

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Office of Chief Clerk Date: December 23, 2024

From: Michael Parr II, Staff Attorney, Environmental Law Division

Subject: Transmittal of Documents for Administrative Record

Applicant: Smiling Mallard

Proposed Permit No.: WQ0016077001

Program: Water Quality Division

TCEQ Docket No.: 2023-0863-MWD

In a contested case hearing, the administrative record includes copies of the public notices relating to the permit application, as well as affidavits of public notices filed by the applicant directly with the Office of the Chief Clerk (OCC). In addition, the record includes the following documents provided to the OCC by the Executive Director's (ED's) staff. See 30 TAC § 80.118.

This transmittal serves to also request that the OCC transmit the attached items, together with (a) the public notice documents (including notice of hearing), and (b) where available for direct referral cases only, the ED's Response to Comments to the State Office of Administrative Hearings.

Indicated below are the documents included with this transmittal:

1. The Executive Director's Response to Hearing Request.
2. The Executive Director's Technical Backup Memos (Fact Sheet, Draft Permit and the Executive Director's Preliminary Decision and the Compliance History).
3. The Executive Director's Response to Comments and Final Decision letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Parr II", is written over a horizontal line.

Michael Parr II
Staff Attorney
Environmental Law Division

TCEQ DOCKET NO. 2023-0863-MWD

**APPLICATION BY SMILING MALLARD
DEVELOPMENT, LTD. FOR NEW
TPDES PERMIT NO. WQ0016077001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by Smiling Mallard Development, Ltd. (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016077001, authorizing the discharge of treated domestic wastewater at a daily average flow not to exceed a daily average flow of 100,000 or 0.1 million gallons per day (proposed discharge) from the Smiling Mallard Site # 2 Facility (proposed facility). Herb Flanagan, Lanell Flanagan, Bret Richards, Jean Ragusa, Melisa Wagner, Cynthia Werner, Warren Wall, Jamie Thomas, and Shana Elliot filed timely, written Requests for a Contested Case Hearing.

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map

III. DESCRIPTION OF FACILITY, DISCHARGE ROUTE, & THE ED'S TECHNICAL REVIEW

A. *FACILITY*

The proposed facility will be located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State Highway 6, in Brazos County, Texas 77845, serve the Mesa Verde Commercial Development at the Villages of Indian Lakes, and will be an activated sludge process plant operated in the conventional mode. Treatment units include bar screens, an aeration basin, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The route of the proposed discharge is to an unnamed tributary of Peach Creek, then to Peach Creek, then to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

B. *DISCHARGE ROUTE/RECEIVING WATERS*

The route of the proposed discharge is to an unnamed tributary of Peach Creek, then to Peach Creek, then to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

Segment No. 1209 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria in the portion of Navasota River from the confluence with Camp Creek upstream to Lake Limestone Dam, in Robertson County (Assessment Unit [AU] 1209_05). However, the proposed permit includes a requirement that the Applicant use chlorine for disinfection and a bacteria limit of 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and this facility, when operated properly, is designed to provide adequate disinfection, and should not add to the bacterial impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 111 has been approved for this segment: *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. On August 28, 2019, the TCEQ adopted *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. The EPA approved the TMDLs on October 25, 2019. The TMDL addresses elevated levels of bacteria in one classified segment (Navasota River Below Lake Limestone – 1209, AUs _03 and _05) of this watershed. This project takes a watershed approach, but the TMDL only applies to AU 1209_03 and the AUs and additional unclassified segments upstream of it (1209_04, 1209_05, 1209_H, 1209G, 1209J, 1209K, and 1209P).

The waste load allocation (WLA) for WWTFs was established as the final permitted flow for each WWTF multiplied by the geometric mean criterion for bacteria multiplied by a conversion factor (to get to units per day). The allocated loads were calculated for *Escherichia coli* (*E. coli*). Future growth from existing or new permitted sources is not limited by these TMDLs if the sources do not exceed the limits provided. To ensure that the effluent limits in the proposed permit are consistent with the WLAs provided in the TMDL, a concentration-based effluent limitation of 126 CFU or MPN per 100 ml for *E. coli* was added to the proposed permit.

C. ED'S TECHNICAL REVIEW

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

The Technical Review process for surface water quality is conducted collectively by staff in the ED's Water Quality Division (WQD staff) on the Standards Implementation Team (Standards Team) and WQD staff on the Water Quality Assessment Team (WQA Team). Both Teams reviewed the application in accordance with the TSWQS and TCEQ's IPs with the goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving surface waters.

The first component of the ED's Technical Review involves WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters in the state within the route of the proposed discharge. Other available information and a receiving water assessment allowed the Standards Team to preliminarily determine the aquatic life uses in the proposed discharge's possible area of possible impact and assign the corresponding Minimum Dissolved Oxygen Criterion (DO limit) as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ's IPs.

The designated uses for Segment No. 1209, as stated in the 2018 TSWQS-Appendix A (30 TAC § 307.10) are primary contact recreation, public water supply, and high aquatic life use, and 5.0 mg/L DO. Through his Technical Review, the ED provides the proper effluent limits to protect these uses.

For all applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge and the receiving waters according to 30 TAC § 307.5 of the TSWQS and TCEQ's IPs. Correspondingly, the Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action because numerical and narrative criteria to protect existing uses will be maintained.

Because the proposed discharge is directly to an unnamed tributary, an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) of the TSWQS. The Standards Team determined that the unclassified receiving water uses and DO criterion are minimal aquatic life use and 2.0 mg/L DO for the unnamed tributary and minimal aquatic life use and a 3.0 mg/L DO criterion for Peach Creek. Because this review preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses were present within the stream reach assessed, a Tier 2 antidegradation review was not performed. However, significant degradation of water quality is not expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and the existing water quality uses will be maintained and protected.

The second component of the ED's Technical Review involves WQD staff on the Modeling Team performing water quality modeling runs, or Dissolved Oxygen (DO) analyses, using a mathematical model; in this case, an uncalibrated QUAL-TX model.

Conventional effluent limits such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH₃N), are based on stream standards and WLAs for water quality-limited streams promulgated by the TSWQS and the State of Texas Water Quality Management Plan.

The proposed permit's effluent limits, established by the Modeling Team's results using an "uncalibrated QUAL-TX" model, of 10.0 mg/L CBOD₅, 3.0 mg/L NH₃-N, and 4.0 mg/L DO, based on a 30-day average will maintain, and protect the existing instream uses. Specifically, the proposed limits above are predicted to be adequate to maintain DO levels above the criteria stipulated by the Standards Team for the unnamed tributary (2.0 mg/L), Peach Creek (3.0 mg/L), and the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin (5.0 mg/L).

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, effective 7/22/2010), and the EPA-approved portions of the TSWQS (effective 3/6/2014). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with pH criteria in the TSWQS when the discharge authorized is from a minor facility and the unclassified waterbodies have minimal or limited aquatic life uses. This technology-based approach reasonably assures instream compliance with TSWQS due to relatively smaller discharge volumes authorized by these permits. TCEQ sampling conducted throughout Texas indicating instream buffering quickly restores pH levels to ambient conditions, informs this conservative approach.

The Houston toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within Segment No. 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the Texas' authorization of the TPDES permitting program (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for

TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species. However, the determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment No. 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is determined that the proposed facility's discharge is not expected to impact the Houston toad.

Through the Technical Review, the ED provides the proper limits to maintain and protect the existing instream uses. Coefficients and kinetics used in the water quality modeling are a combination of site-specific, standardized default, and estimated values. However, as with all determinations, reviews, or analyses related to the technical review of the proposed permit, the above can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

IV. PROCEDURAL HISTORY

The TCEQ received the application on November 29, 2021, and declared it administratively complete on March 15, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Brazos County, Texas in the *Eagle Newspaper* on March 18, 2022. The ED completed the technical review of the application on April 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Brazos County, Texas in the *Eagle Newspaper* on May 25, 2022. The public comment period ended on June 24, 2022, and the ED's original RTC was filed on August 3, 2022. On September 1, 2022, the ED approved a Public Meeting Request from Texas State Representative Kyle Kacal. On December 8, 2022, the Applicant published the Notice of Public Meeting in the *Eagle Newspaper*. On January 23, 2023, at 7:00pm, a Public Meeting was held at the Embassy Suites in College Station, located at 201 University Drive East, 77840. The reopened comment period closed on January 23, 2023, at the close of the Public Meeting., the ED's Amended RTC was filed on April 18, 2023, and the ED's Final Decision Letter mailed out on April 11, 2023. The deadline for filing a Request or a Request for Reconsideration (RFR) was May 25, 2023. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

V. ACCESS TO RULES, LAWS AND RECORDS

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

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

Commission records for the proposed facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the at the Brazos County Clerk’s Office located at East 26th Street, Suite 1430, Bryan, Texas 77083, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are available for viewing and copying at the same location since publication of the NAPD.

