

TCEQ Docket No. 2025-1554-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
PHHOU - BENTON ROAD 200, LLC	§	ON
FOR TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0016570001	§	

**PHHOU – BENTON ROAD 200, LLC’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND RECONSIDERATION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

Applicant Phhou – Benton Road 200, LLC (the “Applicant”) files this Response to Requests for Contested Case Hearing and Reconsideration (“Response”), and in support thereof, would respectfully show the following:

I. Introduction

The Applicant has applied to the Texas Commission on Environmental Quality (“TCEQ” or the “Commission) for Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0016570001 (the “Permit”), which will authorize the construction and operation of a new wastewater treatment plant (“Proposed Facility”) for the management of treated domestic wastewater within the Applicant’s service area near the City of Rosenberg in Fort Bend County, Texas. The Proposed Facility is needed to support a 200.4-acre development and will ultimately serve 519 residential lots.

Domestic wastewater will be treated at the Proposed Facility by an activated sludge process plant and the treatment units will include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. Under the terms of the draft permit issued by the Executive Director (“ED”) of the TCEQ (the “Draft Permit”), the Proposed Facility would be

authorized to discharge treated effluent at an Interim volume not to exceed a daily average flow of 0.1 million gallons per day (“MGD”) and a Final volume not to exceed a daily average flow of 0.2 MGD. The treated discharge from the Proposed Facility would be via pipe to Gapps Slough, thence to House Bayou, thence to Rabbs Bayou, thence to Big Creek, thence to the Navasota River in Segment No. 1202 of the Brazos River Basin. The designated uses for Segment No. 1202 are primary contact recreation, public water supply, and high aquatic life use.

II. Procedural History

The Applicant’s July 10, 2024, permit application (the “Application”) was declared administratively complete on August 16, 2024. On August 22, and August 28, 2024, the Applicant published Notice of Receipt and Intent to Obtain Water Quality Permit (“NORI”) in English and Spanish. On March 3, 2025, the Executive Director issued a Notice of Application and Preliminary Decision (“NAPD”). The NAPD stated that the ED had completed the technical review and had issued the Draft Permit. The ED issued a Response to Public Comment (“RTC”) on July 21, 2025, fully responding to all public comments and rendering her decision that the Application met all the requirements of applicable law.

III. The Requests for a Contested Case Hearing and Reconsideration Should be Denied

A. Legal Standard for Requesting a Contested Case Hearing

Under Section 55.201(c) of the TCEQ’s rules, a valid request for a contested case hearing must be: (1) made by an affected person, (2) be timely filed, and (3) be based solely on the requestor’s timely filed comments.¹ Each of these three prongs is a mandatory requirement, and the request must fail if there is a failure in meeting any one of them.

¹ 30 TEX. ADMIN CODE § 55.201(c).

1. Affected Person

Compliance with TCEQ's rules is essential because the Texas Legislature, in enacting the Texas Water Code, only allows an "affected person" the opportunity to be granted a contested case hearing on permit applications.² The Texas Legislature narrowly defined the universe of "affected persons" to only those persons who have "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing."³ Critically, "[a]n interest common to members of the general public does not qualify as a personal justiciable interest."⁴ The burden of demonstrating affected person status is on the person seeking such status.⁵ To meet that burden, "the complainant must show that a concrete, particularized, actual or imminent injury faces him or her due to the decision; a hypothetical or speculative injury is not enough."⁶

Additionally, the Commission adopted rules specifying the factors that must be considered in determining whether a person is an affected person. Those factors are:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of that person;
- 5) likely impact of the regulated activity on use of the impacted natural resource by the person;

² See TEX. WATER CODE §§ 5.556(c); 5.115.

³ TEX. WATER CODE § 5.115(a); *see also* 30 TEX. ADMIN. CODE § 55.203(a).

⁴ TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a).

⁵ *Texas Commission on Environmental Quality v. San Antonio Bay Estuarine Waterkeeper*, 715 S.W.3d 720, 284 (Tex. App.—15 Dist. 2025) (citing *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008)).

⁶ *Id.*

- 6) for a hearing request on an application filed on or after September 1, 2025, whether the requestor timely submitted comments on the application that were not withdrawn; and
- 7) for governmental entities, their statutory authority over interest in the issues relevant to the application.⁷

The Commission may also consider information and analyses in the record in determining whether a person is an affected person, including:

- 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.⁸

In considering evidence to apply the above factors to a given request, the Third Court of Appeals explained that "TCEQ enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity . . . will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources."⁹ TCEQ's application of the factors described above "may include reference to the permit application, attached expert reports, the analysis and opinions of professionals on its staff, and any reports, opinions, and data it has before it."¹⁰ In making these determinations, the court was applying the Texas Supreme Court's 2013 decision in *Texas Commission on Environmental*

⁷ 30 TEX. ADMIN. CODE § 55.203(c).

⁸ 30 TEX. ADMIN. CODE § 55.203(d).

⁹ *Sierra Club v. Tex. Comm'n on Env'tl. Quality*, 455 S.W.3d 214, 223–24 (Tex. App.—Austin 2014, pet. denied).

¹⁰ *Id.* at 224.

