be "available for viewing and copying at Riter C. Hulsey Public Library, 301 North Rockwall Avenue, Terrell, Texas." This is consistent with 30 TAC § 39.405(g)(1) – (2), which provide as follows: "The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. . . . A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of [the NORI] and remain available for the publications' designated comment period . . . A copy of the complete application (including any subsequent revisions to the application) and [the ED]'s preliminary decision must be available for review and copying beginning on the first day of newspaper publication . . . and remain available until the commission has taken action on the application or the commission refers issues to [SOAH]."¹¹ Though the public comment period closes on January 25, 2024, and TCEQ's commissioners are not yet scheduled to act on the Application, on January 4, 2024, when the City contacted the Riter C. Hulsey Public Library regarding the Application, it was not available for viewing or copying. Therefore, there is reason to believe that Applicant failed to comply with the foregoing notice requirements imposed by TCEQ.

¹¹ Accord 30 Tex. Admin. Code § 39.411(b)(8) (the NORI must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying"), 39.411(c)(5) (the NAPD must include "the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying").

2. Given the uncertainty as to the locations of the Proposed Plant and associated outfall, the Application should have been made available for public review in both Kaufman and Rockwall Counties. As shown by the "Service Area Map" included as Attachment K to the Application, the service area for the Proposed Plant extends into both Kaufman and Rockwall Counties. According to Section 8.D. of Administrative Report 1.0, "[i]f the facility or outfall is located in more than one county, a public viewing place for each county must be provided." Similarly, the Check List for Admin Review of Municipal Application for Permit (the "**Admin Review Check List**") states "[i]f discharge is directly into water body that borders two counties, application must be placed in a public facility in both counties and the notice must be published in both counties." Here, since it is unclear whether the facility or outfall is located in more than one county, as described above, but there is no doubt that the service area for the Proposed Plant includes areas in two counties, a copy of the Application should have been available for review in both such counties (Rockwall and Kaufman).
3. The Application materials are inconsistent with regard to whether the Proposed Plant is a major or minor facility. According to the Admin Review Check List, "[a] minor facility is generally one in which the final flow is less than 1.0 MGD." That is consistent with the criteria reiterated on pages 73, 88, and 98 of the Instructions, all of which clarify that a facility with a treatment capacity of less than 1.0 MGD is considered minor. Here, however, despite the fact that the Admin Review Check List correctly indicates that Applicants have requested authorization to discharge up to 1.6 MGD, that same document describes the Proposed Plant as a minor facility. Conversely, the "MUNICIPAL MAJOR/MINOR DETERMINATION" document dated August 26, 2023, classifies the Proposed Plant as a major facility. As such, it is unclear whether the Proposed Plant is a major or minor facility, and TCEQ may not have had accurate information upon which to base its decisions related to the Application.
4. The Admin Review Check List contains additional deficiencies and inconsistencies. As shown by the following excerpt, and even though the Application seeks authorization for a new surface water discharge, the Admin Review Check List indicates that a receiving water assessment determination was not completed as part of the Application review process.

<input type="checkbox"/> For new and major amendment applications that propose surface water discharge, the standards review for RWA comments is included.
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Nevertheless, an RWA Determination Form was completed by Standards Reviewer B. M. Lee on December 29, 2022, and is included among the Application materials. Given such discrepancy and the fact that the RWA Determination Form creates confusion as to the location of the Proposed Plant and outfall, there is reason to believe that neither the Admin Review Check List nor the RWA Determination Form may be reasonably relied upon. Similarly, the Admin Review Check List incorrectly provides as follows:

SECTION 3 FACILITY OWNER (APPLICANT) AND CO-APPLICANT

- ☒ Legal name of applicant is listed (*the owner of the facility must apply for the permit*)
- ☐ Legal name of co-applicant is listed (*if required to apply with facility owner*)
- ☒ Core Data Form (CDF) is provided. A separate CDF is required for each customer.