Alternative language notice in Spanish is available at:

<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, animal life, vegetation, and human health. However, if you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 9) in Waco, TX at (254) 751-0335 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above at the last bullet point under, “Access to Rules, Laws, and Records.” If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the Facility is out of compliance with TCEQ rules, enforcement actions may arise.

VI. EVALUATION OF HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission’s consideration of hearing requests (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the commission’s consideration of Requests. This application was declared administratively complete on September 14, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709.

A. LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS

“The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests”¹

1. whether the requestor is an affected person;
2. whether issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter by filing a written withdrawal letter with the chief clerk prior to the filing of the ED’s Response to Comment;
6. whether the issues are relevant and material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.²

B. HEARING REQUEST REQUIREMENTS

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester’s timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED’s Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person’s 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 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 facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;

(B) on or after September 1, 2015, 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. To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED’s responses to the requestor’s comments

¹ 30 TAC § 55.209(d).

² *Id.* at § 55.209(e).

³ 30 TAC § 55.201(c).

that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.⁴

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁵
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
 - (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 ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁶

⁴ *Id.* at § 55.201(d).

⁵ 30 TAC § 55.203(a)-(c).

⁶ *Id.* at § 55.203(d).

D. REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.”⁷ “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.”⁸

E. REQUESTS FOR RECONSIDERATION

According to 30 TAC § 55.201(e), any person may file a RFR of the ED’s decision no later than 30 days after the Chief Clerk mails the ED’s decision and RTC, if it expressly states that the person is requesting reconsideration of the ED’s decision, is in writing, and gives reasons why the decision should be reconsidered.

VII. ANALYSIS OF THE HEARING REQUESTS

The ED’s analyses evaluated whether the Request followed TCEQ rules, if the requestor qualified as an affected person, what issues may be referred for a possible hearing, and the appropriate length of any hearing. The ED reviewed the Requests using the following analysis and respectfully recommends granting the Requests of Herb Flanagan, Lanell Flanagan, Bret Richards, Jean Ragusa, Melisa Wagner, Cynthia Werner, and denying the Requests of Shana Elliot, Jamie Thomas, and Warren Wall.

A. WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).

1. **Herb Flanagan** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Flanagan’s Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Flanagan believes he will be affected by the application differently than the public. Mr. Flanagan’s Request stated he and his family live in proximity to the proposed facility and raised issues relevant to a decision on the application, such as adverse impacts on human health, animal life, wildlife, and the environment from the proposed discharge and spills at the proposed facility.

The ED recommends finding that Herb Flanagan’s Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

2. **Lanell Flanagan** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of her Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

⁷ 30 TAC § 50.115(b).

⁸ *Id.* at § 55.203(d).

Ms. Flanagan's Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Ms. Flanagan believes she will be affected by the application differently than the public. Ms. Flanagan's Request stated she lives in proximity to the proposed facility and raised issues relevant to a decision on the application, such as adverse impacts on human health, animal life, wildlife, and the environment from the proposed discharge and spills at the proposed facility.

The ED recommends finding that Lanell Flanagan's Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

3. **Bret Richards** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Richards' Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Richards believes he will be affected by the application differently than the public. Mr. Richards' Request stated he and his family live in proximity to the proposed facility and raised issues relevant to a decision on the application, such as negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility.

The ED recommends finding that Bret Richards' Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

4. **Jean Ragusa** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of her Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Ms. Ragusa's Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Ms. Ragusa believes she will be affected by the application differently than the public. Ms. Ragusa's Request stated she and her family live in proximity to the proposed facility and raised issues relevant to a decision on the application, such as negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility.

The ED recommends finding that Jean Ragusa's Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

5. **Melisa Wagner** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of her Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Ms. Wagner's Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Ms. Wagner believes she will be affected by the application differently than the public. Ms. Wagner's Request stated she and her family live in proximity to the proposed facility and raised issues relevant to a decision on the

application, such as negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility.

The ED recommends finding that Melisa Wagner's Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

6. **Cynthia Werner** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of her Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Ms. Werner's Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Ms. Werner believes she will be affected by the application differently than the public. Ms. Werner's Request stated she and her family live in proximity to the proposed facility and raised issues relevant to a decision on the application, such as negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility.

The ED recommends finding that Cynthia Werner's Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

7. **Shana Elliot** filed a timely, written Request that provided the requisite contact information and requested a Hearing; however, Ms. Elliot's Request failed to raise relevant and material issues from her comments on the application.

Ms. Elliot's Request failed to raise issues that formed the basis of her Request in timely comments not withdrawn before the RTC was filed, because she did not make any relevant or material comments on the application to base her Request on, as required by 30 TAC § 55.201(d)(4)(B), nor did Ms. Elliot's Request raise any relevant or material issues of disputed fact that were based on any timely comments also required by § 55.201(d)(4)(B).

Ms. Elliot's Request also lacked a statement of how and why she believes she will be adversely affected by the proposed facility or discharge in a manner not common to members of the public, as required by 30 TAC § 55.201(d)(2).

The ED recommends finding that Shana Elliot's Request failed to substantially comply with 30 TAC §§ 55.201(c) and 55.201(d).

8. **Jamie Thomas** filed a timely, written Request that provided the requisite contact information and requested a Hearing; however, Ms. Thomas' Request failed to raise relevant and material issues from her comments on the application.

Ms. Thomas' Request failed to raise issues that formed the basis of her Request in timely comments not withdrawn before the RTC was filed, because she did not make any relevant or material comments on the application to base her Request on, as required by 30 TAC § 55.201(d)(4)(B), nor did Ms. Thomas' Request raise any relevant or material issues of disputed fact that were based on any timely comments also required by § 55.201(d)(4)(B).

Ms. Thomas' Request also lacked a statement of how and why she believes she will be adversely affected by the proposed facility or discharge in a manner not common to members of the public, as required by 30 TAC § 55.201(d)(2).

The ED recommends finding that Jamie Thomas' Request failed to substantially comply with 30 TAC §§ 55.201(c) and 55.201(d).

9. **Warren Wall** filed a timely, written Request that provided the requisite contact information and requested a Hearing; however, Ms. Wall's Request failed to raise relevant and material issues from her comments on the application.

Mr. Wall's Request failed to raise issues that formed the basis of his Request in timely comments not withdrawn before the RTC was filed, because he did not make any relevant or material comments on the application to base his Request on, as required by 30 TAC § 55.201(d)(4)(B), nor did Mr. Wall's Request raise any relevant or material issues of disputed fact that were based on any timely comments also required by § 55.201(d)(4)(B).

Mr. Wall's also lacked a statement of how and why he believes he will be adversely affected by the proposed facility or discharge in a manner not common to members of the public, as required by 30 TAC § 55.201(d)(2).

The ED recommends finding that Warren Wall's Request failed to substantially comply with 30 TAC §§ 55.201(c) and 55.201(d).

B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203.

1. **Herb Flanagan** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Mr. Flanagan's Request stated that the proposed facility is in proximity to his home, which according to the GIS map prepared by the ED's staff is only 0.10 linear miles from the proposed facility, which can possibly increase the likelihood that Mr. Flanagan will be affected in a way not common to the public.

Mr. Flanagan's proximity, which was explained briefly and specifically, in plain language in his Request, and the relevant issues to a decision on the application that he raised, adverse impacts to human health, animal life, wildlife, and the environment from the proposed discharge and spills at the proposed facility, are issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Mr. Flanagan may be affected in a way not common to the public.

The ED recommends that the Commission find that Herb Flanagan is an Affected Persons under 30 TAC § 55.203.

2. **Lanell Flanagan** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Ms. Flanagan's Request stated that the proposed facility is in proximity to her home, which according to the GIS map prepared by the ED's staff is only 0.10 linear miles from the proposed facility, which can possibly increase the likelihood that Ms. Flanagan will be affected in a way not common to the public.