Quality v. City of Waco, which affirmed TCEQ’s discretion to rely on such information in making an affected person determination.¹¹

2. *Timely Filed*

Unless the Commission finds “a hearing would be in the public interest,”¹² a request for a contested case hearing shall not be granted unless it is “timely filed with the chief clerk.”¹³

Requests for a contested case hearing must come after the ED issues the RTC. According to the TCEQ’s rules, “[a] request for reconsideration or contested case hearing *must be filed no later than 30 days after the chief clerk mails* (or otherwise transmits) *the executive director’s decision and response to comments* and provides instructions for requesting that the commission reconsider the executive director’s decision or hold a contested case hearing.”¹⁴ This temporal limitation functions to align with the requirement that a contested case hearing request should, among other requirements, “specify any of the executive director’s responses to the requestor’s comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law.”¹⁵

3. *Content of Request*

In addition to requiring timely filed comments by an affected person, the content of the comments is prescribed, in part, by the TCEQ’s rules. Critically, for applications filed on or after September 1, 2015, requestors must “list all relevant and material disputed issues of fact that were

¹¹ See *Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 420–21 (Tex. 2013).

¹² See 30 TEX. ADMIN. CODE § 55.211(d)(1).

¹³ 30 TEX. ADMIN. CODE § 55.211(c)(2)(B).

¹⁴ 30 TEX. ADMIN. CODE § 55.201(a) (emphasis added).

¹⁵ 30 TEX. ADMIN. CODE § 55.201(d)(4)(B).

raised by the requestor during the public comment period and that are the basis of the hearing request.”¹⁶

Furthermore, a request must include the address of the requester, a “written statement explaining in plain language the requester’s location and distance relative to the proposed facility” and explain “how and why the requester 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.”¹⁷

Finally, any concerns raised about issues outside the jurisdiction of the Commission “cannot [be] consider[ed].”¹⁸

B. The Requests of Ms. Wang Should be Denied

The request submitted by Ms. Wang for a contested case hearing was legally deficient for two reasons: (1) the request was not timely filed; and (2) Ms. Wang fails to meet her burden to demonstrate affected person status. Furthermore, Ms. Wang raises numerous issues that are beyond the Commission’s jurisdiction to consider, including the impact of the Proposed Facility on flooding risk and property values. While Ms. Wang raises some issues that are within the Commission’s jurisdiction to consider, she entirely failed to demonstrate how her asserted interests are not common to the general public.

1. Ms. Wang’s Public Comments

Ms. Wang made three public comments to the Commission both within and without the designated public comment periods.¹⁹ First, Ms. Wang submitted a public comment and request

¹⁶ 30 TEX. ADMIN. CODE § 55.201(f).

¹⁷ 30 TEX. ADMIN. CODE § 55.201(d)(1)–(2).

¹⁸ TCEQ, *Issues Outside TCEQ’s Jurisdiction: Answer to Public Comments We Receive*, Nov. 2024 at 1, <https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf>.

¹⁹ See 30 TEX. ADMIN. CODE § 55.152(a) (“Public comments must be filed with the chief clerk within the time period specified in the notice.”).

for public meeting on March 8, 2025 (the “First Comment”),²⁰ which came within the 30-day public comment period following the NAPD. Second, Ms. Wang submitted a public comment and request for public meeting on June 11, 2025 (the “Second Comment”),²¹ 71 days after the 30-day public comment period following the NAPD. Third, Ms. Wang submitted a public comment and request for contested case hearing on June 12, 2025 (the “Third Comment”),²² 72 days after the 30-day public comment period following the NAPD and 39 days before the RTC was issued and the associated 30-day comment period began.

2. *Ms. Wang Did Not Timely File a Request for a Contested Case Hearing*

A request for a contested case hearing must be timely filed.²³ That time period is “no later than 30 days *after the chief clerk mails . . . the executive director’s decision and response to comments.*”²⁴ Further, the “request for contested case hearing . . . must be filed with the chief clerk within the time period provided by subsection (a) of this section.”²⁵ The regulation is clear, a request for a contested case hearing must be filed within the time period described by the rule that begins after the ED’s decision and RTC are mailed out, not before. Functionally, this requirement facilitates compliance with the companion requirement to “specify any of the executive director’s responses to the requestor’s comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law.”²⁶ This companion requirement is an important part of the rule and gives the ED and other parties to the case an explanation as to why the requestor is seeking a contested case hearing. Its effectiveness, however, is based on compliance with filing the request

²⁰ Lili Wang, First Comment, March 8, 2025.

²¹ Lili Wang, Second Comment, June 11, 2025.

²² Lili Wang, Third Comment, June 12, 2025.

²³ 30 TEX. ADMIN. CODE § 55.201(c).

²⁴ 30 TEX. ADMIN. CODE § 55.201(a).

²⁵ 30 TEX. ADMIN. CODE § 55.201(c).

²⁶ 30 TEX. ADMIN. CODE § 55.201(d)(4)(B).

within the time period specified by subsection (a) of the rule. A request that does not substantially comply with that requirement violates TCEQ's rules.²⁷

Ms. Wang filed her request for a contested case hearing on June 12, 2025, 39 days before the ED issued her decision and RTC.²⁸ Ms. Wang's request was not within the 30-day period *after* the Chief Clerk mailed the ED's decision and RTC. As a result, her request could not and did not respond to "the executive director's responses," as required by 30 Tex. Admin. Code ("TAC") § 55.201(d)(4)(B). Ms. Wang's request, therefore, is not a timely filed contested case hearing request and should be denied.