The foregoing excerpt not only demonstrates that the Application was deemed administratively complete despite the fact that Developer, a required co-applicant in this instance, is not listed in the Application but also incorrectly indicates that a Core Data Form was provided for "each customer" when such form was only submitted for Applicant. The Admin Review Checklist also incorrectly indicates that the owner of the land where the Proposed Plant will be located "is the **SAME** as the [A]pplicant." As described in more detail above, this simply is not the case. Rather, the owner of the site for the Proposed Plant is Developer, not Applicant. As such, the Admin Review Check List dictates that "[a] copy of a lease agreement or easement, with a term for the duration of the permit, between applicant and landowner" should have been provided or the Developer should have applied as a co-permittee, neither of which is the case in this instance.

5. It is unclear whether the EPA approved the Draft Permit as required by a TCEQ/EPA Memorandum of Understanding referenced in a letter from Mr. Firoj Vahora, Leader of TCEQ's Municipal Permits Team, to Ms. Evelyn Rosborough of EPA's Region 6 office. According to such letter, Ms. Rosborough was to "provide any written comments, objections (general or interim) or recommendations with respect to the [D]raft [P]ermit within forty-five days from the receipt" thereof. However, because the Draft Permit was transmitted to Ms. Rosborough via the above-referenced letter, which is undated, and TCEQ's file for this Application contains no responsive communications from Ms. Rosborough, the City is concerned that EPA approval of the Draft Permit may not have been obtained as required.
6. Similarly, it is unclear whether TCEQ's Region 4 office responded to the Request for Comments on Draft Permit included in TCEQ's Application files. Such request contradictorily states: "Comment Deadline: Within 7 days" as well as "Please return comments ASAP, but no later than the comments deadline, which is 10 days from the submittal date." As said Request for Comments on Draft Permit is undated and TCEQ's file for this Application contains no responsive communications from its Region 4 offices, the City is concerned that Region 4 may not have commented on the Draft Permit as required.
7. Information provided in additional documentation transmitted to Ms. Rosborough via the above-referenced letter was inaccurate. Specifically, the NPDES Certification Checklist indicates that the Proposed Plant does not discharge any of the pollutants of concern identified in the 303(d) List for Segment No. 0818. This is inaccurate, though consistent with the Municipal EPA Review Checklist, where it is incorrectly indicated that the proposed discharge does not have the potential to discharge any pollutant that is causing or contributing to the impairment of a segment on the 303(d) List. Instead, Kings Creek, in

Segment No. 0818C, is impaired by bacteria in the water, and Cedar Creek Reservoir, in Segment No. 0818, is impaired by pH. The ED's Decision Document even includes comments stating that the Proposed Plant "should not" contribute to "the bacterial impairment" of Kings Creek or "the pH impairment of the segment." Having been denied that information, EPA lacked the notice necessary to ensure it could complete a sufficiently comprehensive review of the Draft Permit.

8. The Fact Sheet and Executive Director's Preliminary Decision document ("**Decision Document**") relies upon outdated information, calling into question the determinations therein. Specifically, the Decision Document states that "[t]he 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," and explains that "[t]his determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update)" ("**Biological Opinion**"). With respect to whether the proposed discharge would affect endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat, the Biological Opinion is out of date. New information and changed circumstances regarding the Barton Springs Salamander require that EPA and the United States Fish and Wildlife Service fulfill their duty to reinstitute formal consultation regarding the approval of the State of Texas's application to administer the National Pollutant Discharge Elimination System program in accordance with 50 Code of Federal Regulations § 402.16. The range of the Barton Springs Salamander is now known to be more extensive than considered at the time of delegation, which demonstrates that the exercise of NPDES permitting authority by TCEQ will impact the Barton Springs Salamander in a manner, and to an extent, not previously considered. As such, the City is concerned that, issuance of the Draft Permit has the potential to negatively affect threatened or endangered species.
9. Information in the SPIF, received by TCEQ on December 14, 2022, is inaccurate. As noted above, in response to the third question in the SPIF, Applicant indicated that "[p]roperty owner is the permittee" even though Developer owns the Plant Site and is not a co-applicant. In addition, the fifth question in the SPIF requires TPDES permit applicants to indicate whether their proposed project includes any of the following:
 - proposed access roads, utility lines, construction easements;
 - additional phases of development that are planned for the future;
 - vibration effects during construction or as a result of project design; and
 - disturbance of vegetation or wetlands.