Ms. Flanagan's proximity, which was explained briefly and specifically, in plain language in her Request, and the relevant issues to a decision on the application that she raised, adverse impacts to human health, animal life, wildlife, and the environment from the proposed discharge and spills at the proposed facility, are

issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Ms. Flanagan may be affected in a way not common to the public.

The ED recommends that the Commission find that Lanell Flanagan is an Affected Persons under 30 TAC § 55.203.

3. **Bret Richards** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Mr. Richards' Request stated that the proposed facility is in proximity to his home, which according to the GIS map prepared by the ED's staff is only 0.87 linear miles from the proposed facility, which can possibly increase the likelihood that Mr. Richards will be affected in a way not common to the public.

Mr. Richards' proximity, which was explained briefly and specifically, in plain language in his Request, and the relevant issues to a decision on the application that he raised, negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility, are issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Mr. Richards may be affected in a way not common to the public.

The ED recommends that the Commission find that Bret Richards is an Affected Persons under 30 TAC § 55.203.

4. **Jean Ragusa** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Ms. Ragusa's Request stated that the proposed facility is in proximity to her home, which according to the GIS map prepared by the ED's staff is only 1.02 linear miles from the proposed facility, which can possibly increase the likelihood that Ms. Ragusa will be affected in a way not common to the public.

Ms. Ragusa's proximity, which was explained briefly and specifically, in plain language in her Request, and the relevant issues to a decision on the application that she raised, negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility, are issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Mr. Richards may be affected in a way not common to the public.

The ED recommends that the Commission find that Jean Ragusa is an Affected Persons under 30 TAC § 55.203.

5. **Melisa Wagner** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Ms. Wagner's Request stated that the proposed facility is in proximity to her home, which according to the GIS map prepared by the ED's staff is only 1.31 linear miles from the proposed facility, which can possibly increase the likelihood that Ms. Wagner will be affected in a way not common to the public.

Ms. Wagner's proximity, which was explained briefly and specifically, in plain language in her Request, and the relevant issues to a decision on the application

that she raised, negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility, are issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Ms. Wagner may be affected in a way not common to the public.

The ED recommends that the Commission find Melisa Wagner is an Affected Persons under 30 TAC § 55.203.

6. **Cynthia Werner** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Ms. Werner's Request stated that the proposed facility is in proximity to her home, which according to the GIS map prepared by the ED's staff is only 1.44 linear miles from the proposed facility, which can possibly increase the likelihood that Ms. Werner will be affected in a way not common to the public.

Ms. Werner's proximity, which was explained briefly and specifically, in plain language in her Request, and the relevant issues to a decision on the application that she raised, negative odors and impacts to human health, animal life, and wildlife from the proposed discharge and facility, are issues related to the interests of the requester, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which also increases the likelihood that Ms. Werner may be affected in a way not common to the public.

The ED recommends that the Commission find that Cynthia Werner is an Affected Persons under 30 TAC § 55.203.

7. **Shana Elliot** filed a Request that failed to identify a personal, justiciable interest affected by the application, describing in plain language in a brief, written statement of how and why Ms. Elliot believes she will be adversely affected by the proposed facility in a manner not common to members of the public.

Though the GIS map prepared by the ED's staff locates Ms. Elliot's location property 1.44 linear miles from the proposed facility, Ms. Elliot's Request did not raise any relevant issues, nor explain why she believes she will be adversely affected by this application in a manner not common to members of the public. Lacking that necessary explanation and failing to raise any relevant issues for the Commission to consider, Ms. Elliot's Request failed to demonstrate a reasonable relationship between the interests claimed and the activity regulated, which decreases the likelihood that Ms. Elliot may be affected in a way not common to the public.

The ED recommends that the Commission find that Shana Elliot is not an Affected Person under 30 TAC § 55.203.

8. **Jamie Thomas** filed a Request that failed to identify a personal, justiciable interest affected by the application, describing in plain language in a brief, written statement of how and why Ms. Thomas believes she will be adversely affected by the proposed facility in a manner not common to members of the public.

Though the GIS map prepared by the ED's staff locates Ms. Thomas' location property 0.98 linear miles from the proposed facility, Ms. Thomas' Request did not raise any relevant issues, nor explain why she believes she will be adversely affected by this application in a manner not common to members of the public.

Lacking that necessary explanation and failing to raise any relevant issues for the Commission to consider, Ms. Thomas' Request failed to demonstrate a reasonable relationship between the interests claimed and the activity regulated, which decreases the likelihood that Ms. Thomas may be affected in a way not common to the public.

The ED recommends that the Commission find that Jamie Thomas is not an Affected Person under 30 TAC § 55.203.

9. **Warren Wall** filed a Request that failed to identify a personal, justiciable interest affected by the application, describing in plain language in a brief, written statement of how and why Mr. Wall believes he will be adversely affected by the proposed facility in a manner not common to members of the public.

Though the GIS map prepared by the ED's staff locates Mr. Wall's location 1.28 linear miles from the proposed facility, Mr. Wall's Request did not raise any relevant issues, nor explain why he believes he will be adversely affected by this application in a manner not common to members of the public. Lacking that necessary explanation and failing to raise any relevant issues for the Commission to consider, Mr. Wall's Request failed to demonstrate a reasonable relationship between the interests claimed and the activity regulated, which decreases the likelihood that Mr. Wall may be affected in a way not common to the public.

The ED recommends that the Commission find that Warren Wall is not an Affected Person under 30 TAC § 55.203.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

The Requests of Herb Flanagan, Lanell Flanagan, Bret Richards, Jean Ragusa, Melisa Wagner, and Cynthia Werner raised the following issues of whether:

1. **The draft permit contains adequate protections for human health and the environment consistent with the TCEQ's rules, including the TSWQS.**

(RTC Response No. 2) This is an issue of fact. If it can be shown that the draft permit does not have adequate protections for human health and the environment consistent with the TCEQ's rules, including the TSWQS, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

2. **The draft permit has adequate provisions to control odors from the proposed facility in accordance with applicable TCEQ rules.**

(RTC Response No. 4) This is an issue of fact. If it can be shown that the draft permit does not have adequate provisions to control odors, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

IX. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

X. REQUESTS FOR RECONSIDERATION

Sergey Bitenko, Gordon Wilson, Paul Wagner, and Michelle Moore all filed timely Requests for Reconsideration (RFR), however, all the RFRs failed to raise any new information for the ED to analyze. Therefore, the ED recommends denying all RFRs.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Herb Flanagan, Lanell Flanagan, Bret Richards, Jean Ragusa, Melisa Wagner, and Cynthia Werner are affected persons under 30 TAC §§ 55.203.
2. Grant the Requests of Herb Flanagan, Lanell Flanagan, Bret Richards, Jean Ragusa, Melisa Wagner, and Cynthia Werner and deny all others.
3. Deny all the RFRs filed on the application.
4. Should the Commission decide to refer this case to SOAH;
 - a. refer the case to Alternative Dispute Resolution for a reasonable time.
 - b. refer the identified issues in section VII. 1.- 2. to SOAH for a Hearing

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel Linden, *Interim Executive Director*

Erin Chancellor, *Director*
Office of Legal Services

Charmaine Backens, *Deputy Director*
Environmental Law Division,



Michael T. Parr II, Staff Attorney
Environmental Law Division
State Bar No. 24062936
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239 0611
Facsimile No. 512-239-0626
REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

XII. CERTIFICATE OF SERVICE

I certify that on September 1, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016077001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.

A handwritten signature in black ink, appearing to read "Michael T. Parr II", is positioned above a horizontal line.

Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936

Attachment A

Smiling Mallard Development, Ltd. GIS Map

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 6/20/2023
CRF 0089733
Cartographer: Abanda



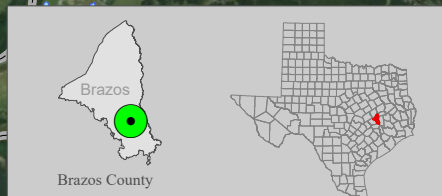
- Proposed Facility
- Outfall Permit Number 16077-001
- Requestors
- 0.5-Mile Radius from Proposed Facility
- 1.0-Mile Radius from Proposed Facility
- 1.5-Mile Radius from Proposed Facility
- Discharge Route 0.00 to 0.75 Miles
- Discharge Route 0.75 to 1.50 Miles
- NHD Flowline including Discharge Route
- Major Roads**
 - Highway
 - Intermediate Roads
 - County Boundary

Distances, in miles, between the Requestors and the Proposed Facility point are located in Appendix A.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is 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 boundaries.