3. *The Contents of Ms. Wang's Untimely Request*

As noted above, a hearing request must "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."²⁹ In Ms. Wang's untimely hearing request, she describes four disputed issues as the basis for her hearing request: (1) drainage and flooding; (2) potential odor; (3) air quality impacts; and (4) and property value loss.³⁰ Three of these four issues were raised in Ms. Wang's only timely comment—her First Comment.³¹ The air quality issue was not raised in any timely comments she filed, nor is it an issue for consideration in this wastewater discharge permitting

²⁷ See 30 TEX. ADMIN. CODE § 55.201(d).

²⁸ See Third Comment, at 1. Ms. Wang's Second Comment initially requests a public meeting but ends with a request for a "formal public meeting and hearing." Lili Wang, Second Comment, June 11, 2025. For the same reasons described below that Ms. Wang's request for hearing in her Third Comment is untimely, her request for hearing in the Second Comment is untimely. Moreover, none of the issues she raises in the Second Comment request can form the basis of a hearing request. She raises stormwater and flood risk concerns, which are not within the TCEQ's jurisdiction and financial responsibility of Applicant concerns, which were not previously raised in a timely comment. See Lili Wang, First Comment, March 8, 2025.

²⁹ 30 TEX. ADMIN. CODE § 55.201(f).

³⁰ Lili Wang, Third Comment, June 12, 2025. Ms. Wang's request also represents that her "property directly borders the proposed development site." *Id.* The Applicant does not dispute this point, but to clarify however, her property does *not* border the Proposed Facility. Exhibit 1-A (Benton Road Area Map).

³¹ Lili Wang, First Comment, March 8, 2025.

case.³² Consequently, if the Commission determines that Ms. Wang’s request is timely, analysis of her hearing request should be based only on the following issues (1) drainage and flooding; (2) potential odor; (3) and property value loss

4. *Ms. Wang Fails to Demonstrate Affected Person Status*

Ms. Wang’s request for a contested case hearing is also deficient because Ms. Wang failed to meet her burden to demonstrate affected person status. Affected person status is afforded only to those who identify a “personal justiciable interest” that is “not common to members of the general public.”³³ As the Fifteenth Court of Appeals recently found, “[a] ‘personal justiciable interest’ not common to members of the ‘general public’ is the cornerstone of [the Texas Water Code’s] ‘affected person’ definition.”³⁴ Without a stated interest, the Commission is left with little to evaluate by way of the relationship between the proposed activity and the protected interest.³⁵ As the Texas courts have held, the burden to demonstrate affected person status is on the seeking party.³⁶ Imputing or inferring an interest on a party who does not expressly claim one would impermissibly shift this burden, and the Commission, like courts, “cannot presume or create standing . . . even for equitable reasons.”³⁷

A request for contested case hearing can only be based on timely comments.³⁸ Ms. Wang’s only timely comment was her First Comment, dated March 8, 2025. Her Second and Third

³² *Id.*; Executive Director’s Response To Comments; *see also* TCEQ, *Issues Outside TCEQ’s Jurisdiction: Answer to Public Comments We Receive*, Nov. 2024 at 1, <https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf>

³³ 30 TEX. ADMIN. CODE § 55.201(d)(1)–(2).

³⁴ *Texas Commission on Environmental Quality v. San Antonio Bay Estuarine Waterkeeper*, 715 S.W.3d 720, 286 (Tex. App—15 Dist. 2025).

³⁵ 30 TEX. ADMIN. CODE § 55.203(c).

³⁶ *TCEQ v. San Antonio Bay Estuarine Waterkeeper*, 715 S.W.3d 720, 284 (Tex. App—15 Dist. 2025).

³⁷ *State v. Naylor*, 466 S.W.3d 783, 796 (Tex. 2015) (Boyd, J., concurring). *See id.* at 791 (majority op.) (courts are not empowered to “create standing where none exists”).

³⁸ 30 TEX. ADMIN. CODE § 55.201(c).

Comments are untimely because they were not filed within the comment periods of either the NORI or NAPD.³⁹ Thus, they cannot be the bases for a hearing request and should not be considered for determining affected person status in connection with her request.

Ms. Wang's request for hearing raises a couple of issues beyond the TCEQ's jurisdiction: (1) concerns about flooding and drainage and (2) concerns about effects on property values.⁴⁰ For this proceeding, these asserted interests are irrelevant and cannot serve as bases for affected person status.⁴¹

Thus, the only issue Ms. Wang raises in her hearing request that such a request can be based on are odor concerns. That issue is addressed in more detail below.

a) Potential Odor Concerns

Ms. Wang's First Comment (dated March 13, 2025) is the basis for her hearing request. In that comment, she noted that she is "a homeowner within 0.5 miles of the discharge site" and that "Residents in the area may face odors" that could impact property values and quality of life.⁴² Her vague odor concerns, however, do not establish that Ms. Wang is entitled to affected party status because she fails to address the likelihood of her experiencing such odors or explain how potential odors may affect her, let alone how her interests would be affected in a manner not common to the general public. In fact, her statement is in terms of "residents in the area," which does not

³⁹ See *supra* at § III.B.1., pp.6-7.

⁴⁰ See First Comment, at 1-2.