The Application indicates that installation of the Proposed Plant includes only the first two of the foregoing effects, but there is no reason to believe that the development of an entirely

new residential subdivision and an “[a]pproximately 10 acre” Proposed Plant would not also involve the other two items in that list.¹²

10. Applicant failed to provide the information required by Section 8 of Domestic Technical Report 1.0.¹³ According to page 62 of the Instructions, Applicant should have “[p]rovide[d] the name, operator certification number, and class for the facility operator as listed in the Central Registry,” or “[i]f the operation of the facility is provided by an operations company, provide[d] the name of the company and company’s certificate number.” Here, Applicant provided no operator information whatsoever, stating only that an operator “will be selected prior to construction.” The lack of operator information is also at odds with other Application materials that indicate Applicant will be the operator of the Proposed Plant.¹⁴
11. There may be no need for the Proposed Plant. Because Applicant thwarted the required regionalization analysis by failing to indicate that City wastewater facilities already exist within less than three miles of the Proposed Plant, the Application lacks the communications and cost analyses necessary for TCEQ to adequately determine whether there is a need for the Proposed Plant.
12. The potentially unnecessary Proposed Plant is likely to create equally unnecessary nuisance odors. As the proposed development may be able to receive regionalized wastewater services, any nuisance odors emanating from the Proposed Plant would unnecessarily adversely affect the quality of life of nearby residents and the public. In accordance with 30 TAC § 309.13(e), Applicant must demonstrate that sufficient measures to prevent nuisance odors will be undertaken, but 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.
13. Applicant indicated that buffer zone requirements will be met through ownership of the required buffer zone area,¹⁵ but, as described in more detail above, that area is not owned by Applicant, so that is not possible. The Application also fails to include the requisite buffer zone map for the Final phase of the Draft Permit.¹⁶

For the above-cited reasons, among others, the City requests that TCEQ deny the Application and decline to issue the Draft Permit.

IV. REQUEST FOR CONTESTED CASE HEARING

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by

¹² Application Administrative Report at 20.

¹³ Application Technical Reports at 12.

¹⁴ Application Attachment A – Core Data Form at 1 (Applicant indicated its role would be “Owner & Operator”); Compliance History Report at 1 (Applicant is twice identified as the “Owner/Operator”).

¹⁵ Application Administrative report at 17; Application technical Reports at 5.

¹⁶ Application Attachment F – Buffer Zone Maps.

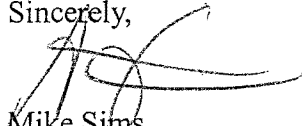
30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ 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; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.”¹⁷ TCEQ may also consider “the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance.”¹⁸ All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

V. CONCLUSION

Given that additional information may become apparent through the public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City’s Public Comments or Hearing Request.

Sincerely,



Mike Sims
City Manager

¹⁷ 30 TAC § 55.203(c).

¹⁸ *Id.* § 55.203(d).

①

TCEQ Registration Form

January 25, 2024

Moore Farm Water Control and
Improvement District No. 1
Proposed TPDES Permit No. WQ0016274001

PLEASE PRINT

Name: Mike Sims

Mailing Address: 201 E Nash Terrell TX 75160

Physical Address (if different): _____

City/State: Terrell Zip: 75160

****This information is subject to public disclosure under the Texas Public Information Act****

Email: Mike.Sims@cityofterrell.org

Phone Number: (214) 397 8196

- Are you here today representing a municipality, legislator, agency, or group? ☒ Yes ☐ No

If yes, which one? City of Terrell

☒ Please add me to the mailing list.

☒ I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

☒ I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.