For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Brazos County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Brazos County (red) in the state of Texas.

0 0.75 1.5
Miles

Appendix A - Distance (miles) Between Requestor and Facility Point

Label	Distance (mi)	Name	Address	City	State	ZIP	Latitude	Longitude
1	0.10	Lanell Flanagan	1881 Narrow Way	College Station	TX	77845	30.5257	-96.2333
2	7.67	Lanell Flanagan	1006 S Dexter Drive	College Station	TX	77840-6123	30.6024	-96.3277
3	7.38	Herb Flanagan	10996 Woodlands Dr	College Station	TX	77845-9124	30.578	-96.3419
4	0.87	Bret Richards	18339 Copper River Dr	College Station	TX	77845-4667	30.5149	-96.2369
5	1.28	Warren Wall	3384 Arapaho Ridge Rd	College Station	TX	77845-4539	30.5193	-96.2524
6	1.02	Jean Ragusa	3473 Toltec Trail	College Station	TX	77845-4539	30.5153	-96.2431
7	1.31	Melissa Wagner	19059 Tallulah Trail	College Station	TX	77845-8647	30.5082	-96.2299
8	0.98	Jamie Thomas	3645 ShoShoni Court	College Station	TX	77845-4588	30.5229	-96.2485
9	1.44	Shana Elliot*	3337 Arapaho Ridge Rd	College Station	TX	77845-4540	30.5186	-96.2549
10	1.44	Cynthia Werner*	3337 Arapaho Ridge Rd	College Station	TX	77845-4540	30.5186	-96.2549

MAILING LIST
Smiling Mallard Development, Ltd.
TCEQ Docket No. 2023-0863-MWD; TPDES Permit No. WQ0016077001

FOR THE APPLICANT:

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3608 East 29th Street, Suite 100
Bryan, Texas 77802

George Neill, P.E., Project Engineer
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FOR THE EXECUTIVE DIRECTOR
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FOR 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

REQUESTER(S)/INTERESTED PERSON(S):
See attached list.

REQUESTER(S)

Sergiy Butenko
3421 Mojave Canyon Dr
College Station, TX 77845-4660

Shana Elliott
3337 Arapaho Ridge Dr
College Station, TX 77845-4540

Herb Flanagan
10996 Woodlands Dr
College Station, TX 77845-9124

Herb Flanagan
1881 Narrow Way
College Station, TX 77845-8746

Herb Flanagan
Moore Supply Company
1530 Harvey Mitchell Pkwy S
College Station, TX 77840-6209

Michele Moore
3718 Maricopa Ln
College Station, TX 77845-2009

Jean Ragusa
3473 Toltec Trl
College Station, TX 77845-3543

Bret Richards
18339 Copper River Dr
College Station, TX 77845-4667

Jamie Thomas
3645 Shoshoni Ct
College Station, TX 77845-4588

Melisa Wagner
19059 Tallulah Trl
College Station, TX 77845-8647

Paul Wagner
19059 Tallulah Trl
College Station, TX 77845-8647

Warren Edward Wall
3384 Arapaho Ridge Dr
College Station, TX 77845-4539

Cynthia Werner
3385 Arapaho Ridge Dr
College Station, TX 77845-4540

Gordon Wilson
17313 Cheveyo Cv
College Station, TX 77845-7461

PUBLIC OFFICIALS - INTERESTED PERSON(S)

The Honorable Kyle Kacal
State Representative, Texas House of
Representatives District 12
PO Box 2910
Austin, TX 78768-2910

The Honorable Charles Schwertner
State Senator, The Senate of Texas
District 5 PO Box 12068
Austin, TX 78711-2068

INTERESTED PERSON(S)

Gamal Akabani
3539 Matoska Rdg
College Station, TX 77845-5767

Fred Anderholm
17348 Cheveyo Cv
College Station, TX 77845-7462

Daniel Applegate
18522 Anasazi Bluff Dr
College Station, TX 77845-6395

Lindsey Bolline
3718 Maricopa Ln
College Station, TX 77845-2009

Bernice Burns
17349 Cheveyo Cv
College Station, TX 77845-7461

Joanna Butenko
3421 Mojave Canyon Dr
College Station, TX 77845-4660

Xenia Butenko
3421 Mojave Canyon Dr
College Station, TX 77845-4660

Laura Caraway
17708 Seneca Spgs
College Station, TX 77845-3564

Tyler Chessman
3000 Sandia Springs Cv
College Station, TX 77845-2132

David Coatney
3325 Mojave Canyon Dr
College Station, TX 77845-4658

Jean Coatney
3325 Mojave Canyon Dr
College Station, TX 77845-4658

William Dehaes
17337 Lesharo Cv
College Station, TX 77845-1413

Andrea Etheridge
18643 Iroquois Cv
College Station, TX 77845-7377

Xue Fan
3469 Mojave Canyon Dr
College Station, TX 77845-4660

Christopher Flanagan
1881 Narrow Way
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Lanell Flanagan
1006 S Dexter Dr
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Laurie Galbreath
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College Station, TX 77845-4544

Charles Galindo
3280 Toltec Trl
College Station, TX 77845-3532

Janet Estill Galindo
3280 Toltec Trl
College Station, TX 77845-3532

Andrea Gatlin
3493 Mojave Canyon Dr
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Laura Goehring
17253 Baquito Cv
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Abby Goerig
18665 Anasazi Bluff Dr
College Station, TX 77845-6459

Megan Amanda Hampton
2923 Chaco Canyon Dr
College Station, TX 77845-4631

Kayla Henderson
17233 Sundance Dr
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Linda Hoffpauir
3300 Osage Trail Cv
College Station, TX 77845-4575

Patrick Hoffpauir
3300 Osage Trail Cv
College Station, TX 77845-4575

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College Station, TX 77845-6678

Tasha Homann
17295 Baquito Cv
College Station, TX 77845-6678

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College Station, TX 77845-7461

Neetu Kainthla
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Sairoj Maknojia
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Rhonda McCormick
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College Station, TX 77845-6155

Tara McGuire
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College Station, TX 77845-2451

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College Station, TX 77845-2455

Stacy Muehlbrad
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Beiyan Nan
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D Darlene Neeley
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Brenda Nunley
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College Station, TX 77845-7462

Mark Nunley
17360 Cheveyo Cv
College Station, TX 77845-7462

Becky Ricketts
3000 Algoma Cv
College Station, TX 77845-2142

Shane Phelps
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College Station, TX 77845-7792

Janet Prater
17325 Makawee Ct
College Station, TX 77845-2455

Kim Pritchard
3400 Navajo Ridge Dr
College Station, TX 77845-4657

Lucinda Pritchard
3400 Navajo Ridge Dr
College Station, TX 77845-4657

Robin Rackley
3384 Chaco Canyon Dr
College Station, TX 77845-4555

Jean Ricciardello
4023 Chaco Canyon Dr
College Station, TX 77845-7792

Erin Richards
18395 Anasazi Bluff Dr
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Becky Ricketts
3000 Algoma Cv
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Caroline Roeth
17250 Catori Cv
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3648 Seminole Pt
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Sue Schuelke
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Marshall Taylor
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Sandra Taylor
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Chris Wang
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Ste 200
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Austin Wilcox
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Melissa Wilson
17313 Cheveyo Cv
College Station, TX 77845-7461

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Final Documents Team Leader
Chief Clerk's Office

DATE: September 8, 2023

From: Michael Parr
Staff Attorney
Environmental Law Division

Subject: Backup Filed for the ED's Response to Hearing Requests

Applicant:	Smiling Mallard Development, Ltd.
Proposed Permit No.:	WQ0016077001
Program:	Water
Docket No.:	2023-0863-MWD

Enclosed please find a copy of the following documents for inclusion in the background material for this permit application:

- Technical Summary & Proposed Permit
- The Compliance History Report

**STATEMENT OF BASIS/TECHNICAL SUMMARY
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION**

DESCRIPTION OF APPLICATION

Applicant: Smiling Mallard Development, Ltd.
Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016077001, EPA I.D. No. TX0142123

Regulated Activity: Domestic Wastewater Permit

Type of Application: New Permit

Request: New Permit

Authority: Federal Clean Water Act (CWA) § 402; Texas Water Code § 26.027; 30 Texas Administrative Code (TAC) Chapters 30, 305, 307, 309, 312, and 319; Commission policies; and United States Environmental Protection Agency (EPA) guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The draft permit includes an expiration date of **five years from the date of issuance**.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.1 million gallons per day (MGD). The proposed wastewater treatment facility will serve the Villages of Indian Lakes – Mesa Verde Commercial Development.