⁴¹ TCEQ, *Issues Outside TCEQ's Jurisdiction: Answer to Public Comments We Receive*, Nov. 2024 at 1, <https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf>.

⁴² Lili Wang, First Comment, March 8, 2025. Although Ms. Wang's home may be within 0.5 miles of the discharge site, her property is not located along the proposed discharge route, nor did she describe as part of her comments any personal uses of or recreational interests in the waters along the discharge route she may have. *Id.*; Exhibit 1A (Benton Road Area Map).

distinguish her interests from the public's. Simply stating vague concerns about odor is insufficient to establish affected person status.

The Commission may also consider information and analyses in the record in determining whether a person is an affected person.⁴³ In this case there are matters that go to the merits of the underlying Application that demonstrate odors from the Proposed Facility will likely not affect Ms. Wang's property.

First, a summary diagram of prevailing wind patterns from nearly thirty years of data contained in the Application demonstrates that Ms. Wang's property is upwind of the Proposed Facility.⁴⁴ The prevailing winds are from the South-Southeast quadrant with another significantly smaller component of prevailing winds from the North. The Proposed Facility will be located West of Ms. Wang's property.⁴⁵ Thus, any potential odors from the Proposed Facility would have little to no effect on Ms. Wang's property because prevailing wind patterns would direct any odors away from her property.⁴⁶

Second, the ED's analysis led to her opinion that "nuisance odor is not expected to occur as a result of the permitted activities at the facility."⁴⁷ Under the TCEQ's rules, wastewater treatment plants must have a "buffer zone" of 150 feet to abate and control nuisance odors.⁴⁸ The Applicant owns the buffer zone property, which extends out 150 feet from the Proposed Facility units in all directions,⁴⁹ including between the Proposed Facility and Ms. Wang's property. Ms.

⁴³ See *supra* § III (A) (1), pp. 3-5.

⁴⁴ Exhibit 1 (Affidavit of Jonathan Nguyen) at 1-2; Exhibit 1-B (Windrose plot for [SGR] Houston/Hill Field); Application, at Attachment R.

⁴⁵ Exhibit 1-A (Benton Road Area Map).

⁴⁶ Exhibit 1-B (Windrose plot for [SGR] Houston/Hill Field).

⁴⁷ Executive Director's Response to Comments, Response 4.

⁴⁸ 30 TEX. ADMIN. CODE § 309.13(e).

⁴⁹ Application, Attachment R, July 10, 2024.

Wang’s comment does not challenge whether the Proposed Facility will meet the buffer zone requirements, which TCEQ promulgated to address potential nuisance odors from such facilities.⁵⁰

Additionally, though not mentioned in the RTC, the Proposed Facility will utilize an activated sludge process.⁵¹ The ED has routinely acknowledged when properly treated with an activated sludge process, domestic wastewater “is not expected to have offensive odors.”⁵²

Accordingly, Ms. Wang should not be considered an affected person on the basis of odor impacts because the likelihood of effects on her property associated with potential odors from the Proposed Facility are remote, “hypothetical or speculative,” and not “concrete, particularized, actual or imminent,” as required under Texas law.⁵³

IV. The Request of Mr. Chen Should be Denied

Mr. Chen commented on his *support* for the request for a “public hearing” filed by Ms. Wang. He does not request a contested case hearing for himself.⁵⁴ Instead, he requests the Commission grant Ms. Wang’s hearing request. Accordingly, the Commission should acknowledge that Mr. Chen is not requesting affected party status for himself.

If the Commission views Mr. Chen’s support for Ms. Wang’s request for a public hearing as a request for a contested case hearing for himself, the Commission should deny his request.

⁵⁰ Lili Wang, First Comment, March 8, 2025.

⁵¹ Application, Supplemental Technical Report for the Wastewater Treatment Plant Domestic Wastewater Permit, at 1.

⁵² See e.g., Texas Commission on Environmental Quality, *Executive Director’s Response to Public Comment, TPDES Permit No. WQ0016334001*, Nov. 21, 2024.

⁵³ *Texas Commission on Environmental Quality v. San Antonio Bay Estuarine Waterkeeper*, 715 S.W.3d 720, 284 (Tex. App—15 Dist. 2025) (citing *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008)).

⁵⁴ Richard Chen, Support for Hearing Request – TPDES Permit No. WQ0016570001 (PHHOU Benton Road 200, LLC), Oct. 31. 2025.

As an initial matter, Mr. Chen did not timely file his request. Mr. Chen filed his request on October 31, 2025, well outside of the 30-day window following the ED’s publication of the RTC. The ED published the RTC on July 21, 2025. Thus, the 30-day window ended on August 20, 2025.

Additionally, Mr. Chen failed to identify any personal justiciable interest affected by the Application, failed to explain his distance relative to the Proposed Facility, and failed to explain how and why he believes he will be adversely impacted by the Proposed Facility in a manner not common to members of the general public as required by the TCEQ’s rules.⁵⁵ Furthermore, Mr. Chen did not list any relevant or material disputed facts as the basis for his hearing request, and did not specify any of the executive director’s responses to comments that he disputes, as required by the TCEQ’s rules.⁵⁶ Thus, Mr. Chen cannot be granted affected person status.

Since Mr. Chen’s “support [for] the request for a public hearing filed by Ms. Lili Wang” was not timely filed, does not provide any indication of how he could meet his burden of demonstrating he has a personal justiciable interest not common to members of the public, and does not substantially comply with the TCEQ’s rules for a request for a contested case hearing, the Commission should deny his request.

V. Potential Issues for Referral

To the extent the Commission determines that the requestor is an affected person, the Commission must determine which issues should be referred to the State Office of Administrative Hearings (“SOAH”) for consideration in a contested case hearing.⁵⁷ The Commission is required to limit the number of and scope of issues that are referred to SOAH for hearing.⁵⁸

⁵⁵ 30 TEX. ADMIN. CODE § 55.201(d)(2).

⁵⁶ 30 TEX. ADMIN. CODE §§ 55.201(d)(3), (d)(4).

⁵⁷ See TEX. WATER CODE § 5.556(d), (e).

⁵⁸ *Id.*

The issues within the TCEQ's jurisdiction raised in the hearing request of one or more of the requestors have been addressed by the Application, the ED's RTC, and this response, including its supported affidavit. The Applicant firmly believes that none of the issues within the TCEQ's jurisdiction raised by the requestor should be referred to SOAH for a contested case hearing, as demonstrated below:

A. Water Quality Degradation and Potential Impact on Fish, Other Aquatic Life, Agriculture, and Wildlife Along the Discharge Route

Ms. Wang raised water quality degradation as a concern related to a potential increase in the nutrient load of Gapps Slough and the Brazos River.⁵⁹ Ms. Wang also expressed concern about the potential impact of the proposed discharge on fish, other aquatic life, agriculture, and wildlife along the discharge route.⁶⁰ As detailed in the ED's RTC, "[t]he draft permit was developed to be protective of human health and the environment."⁶¹ Critically, the Executive Director pointed to the antidegradation review conducted by the Commission, "which involves a series of rigorous technical reviews by various subject matter experts to ensure the effluent limits in the draft permit are set to maintain and protect existing instream uses and not cause degradation of receiving waters."⁶² As part of the review, the TCEQ "evaluated the potential for the discharge to impact water quality through the introduction of pollutants."⁶³ As a result, "[r]equirements were added to the draft permit for any pollutants that were determined to have the potential to adversely affect water quality."⁶⁴ Additionally, "Executive Director staff reviewed the potential for discharge to

⁵⁹ See First Comment, at 1, and Executive Director's Response to Comments, Comment 1.

⁶⁰ Executive Director's Response to Comments, Comment 2.

⁶¹ Executive Director's Response to Comments, Response 1.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

create instream eutrophic conditions using the methodology outlined in the Procedures to Implement the Texas Surface Water Quality Standards (IPs) (RG-194).”⁶⁵

The above-described analysis led the ED to the opinion that total phosphorus effluent limits “were not warranted for this permit action” and that “[a]s written, the draft permit will sufficiently control nutrient levels in the discharge.”⁶⁶ Additionally, the ED expressed the opinion that the treated effluent will be protective of human and animal health.⁶⁷ Applicant agrees with the ED’s conclusions regarding the protectiveness of the discharge and the Draft Permit. Accordingly, it is the Applicant’s position that this issue is not relevant and material and should not be referred to SOAH.

If the Commission refers this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: “Whether the draft permit is protective of existing uses of the receiving waters, aquatic life, flora, and fauna, in accordance with applicable regulations.”

B. Public Health Impacts and Potential Contamination of Water Used for Recreation and Drinking

Ms. Wang raised concerns related to public health impacts and the potential contamination of water used for recreation and drinking.⁶⁸ As detailed in the ED’s RTC, “the proposed draft permit was developed in accordance with the statutes and rules [of the State of Texas] to be protective of water quality.”⁶⁹ According to the RTC, the ED conducted a two-tier antidegradation review. Tier 1 of the review “preliminarily determined that existing water quality uses will not be impaired by

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Executive Director’s Response to Comments, Response 2.

⁶⁸ Executive Director’s Response to Comments, Comment 3.

⁶⁹ Executive Director’s Response to Comments, Response 3.

this permit action.”⁷⁰ Tier 2 of the review “preliminarily determined that no significant degradation of water is expected in Gapps Slough.”⁷¹

The above-described analysis led the ED to the opinion that “[n]umerical and narrative criteria to protect existing uses will be maintained,” and that “existing uses will be maintained and protected.”⁷² Applicant agrees with the Executive Director’s analysis and conclusions on this issue. Accordingly, it is the Applicant’s position that this issue is not relevant and material and should not be referred to SOAH.

If the Commission refers this issue to SOAH, Applicant respectfully requests that the issue be framed as follows: “Whether the draft permit is protective of existing uses of the receiving waters, aquatic life, flora, and fauna, in accordance with applicable regulations.”

C. Nuisance Odors

Ms. Wang raised a passing concern related to the potential odors, as thoroughly discussed and analyzed above in Section III.B.4.a.⁷³ As stated above, the Applicant’s property includes an odor control buffer zone that extends 150 feet from the Proposed Facility units in all directions, in compliance with the TCEQ’s buffer zone rule. Thus, the ED came to the opinion that “nuisance odor is not expected to occur as a result of the permitted activities at the facility.”⁷⁴

Further, as discuss above, prevailing winds capable of moving any odors from the Proposed Facility originate upwind from Ms. Wang’s property, and thus, will transport any odors from the Facility away from Ms. Wang’s property. In addition, the Executive Director has acknowledged that when properly used, activated sludge processing for wastewater treatment, which the Proposed

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Executive Director’s Response to Comments, Comment 4.