PROJECT DESCRIPTION AND LOCATION

The Smiling Mallard Site 2 Wastewater Treatment Facility is an activated sludge process plant operated in the conventional mode. Treatment units include bar screens, an aeration basin, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

Sludge generated from the treatment facility is hauled by a registered transporter to Mount Houston Road MUD Wastewater Treatment Facility, Permit No. WQ0005023000, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

The plant site will be located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State Highway 6, in Brazos County, Texas 77845.

Outfall Location:

Outfall Number	Latitude	Longitude
001	30.527207 N	96.232964 W

The treated effluent will be discharged to an unnamed tributary of Peach Creek, thence to Peach Creek, thence to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

The unclassified receiving water uses are minimal aquatic life use for unnamed tributary, and limited aquatic life use for Peach Creek. The designated uses for Segment No. 1209 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 TAC § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Five-Day Biochemical Oxygen Demand or Five-Day Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water-quality limited streams as established in the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP).

In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with the TSWQS for pH when the discharge authorized is from a minor facility. This technology-based approach reasonably assures instream compliance with TSWQS criteria due to the relatively smaller discharge volumes authorized by these permits. This conservative assumption is based on TCEQ sampling conducted throughout the state which indicates that instream buffering quickly restores pH levels to ambient conditions. Similarly, this approach has been historically applied within EPA issued NPDES general permits where technology-based pH limits were established to be protective of water quality criteria.

The effluent limits recommended in the draft permit have been reviewed for consistency with the WQMP. The proposed limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. This discharge is less than 0.2 MGD, and has been evaluated consistent with the modeling Memoranda Of Agreement between the TCEQ and the EPA.

The Houston toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within Segment No. 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment No. 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is determined that the facility's discharge is not expected to impact the Houston toad. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1209 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria in the portion of Navasota River from confluence with Camp Creek upstream to Lake Limestone Dam in Robertson County (Assessment Unit [AU] 1209_05).

This facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 111 has been approved for this segment: *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. On August 28, 2019, the TCEQ adopted *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. The EPA approved the TMDLs on October 25, 2019. The TMDL addresses elevated levels of bacteria in one classified segment (Navasota River Below Lake Limestone – 1209, AUs _03 and _05) of this watershed. This project takes a watershed approach, but the TMDL only applies to AU 1209_03 and the AUs and additional unclassified segments upstream of it (1209_04, 1209_05, 1209_H, 1209G, 1209J, 1209K, and 1209P).

The waste load allocation (WLA) for wastewater treatment facilities was established as the final permitted flow for each facility multiplied by the geometric mean criterion for bacteria multiplied by a conversion factor (to get to units per day). The allocated loads were calculated for *Escherichia coli* (*E. coli*). Future growth from existing or new permitted sources is not limited by these TMDLs as long as the sources do not exceed the limits provided.

To ensure that effluent limitations for this discharge are consistent with the WLAs provided in the TMDL, a concentration-based effluent limitation of 126 colony-forming units (CFU) or most probable number (MPN) per 100 ml for *E. coli* has been included in the draft permit.

SUMMARY OF EFFLUENT DATA

Self-reporting data is not available since the facility is not in operation.

DRAFT PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.1 MGD.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 126 CFU or MPN of *E. coli*, and 4.0 mg/l minimum dissolved oxygen. The effluent shall contain a total chlorine residual of at least 1.0 mg/l, and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation. Sludge generated from the treatment facility is hauled by a registered transporter to Mount Houston Road MUD Wastewater Treatment Facility, Permit No. WQ0005023000, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

SUMMARY OF CHANGES FROM APPLICATION

None.

BASIS FOR DRAFT PERMIT

The following items were considered in developing the draft permit:

1. Application received on November 29, 2021, and additional information received on January 3 and 11, 2022, and April 21, 2022.
2. The effluent limitations and conditions in the draft permit comply with EPA-approved portions of the 2018 Texas Surface Water Quality Standards (TSWQS), 30 TAC §§ 307.1 - 307.10, effective March 1, 2018; 2014 TSWQS, effective March 6, 2014; 2010 TSWQS, effective July 22, 2010; and 2000 TSWQS, effective July 26, 2000.
3. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A, Effluent Limitations.
4. Interoffice Memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
5. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
6. *Procedures to Implement the Texas Surface Water Quality Standards* (IP), Texas Commission on Environmental Quality, June 2010, as approved by EPA, and the IP, January 2003, for portions of the 2010 IP not approved by EPA.
7. Texas 2020 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, March 25, 2020, approved by the EPA on May 12, 2020.
8. Texas Natural Resource Conservation Commission, Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 98-001.000-OWR-WQ, May 1998.
9. Total Maximum Daily Load Project No. 111 has been approved for this segment: Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone.

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, the Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment and is not a contested

case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's response to comments and final decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's response to comments and final decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application, contact Deba Dutta, P.E. at (512) 239-4608.

Deba Dutta

Deba Dutta, P.E.
Municipal Permits Team
Wastewater Permitting Section (MC 148)

4/29/2022

Date



TPDES PERMIT NO. WQ0016077001
[For TCEQ office use only - EPA I.D.
No. TX0142123]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Smiling Mallard Development, Ltd.

whose mailing address is

3608 East 29th Street, Suite 100
Bryan, Texas 77802

is authorized to treat and discharge wastes from the Smiling Mallard Site 2 Wastewater Treatment Facility, SIC Code 4952

located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State Highway 6, in Brazos County, Texas 77845

to an unnamed tributary of Peach Creek, thence to Peach Creek, thence to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin

only according to effluent limitations, monitoring requirements, and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **five years from the date of issuance.**

ISSUED DATE:

For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.1 million gallons per day (MGD), nor shall the average discharge during any two-hour period (2-hour peak) exceed 278 gallons per minute.

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>				<u>Min. Self-Monitoring Requirements</u>	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (8.3)	15	25	35	One/week	Grab
Total Suspended Solids	15 (13)	25	40	60	One/week	Grab
Ammonia Nitrogen	3 (2.5)	6	10	15	One/week	Grab
<i>E. coli</i> , colony-forming units or most probable number per 100 ml	126	N/A	N/A	399	One/month	Grab

2. The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

- ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day.

The daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (*E. coli* or Enterococci) - Colony Forming Units (CFU) or Most Probable Number (MPN) of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the n th root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
 - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
 - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).

- b. Grab sample - an individual sample collected in less than 15 minutes.
- 4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
- 5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
- 6. The term "biosolids" is defined as sewage sludge that has been tested or processed to meet Class A, Class AB, or Class B pathogen standards in 30 TAC Chapter 312 for beneficial use.
- 7. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, effluent monitoring data shall be submitted each month, to the Compliance Monitoring Team of the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. Monitoring results must be signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to

be representative of the monitored activity.

- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use or biosolids and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
 - i. date, time and place of sample or measurement;
 - ii. identity of individual who collected the sample or made the measurement.
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final

requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Except as allowed by 30 TAC § 305.132, report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. For Publicly Owned Treatment Works (POTWs), effective December 21, 2025, the permittee must submit the written report for unauthorized discharges and unanticipated bypasses that exceed any effluent limit in the permit using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
 - b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
 - i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
 - c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
 - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Compliance Monitoring Team of the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional

Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All POTWs must provide adequate notice to the Executive Director of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to CWA § 301 or § 306 if it were directly discharging those pollutants;
- b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
- c. For the purpose of this paragraph, adequate notice shall include information on:
 - i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS**1. General**

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
 - i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance

with 30 TAC §§ 305.62 and 305.66 and TWC§ 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§ 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC § 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9; or
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the TWC § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA § 307(a) for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA § 307(a) for toxic pollutants within the time provided in the

regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy

- a. Each permittee shall notify the Executive Director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, § 101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, § 101(2)) of the permittee.