⁷⁴ Executive Director’s Response to Comments, Response 4.

Facility will use, generates treated domestic wastewater that is not expected to have offensive odors.⁷⁵

Accordingly, it is the Applicant's position that odor is not a relevant and material issue and, thus, should not be referred to SOAH. If the Commission decides to refer the issue to SOAH, Applicant respectfully requests that the issue be framed as follows: "Whether the draft permit adequately protects against nuisance odors in accordance with 30 TAC § 309.13."

VI. Maximum Duration of Hearing

Should the Commission decide to refer this case to SOAH for a hearing, given the limited number and scope of issues Applicant believes may be appropriate in this case, the maximum expected duration of a hearing on this Application and Draft Permit should be no longer than 180 days from the first date of the preliminary hearing until the proposal for decision is issued in accordance with Tex. Gov't Code § 2003.047(e-2).

⁷⁵ See Application, Supplemental Technical Report for the Wastewater Treatment Plant Domestic Wastewater Permit, at 1.

VII. Conclusion and Prayer

For the foregoing reasons, the Applicant respectfully requests that the Commission deny the requests for contested case hearing, approve the Executive Director's Response to Public Comment, and issue TPDES Permit No. WQ0016570001, as recommended by the Executive Director.

Date: December 15, 2025

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Danny G. Worrell", is written over a horizontal line.

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200, LLC***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Phhou – 200 Benton Road, LLC's Response to Requests for Contested Case Hearing and Reconsideration has been served on the following counsel/persons by U.S. Mail, or with the Chief Clerk, by electronic service on this 15th day of December 2025.

FOR THE EXECUTIVE DIRECTOR

via U.S. mail:

Maricela Zertuche, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, Texas 78711

Sujata Sinha, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC 145
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division
Public Education Program, MC 108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via U.S. Mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC 103
P.O. Box 13087
Austin, Texas 78711

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

via U.S. Mail:

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

FOR THE OFFICE OF THE CHIEF CLERK

via eFilings:

Docket Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711
<https://www14.tceq.texas.gov/epic/eFiling/>

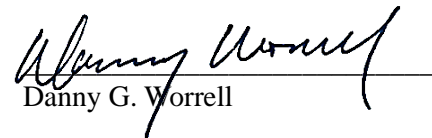
REQUESTORS / INTERESTED PARTIES

via U.S. Mail:

Richard Chen
6006 Sagamore Bay Lane
Richmond, Texas 77469

Michael H. Stein
10311 Reading Road
Richmond, Texas 77469

Lili Wang
1110 Nautical Lane
Richmond, Texas 77469


Danny G. Worrell

TCEQ Docket No. 2025-1554-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
PHHOU - BENTON ROAD 200, LLC	§	ON
FOR TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0016570001	§	

**PHHOU – BENTON ROAD 200, LLC’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 1

TCEQ Docket No. 2025-1554-MWD

APPLICATION BY § **BEFORE THE TEXAS COMMISSION**
PHHOU - BENTON ROAD 200, LLC §
FOR TPDES PERMIT NO. § **ON**
WQ0016570001 § **ENVIRONMENTAL QUALITY**

**PHHOU – BENTON ROAD 200, LLC’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND RECONSIDERATION**

AFFIDAVIT OF JONATHAN NGUYEN

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned Notary Public in and for the State of Texas, personally appeared Jonathan Nguyen, the affiant, whose identify is known to me. After I administered an oath, affiant testified as follows:

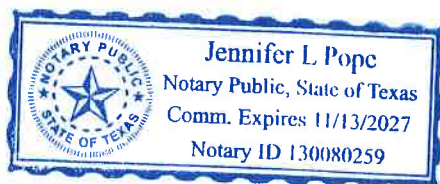
1. My name is Huan Jonathan Nguyen. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts in this affidavit are within my personal knowledge and are true and correct.
2. I am an Engineering Permitting Specialist with Quiddity Engineering. My experience includes more than 10 years of work in the wastewater industry, including experience with TCEQ. I have a Bachelor's Degree in Environmental Geoscience with a minor in Geology.
3. I have prepared this affidavit in support of Phhou – 200 Benton Road, LLC's (the "Applicant") Response to Request for Contested Case Hearing (the "Response") related to TPDES Permit No. WQ0016570001, which authorizes the discharge from a new wastewater treatment plant (the "Proposed Facility") in Fort Bend County, Texas. I have reviewed the Response and the statements of fact in that Response pertaining to the Applicant's application for TPDES Permit No. WQ0016570001 are true and correct.
4. The application for TPDES Permit No. WQ0016570001 (the "Application") is for what the Applicant labels "Big Creek wastewater treatment plant." I am knowledgeable of the Application, as I prepared the TPDES application and have been the main contact with TCEQ regarding the application. The Application complies with all applicable statutes and regulations for domestic wastewater effluent limitation and plant siting, found in 30 Texas Administrative Code ("TAC") Subchapter B.
5. As part of my work with the Applicant, I am very familiar with the location of the Proposed Facility and the surrounding areas. Prior to the preparation of this affidavit, I (along with my colleagues at Quiddity Engineering) prepared the application for TPDES Permit No.