- b. This notification must indicate:
 - i. the name of the permittee;
 - ii. the permit number(s);
 - iii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iv. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge or biosolids use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30

TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC § 7.302(b)(6).

7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §§ 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words confidential business information on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.

- a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 219) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
11. Facilities that generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:
 - a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
 - c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
 - d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Permitting and Registration Support Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.
 - e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well,

container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.

- f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC § 335 and must include the following, as it pertains to wastewater treatment and discharge:
- i. Volume of waste and date(s) generated from treatment process;
 - ii. Volume of waste disposed of on-site or shipped off-site;
 - iii. Date(s) of disposal;
 - iv. Identity of hauler or transporter;
 - v. Location of disposal site; and
 - vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC § 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC § 361.

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SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge or biosolids only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge. **The disposal of sludge or biosolids by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of Class A or Class AB Biosolids. This provision does not authorize the permittee to land apply biosolids on property owned, leased or under the direct control of the permittee.**

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE OR BIOSOLIDS LAND APPLICATION

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge or biosolids in accordance with 30 TAC § 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge or biosolids.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The land application of processed or unprocessed chemical toilet waste, grease trap waste, grit trap waste, milk solids, or similar non-hazardous municipal or industrial solid wastes, or any of the wastes listed in this provision combined with biosolids, WTP residuals or domestic septage is prohibited unless the grease trap waste is added at a fats, oil and grease (FOG) receiving facility as part of an anaerobic digestion process.

B. Testing Requirements

1. Sewage sludge or biosolids shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method that receives the prior approval of the TCEQ for the contaminants listed in 40 CFR Part 261.24, Table 1. Sewage sludge or biosolids failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge or biosolids at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge or biosolids no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Registration Support Division and the Regional Director (MC Region 9) within seven (7) days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Permitting and Registration Support Division (MC 129), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 9) and the Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30th of each year. The permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

2. Biosolids shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C. of this permit.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration</u> <u>(Milligrams per kilogram)*</u>
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site must be treated by one of the following methods to ensure that the sludge meets either the Class A, Class AB or Class B biosolids pathogen requirements.

- a. For sewage sludge to be classified as Class A biosolids with respect to pathogens, the density of fecal coliform in the sewage sludge must be less than 1,000 most probable number (MPN) per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the sewage sludge must be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. In addition, one of the alternatives listed below must be met:

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC § 312.82(a)(2)(A) for specific information;

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of must be treated in one of the Processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion; or

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of must be treated in a process that has been approved by the U. S. Environmental Protection Agency as being equivalent to those in Alternative 5.

- b. For sewage sludge to be classified as Class AB biosolids with respect to pathogens, the density of fecal coliform in the sewage sludge must be less than 1,000 MPN per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. In addition, one of the alternatives listed below must be met:

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%; or

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(iv-vi) for specific information; or

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

- c. Sewage sludge that meets the requirements of Class AB biosolids may be classified a Class A biosolids if a variance request is submitted in writing that is supported by substantial documentation demonstrating equivalent methods for reducing odors and written approval is granted by the executive director. The executive director may deny the variance request or revoke that approved variance if it is determined that the variance may potentially endanger human health or the environment, or create nuisance odor conditions.
- d. Three alternatives are available to demonstrate compliance with Class B biosolids

criteria.

Alternative 1

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U.S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a

single location, except as provided in paragraph v. below;

- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The Executive Director will accept from the U.S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition to the Alternatives 1 – 3, the following site restrictions must be met if Class B biosolids are land applied:

- i. Food crops with harvested parts that touch the biosolids /soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.
- ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remain on the land surface for 4 months or longer prior to incorporation into the soil.
- iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remain on the land surface for less than 4 months prior to incorporation into the soil.
- iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.
- v. Domestic livestock shall not be allowed to graze on the land for 30 days after application of biosolids.
- vi. Turf grown on land where biosolids are applied shall not be harvested for 1 year after application of the biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of biosolids.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids.

ix. Land application of biosolids shall be in accordance with the buffer zone requirements found in 30 TAC § 312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following Alternatives 1 through 10 for vector attraction reduction.

Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.

Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius. Volatile solids must be reduced by less than 17% to demonstrate compliance.

Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° Celsius. Volatile solids must be reduced by less than 15% to demonstrate compliance.

Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° Celsius.

Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° Celsius and the average temperature of the sewage sludge shall be higher than 45° Celsius.

Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.

Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 9 -

- i. Biosolids shall be injected below the surface of the land.
- ii. No significant amount of the biosolids shall be present on the land surface within one hour after the biosolids are injected.
- iii. When sewage sludge that is injected below the surface of the land is Class A or Class AB with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10 -

- i. Biosolids applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
- ii. When biosolids that is incorporated into the soil is Class A or Class AB with respect to pathogens, the biosolids shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

Toxicity Characteristic Leaching Procedure (TCLP) Test	- once during the term of this permit
PCBs	- once during the term of this permit

All metal constituents and fecal coliform or *Salmonella* sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC § 312.46(a)(1):

<u>Amount of biosolids (*)</u> <u>metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(*) *The amount of bulk biosolids applied to the land (dry wt. basis).*

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC § 312.7

Identify each of the analytic methods used by the facility to analyze enteric viruses, fecal coliforms, helminth ova, *Salmonella* sp., and other regulated parameters.

Identify in the following categories (as applicable) the sewage sludge or biosolids treatment process or processes at the facility: preliminary operations (e.g., sludge or biosolids grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.

Identify the nature of material generated by the facility (such as a biosolid for beneficial use or land-farming, or sewage sludge or biosolids for disposal at a landfill) and whether the material is ultimately conveyed off-site in bulk or in bags.

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A, CLASS AB or B BIOSOLIDS PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A, Class AB or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

<u>Pollutant</u>	Cumulative Pollutant Loading Rate (pounds per acre)*
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

*Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A, Class AB or Class B biosolids pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk biosolids enters a wetland or other waters in the State.
2. Bulk biosolids not meeting Class A biosolids requirements shall be land applied in a manner which complies with Applicability in accordance with 30 TAC §312.41 and the Management Requirements in accordance with 30 TAC § 312.44.
3. Bulk biosolids shall be applied at or below the agronomic rate of the cover crop.
4. An information sheet shall be provided to the person who receives bulk Class A or AB biosolids sold or given away. The information sheet shall contain the following information:
 - a. The name and address of the person who prepared the Class A or AB biosolids that are sold or given away in a bag or other container for application to the land.
 - b. A statement that application of the biosolids to the land is prohibited except in accordance with the instruction on the label or information sheet.
 - c. The annual whole sludge application rate for the biosolids application rate for the biosolids that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk biosolids is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk biosolids are proposed to be applied. The notice shall include:
 - a. The location, by street address, and specific latitude and longitude, of each land application site.
 - b. The approximate time period bulk biosolids will be applied to the site.
 - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the biosolids disposal practice.

E. Record Keeping Requirements

The documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a biosolids material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period

of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class AB and Class B biosolids, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

“I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC § 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC § 312.83(b) have been met for each site on which bulk biosolids are applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained. The person who applies bulk biosolids shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply:
 - a. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii), as applicable, and to the permittee’s specific sludge treatment activities.
 - b. The location, by street address, and specific latitude and longitude, of each site on which biosolids is applied.
 - c. The number of acres in each site on which bulk biosolids are applied.
 - d. The date and time biosolids are applied to each site.
 - e. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
 - f. The total amount of biosolids applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 9) and Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30th of each year the following information. The permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

1. Identify in the following categories (as applicable) the sewage sludge or biosolids treatment process or processes at the facility: preliminary operations (e.g., sludge or biosolids grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.
2. Identify the nature of material generated by the facility (such as a biosolid for beneficial use or land-farming, or sewage sludge for disposal at a monofill) and whether the material is ultimately conveyed off-site in bulk or in bags.
3. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
4. The frequency of monitoring listed in Section I.C. that applies to the permittee.
5. Toxicity Characteristic Leaching Procedure (TCLP) results.
6. PCB concentration in sludge or biosolids in mg/kg.
7. Identity of hauler(s) and TCEQ transporter number.
8. Date(s) of transport.
9. Texas Commission on Environmental Quality registration number, if applicable.
10. Amount of sludge or biosolids disposal dry weight (lbs/acre) at each disposal site.
11. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
12. Level of pathogen reduction achieved (Class A, Class AB or Class B).
13. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B biosolids, include information on how site restrictions were met.
14. Identify each of the analytic methods used by the facility to analyze enteric viruses, fecal coliforms, helminth ova, *Salmonella* sp., and other regulated parameters.
15. Vector attraction reduction alternative used as listed in Section I.B.4.

16. Amount of sludge or biosolids transported in dry tons/year.
17. The certification statement listed in either 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge or biosolids treatment activities, shall be attached to the annual reporting form.
18. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
 - a. The location, by street address, and specific latitude and longitude.
 - b. The number of acres in each site on which bulk biosolids are applied.
 - c. The date and time bulk biosolids are applied to each site.
 - d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk biosolids applied to each site.
 - e. The amount of biosolids (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE OR BIOSOLIDS DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

- A. The permittee shall handle and dispose of sewage sludge or biosolids in accordance with 30 TAC § 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge or biosolids meets the requirements in 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge or biosolids and supplies that sewage sludge or biosolids to the owner or operator of a municipal solid waste landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge or biosolids disposal practice.
- D. Sewage sludge or biosolids shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR § 261.24. Sewage sludge or biosolids failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge or biosolids at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge or biosolids no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Registration Support Division and the Regional Director (MC Region 9) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Permitting and Registration Support Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 9) and the Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year.

- E. Sewage sludge or biosolids shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record Keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 9) and Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30th of each year the following information. The permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

1. Identify in the following categories (as applicable) the sewage sludge or biosolids treatment process or processes at the facility: preliminary operations (e.g., sludge or biosolids grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.
2. Toxicity Characteristic Leaching Procedure (TCLP) results.
3. Annual sludge or biosolids production in dry tons/year.
4. Amount of sludge or biosolids disposed in a municipal solid waste landfill in dry tons/year.
5. Amount of sludge or biosolids transported interstate in dry tons/year.
6. A certification that the sewage sludge or biosolids meets the requirements of 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
7. Identity of hauler(s) and transporter registration number.
8. Owner of disposal site(s).
9. Location of disposal site(s).
10. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION IV. REQUIREMENTS APPLYING TO SLUDGE OR BIOSOLIDS TRANSPORTED TO ANOTHER FACILITY FOR FURTHER PROCESSING

These provisions apply to sludge or biosolids that is transported to another wastewater treatment facility or facility that further processes sludge or biosolids. These provisions are intended to allow transport of sludge or biosolids to facilities that have been authorized to accept sludge or biosolids. These provisions do not limit the ability of the receiving facility to determine whether to accept the sludge or biosolids, nor do they limit the ability of the receiving facility to request additional testing or documentation.

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge or biosolids in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. Sludge or biosolids may only be transported using a registered transporter or using an approved pipeline.

B. Record Keeping Requirements

1. For sludge or biosolids transported by an approved pipeline, the permittee must maintain records of the following:
 - a. the amount of sludge or biosolids transported;
 - b. the date of transport;
 - c. the name and TCEQ permit number of the receiving facility or facilities;
 - d. the location of the receiving facility or facilities;
 - e. the name and TCEQ permit number of the facility that generated the waste; and
 - f. copy of the written agreement between the permittee and the receiving facility to accept sludge or biosolids.
2. For sludge transported by a registered transporter, the permittee must maintain records of the completed trip tickets in accordance with 30 TAC § 312.145(a)(1)-(7) and amount of sludge or biosolids transported.
3. The above records shall be maintained on-site on a monthly basis and shall be made available to the TCEQ upon request. These records shall be retained for at least five years.

C. Reporting Requirements

The permittee shall report the following information annually to the TCEQ Regional Office (MC Region 9) and Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30th of each year. The permittee must submit this annual report using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

1. Identify in the following categories (as applicable) the sewage sludge or biosolids treatment process or processes at the facility: preliminary operations (e.g., sludge or biosolids grinding and degritting), thickening (concentration), stabilization, anaerobic digestion, aerobic digestion, composting, conditioning, disinfection (e.g., beta ray irradiation, gamma ray irradiation, pasteurization), dewatering (e.g., centrifugation, sludge drying beds, sludge lagoons), heat drying, thermal reduction, and methane or biogas capture and recovery.
2. the annual sludge or biosolids production;
3. the amount of sludge or biosolids transported;
4. the owner of each receiving facility;
5. the location of each receiving facility; and
6. the date(s) of disposal at each receiving facility.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations, and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Class C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.
3. The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).
4. The permittee shall provide facilities for the protection of its wastewater treatment facility from a 100-year flood.
5. In accordance with 30 TAC § 319.9, a permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission in writing of its compliance and request a less frequent measurement schedule. To request a less frequent schedule, the permittee shall submit a written request to the TCEQ Wastewater Permitting Section (MC 148) for each phase that includes a different monitoring frequency. The request must contain all of the reported bacteria values (Daily Avg. and Daily Max/Single Grab) for the twelve consecutive months immediately prior to the request. If the Executive Director finds that a less frequent measurement schedule is protective of human health and the environment, the permittee may be given a less frequent measurement schedule. For this permit, 1/month may be reduced to 1/quarter. **A violation of any bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule and submit written notice to the TCEQ Wastewater Permitting Section (MC 148).** The permittee may not apply for another reduction in measurement frequency for at least 24 months from the date of the last violation. The Executive Director may establish a more frequent measurement schedule if necessary to protect human health or the environment.
6. Prior to construction of the wastewater treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary transmittal letter in accordance with the requirements in 30 TAC § 217.6(d). If requested by the Wastewater Permitting Section, the permittee shall submit plans and specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems. The permittee shall clearly show how the treatment system will meet the permitted effluent limitations required on Pages 2 of this permit. A copy of the summary transmittal letter shall be available at the plant site for inspection by authorized representatives of the TCEQ.
7. Reporting requirements according to 30 TAC §§ 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge from the facility described by this permit, whichever occurs first. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 9) and the Applications Review

and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first, and prior to completion of each additional phase on Notification of Completion Form 20007.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Final Documents Team Leader
Chief Clerk's Office

DATE: September 11, 2023

From: Michael Parr
Staff Attorney
Environmental Law Division

Subject: Supplemental Backup Filed for the ED's Response to Hearing Requests

Applicant:	Smiling Mallard Development, Ltd.
Proposed Permit No.:	WQ0016077001
Program:	Water
Docket No.:	2023-0863-MWD

Enclosed please find a copy of the following documents for inclusion in the background material for this permit application:

- The Compliance History Report



Compliance History Report

Compliance History Report for CN602787814, RN111386025, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator:	CN602787814, Smiling Mallard Development, Ltd.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN111386025, SMILING MALLARD SITE 2	Classification: UNCLASSIFIED	Rating: -----
Complexity Points:	6	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	LOCATED APPROX 2 000 FT SW OF THE INTERX OF MESA VERDE DR & SH 6 BRAZOS, TX, BRAZOS COUNTY		
TCEQ Region:	REGION 09 - WACO		
ID Number(s):			
WASTEWATER PERMIT WQ0016077001	WASTEWATER EPA ID TX0142123		
Compliance History Period:	September 01, 2018 to August 31, 2023	Rating Year: 2023	Rating Date: 09/01/2023
Date Compliance History Report Prepared:	September 11, 2023		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Component Period Selected:	November 29, 2016 to November 29, 2021		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name: Mparr	Phone: (512) 239-1000		

Site and Owner/Operator History:

- | | |
|--|----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | NO |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.
N/A

F. Environmental audits:
N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 25, 2023

TO: All interested persons.

RE: Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Revised Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Brazos County Clerk's Office, 300 East 26th Street, Suite 1430, Bryan, Texas..

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name,

address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

The Executive Director has made the Revised Response to Public Comment (RTC) for the application by Smiling Mallard Development, Ltd for TPDES Permit No.

WQ0016077001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016077001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Brazos County Clerk's Office, 300 East 26th Street, Suite 1430, Bryan, Texas.

MAILING LIST
for
Smiling Mallard Development, Ltd.
TPDES Permit No. WQ0016077001

FOR THE APPLICANT:

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George Neill, P.E., Project Engineer
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INTERESTED PERSONS:

See attached list.