WQ0016570001. We looked at nearby facilities for regionalization and looked at other site characteristics which included floodplain, wetlands, nearby water wells, etc.

6. I obtained the addresses of Lili Wang and Richard Chen from these individuals' public comments and requests for hearing submitted in connection with TPDES Permit No. WQ0016570001. The map at Exhibit 1-A shows their addresses and identifies their properties.
7. I created the map at Exhibit 1-A using Geographic Information System ("GIS"). GIS is an accurate and reliable tool frequently used by geoscientists and engineers, to identify locations. The information depicted on Exhibit 1-A is accurate and reliable as of December 12, 2025.
8. I plotted and indicated on the map the discharge route downstream from the discharge point of the Proposed Wastewater Treatment Facility.
9. As the map demonstrates, Ms. Wang's property is not along the discharge route.
10. I obtained the Windrose Plot for [SGR] Houston/Hull Field data gathered between July 1, 1996, and April 1, 2024. The Windrose Plot at Exhibit 1-B shows the direction and speed of wind in the location of the Proposed Facility. This Windrose Plot appears in the Application at Attachment R.
11. Ms. Wang, who lives east of the facility, expressed concern about potential odors from the Proposed Facility. The Windrose Plot demonstrates that wind flows generally north and south, while Ms. Wang's property lies to the east of the proposed treatment facility.
12. The Windrose was obtained via the Iowa State University Iowa Environmental Mesonet (IEM). This database has Windrose information for all of the United States, which includes the State of Texas. The Houston/Hull Field Station was the nearest station to the proposed facility and the Windrose was selected from this station to include in the TPDES Permit Application.

Sworn and subscribed before me by Jonathan Nguyen this 15 day of December, 2025.



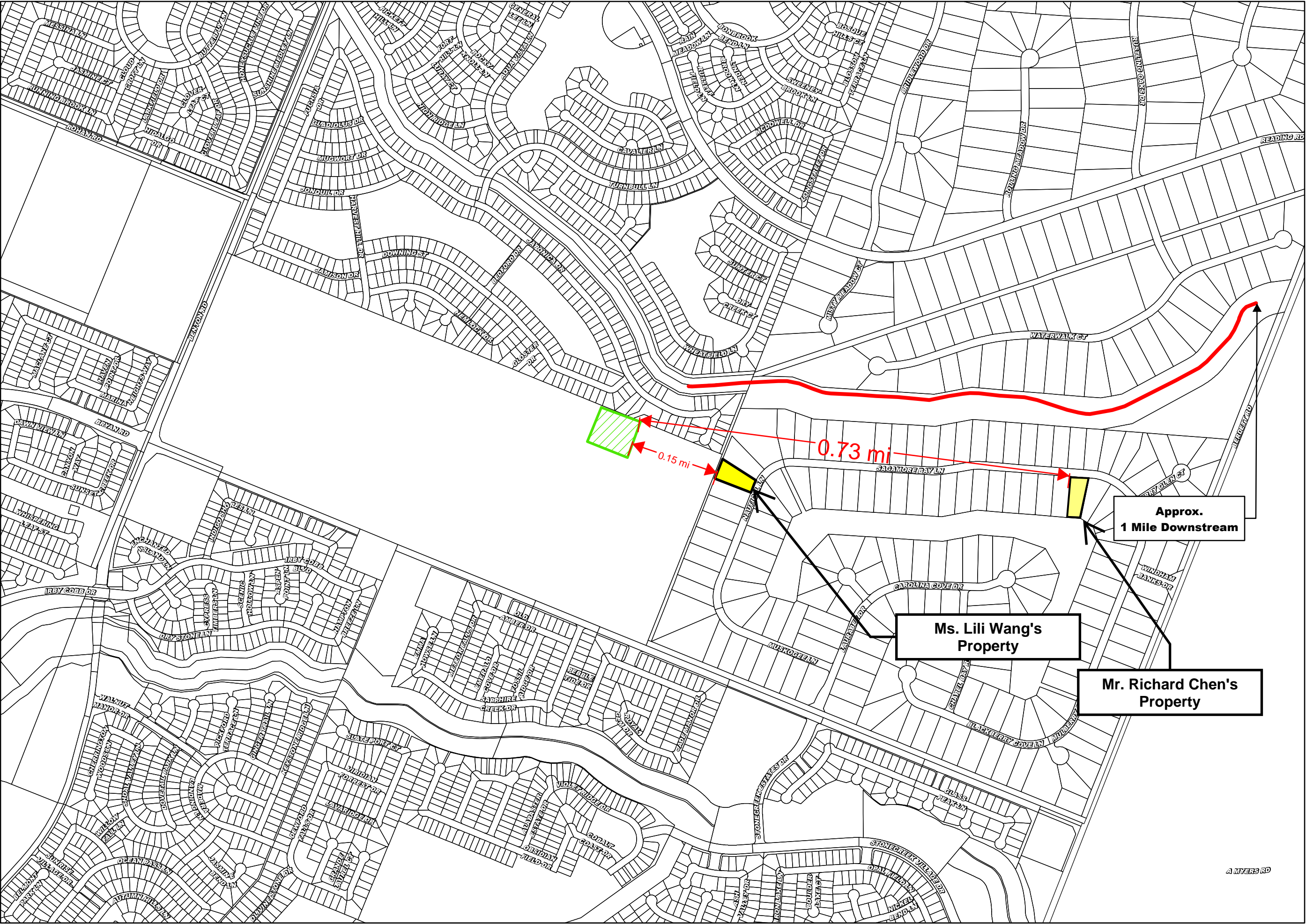

Notary Public in and for the State of Texas
My commission expires: 11/13/27

TCEQ Docket No. 2025-1554-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
PHHOU - BENTON ROAD 200, LLC	§	ON
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**PHHOU – BENTON ROAD 200, LLC’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 1-A



VICINITY MAP
1 INCH = 10 MILES

- LEGEND
- Discharge Route
 - Proposed WWTP
 - FBCAD Parcels

Benton Road Area
Map

BIG CREEK
FORT BEND COUNTY, TEXAS



Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Quiddity Engineering concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit.



TCEQ Docket No. 2025-1554-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
PHHOU - BENTON ROAD 200, LLC	§	ON
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WQ0016570001	§	

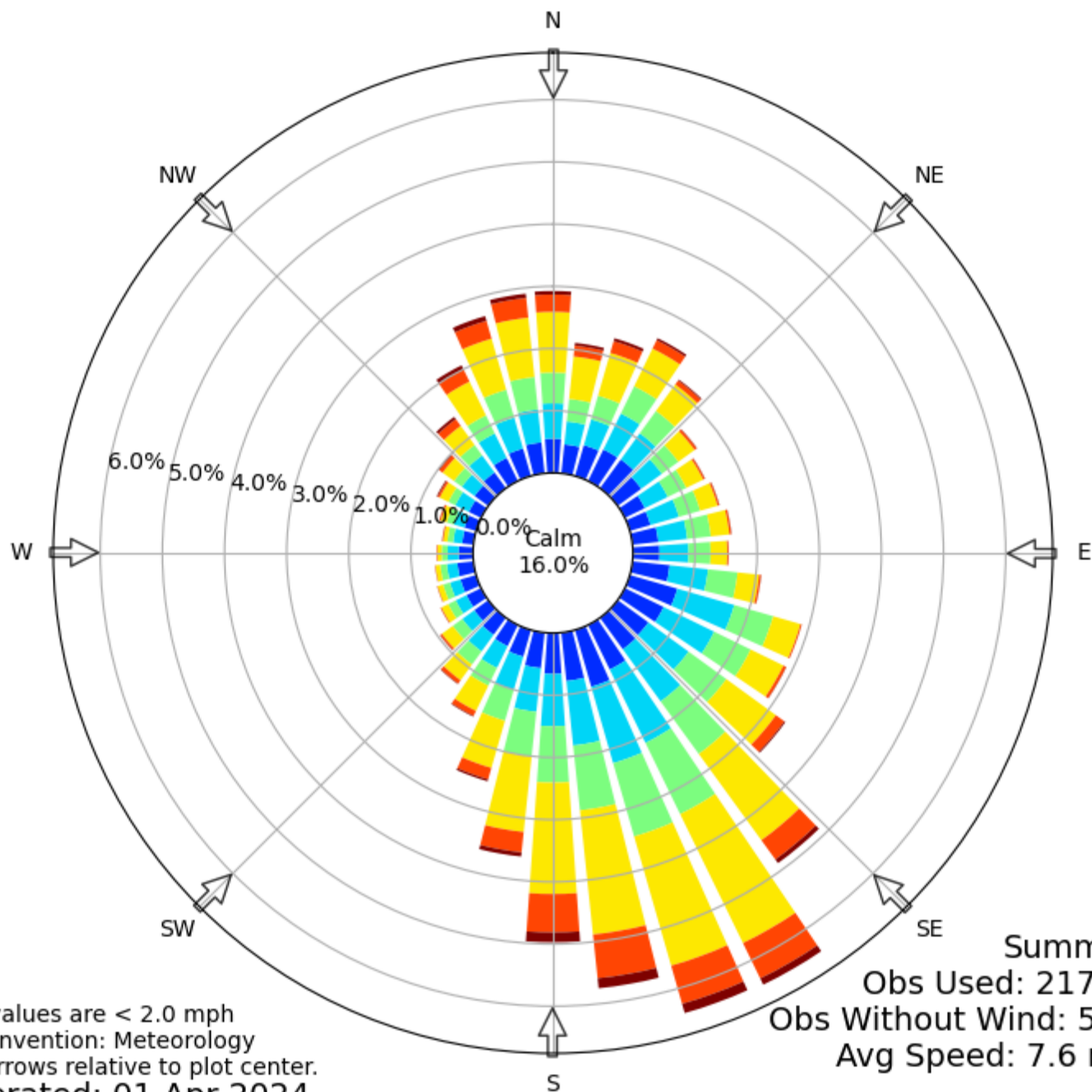
**PHHOU – BENTON ROAD 200, LLC’S RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING AND RECONSIDERATION**

Exhibit 1-B



Windrose Plot for [SGR] HOUSTON/HULL FIELD

Obs Between: 01 Jul 1996 05:50 AM - 01 Apr 2024 03:53 AM America/Chicago



Calm values are < 2.0 mph
Bar Convention: Meteorology
Flow arrows relative to plot center.
Generated: 01 Apr 2024