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DANNY
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BOLLINE , LINDSEY
3718 MARICOPA LN
COLLEGE STATION TX 77845-2009

BURNS , MRS BERNICE
17349 CHEVEYO CV
COLLEGE STATION TX 77845-4661

BUTENKO , JOANNA
3421 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

BUTENKO , SERGIY
DE
3421 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

BUTENKO , XENIA
3421 MOJAVE CANYON DR
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CARAWAY , LAURA
17708 SENECA SPGS
COLLEGE STATION TX 77845-3564

CHESSMAN , TYLER
3000 SANDIA SPRINGS CV
COLLEGE STATION TX 77845-2132

COATNEY , DAVID
3325 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4658

COATNEY , JEAN
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DEHAES , MR WILLIAM
17337 LESHARO CV
COLLEGE STATION TX 77845-1413

ELLIOTT , SHANA
3337 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4540

ETHERIDGE , ANDREA
18643 IROQUOIS CV
COLLEGE STATION TX 77845-7377

FAN , XUE
3469 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

FLANAGAN , CHRISTOPHER
1881 NARROW WAY
COLLEGE STATION TX 77845-8746

FLANAGAN , HERB
10996 WOODLANDS DR
COLLEGE STATION TX 77845-9124

FLANAGAN , LANELL
1006 S DEXTER DR
COLLEGE STATION TX 77840-6123

FLANAGAN , HERB
MOORE SUPPLY COMPANY
1530 HARVEY MITCHELL PKWY S
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FLANAGAN , HERB
1881 NARROW WAY
COLLEGE STATION TX 77845-8746

GALBREATH , LAURIE
3897 CADDO CV
COLLEGE STATION TX 77845-4544

GALINDO , CHARLES
3280 TOLTEC TRL
COLLEGE STATION TX 77845-3532

GALINDO , JANET ESTILL
3280 TOLTEC TRL
COLLEGE STATION TX 77845-3532

GATLIN , ANDREA
3493 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

GOEHRING , LAURA
17253 BAQUITO CV
COLLEGE STATION TX 77845-6678

GOERIG , ABBY
18665 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6459

HAMPTON , MEGAN AMANDA
2923 CHACO CANYON DR
COLLEGE STATION TX 77845-4631

HENDERSON , KAYLA
17233 SUNDANCE DR
COLLEGE STATION TX 77845-4594

HOFFPAUIR , LINDA
3300 OSAGE TRAIL CV
COLLEGE STATION TX 77845-4575

HOFFPAUIR , MR PATRICK
3300 OSAGE TRAIL CV
COLLEGE STATION TX 77845-4575

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3113 LA VENTA WAY
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17295 BAQUITO CV
COLLEGE STATION TX 77845-6678

HOMANN , TASHA
17295 BAQUITO CV
COLLEGE STATION TX 77845-6678

HOWARD , LALLAH
2966 CHACO CANYON DR
COLLEGE STATION TX 77845-4630

HUGGINS , JERALD
3528 CHACO CANYON DR
COLLEGE STATION TX 77845-4559

JENNINGS , HALEY S
17361 CHEVEYO CV
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3600 EAGLE NEST
COLLEGE STATION TX 77845-4565

LINDLEY , SHANNON L
18896 INDIAN LAKES DR
COLLEGE STATION TX 77845-8820

MAKNOJIA , SAIROJ
18435 INDIAN LAKES DR
COLLEGE STATION TX 77845-5777

MAXWELL , MEGAN
19106 TALLULAH TRL
COLLEGE STATION TX 77845-8648

MCAULIFFE , MR SHANE
18267 ANASAZI BLUFF DR
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MCCORMICK , RHONDA
18530 INDIAN LAKES DR
COLLEGE STATION TX 77845-5778

MCGUIRE , TARA
17349 HALONA CT
COLLEGE STATION TX 77845-2451

MOORE , MICHELE
3718 MARICOPA LN
COLLEGE STATION TX 77845-2009

MORGAN , LINDA R
3549 SHOSHONI CT
COLLEGE STATION TX 77845-4586

MUEHLBRAD , DUANE
17349 MAKAWEE CT
COLLEGE STATION TX 77845-2455

MUEHLBRAD , STACY
17349 MAKAWEE CT
COLLEGE STATION TX 77845-2455

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NAN , BEIYAN
3469 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4660

NEELEY , D DARLENE
18767 KIOWA CV
COLLEGE STATION TX 77845-7381

NUNLEY , BRENDA
17360 CHEVEYO CV
COLLEGE STATION TX 77845-7462

NUNLEY , MARK
17360 CHEVEYO CV
COLLEGE STATION TX 77845-7462

PHELPS , SHANE
4023 CHACO CANYON DR
COLLEGE STATION TX 77845-7792

PRATER , JANET
17325 MAKAWEE CT
COLLEGE STATION TX 77845-2455

PRITCHARD , KIM
3400 NAVAJO RIDGE DR
COLLEGE STATION TX 77845-4657

PRITCHARD , LUCINDA
3400 NAVAJO RIDGE DR
COLLEGE STATION TX 77845-4657

RACKLEY , ROBIN
3384 CHACO CANYON DR
COLLEGE STATION TX 77845-4555

RAGUSA , JEAN
3473 TOLTEC TRL
COLLEGE STATION TX 77845-3543

RICCIARDELLO , JEAN
4023 CHACO CANYON DR
COLLEGE STATION TX 77845-7792

RICHARDS , BRET
18339 COPPER RIVER DR
COLLEGE STATION TX 77845-4667

RICHARDS , ERIN
18395 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6158

RICKETTS , BECKY
3000 ALGOMA CV
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ROETH , CAROLINE
17250 CATORI CV
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SCHUELKE , DAVID
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SUTTON , MRS SHERRY
18446 ANASAZI BLUFF DR
COLLEGE STATION TX 77845-6159

TAYLOR , MARSHALL
18195 COPPER RIVER DR
COLLEGE STATION TX 77845-4663

TAYLOR , SANDRA
17672 SENECA SPGS
COLLEGE STATION TX 77845-3560

TEMPLIN , SHELLY D
3397 MOJAVE CANYON DR
COLLEGE STATION TX 77845-4658

THOMAS , JAMIE
3645 SHOSHONI CT
COLLEGE STATION TX 77845-4588

TOLER , ANGELIQUE
2932 CHACO CANYON DR
COLLEGE STATION TX 77845-4630

URBAN , ALLISON MARIE
17325 HALONA CT
COLLEGE STATION TX 77845-2451

URBAN , ANTHONY
17325 HALONA CT
COLLEGE STATION TX 77845-2451

VAN HORN , MR LARRY
3529 CHACO CANYON DR
COLLEGE STATION TX 77845-4560

WAGNER , MELISA
19059 TALLULAH TRL
COLLEGE STATION TX 77845-8647

WAGNER , PAUL
19059 TALLULAH TRL
COLLEGE STATION TX 77845-8647

WALL , WARREN EDWARD
3384 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-5399

WALLIS , TAD
19154 TALLULAH TRL
COLLEGE STATION TX 77845-8648

WANG , CHRIS
STE 200
4121 STATE HIGHWAY 6 S
COLLEGE STATION TX 77845-8681

WANG , CHRIS
17301 CHEVEYO CV
COLLEGE STATION TX 77845-5461

WERNER , CYNTHIA
3385 ARAPAHO RIDGE DR
COLLEGE STATION TX 77845-4540

WILCOX , ANGEE
17300 LESHARO CV
COLLEGE STATION TX 77845-1413

WILCOX , AUSTIN
17300 LESHARO CV
COLLEGE STATION TX 77845-1413

WILKE , JULIE
3145 ARAPAHO RIDGE DR
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WILSON , GORDON
17313 CHEVEYO CV
COLLEGE STATION TX 77845-7461

WILSON , MELISSA
17313 CHEVEYO CV
COLLEGE STATION TX 77845-7461

TPDES PERMIT NO. WQ0016077001

APPLICATION BY SMILING MALLARD
DEVELOPMENT, LTD. FOR NEW
TPDES PERMIT NO. WQ0016077001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S REVISED RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Revised Response to Public Comment (Revised RTC) on the application by Smiling Mallard Development, Ltd. (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016077001, and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk received timely comments from Jean Ragusa, Jeff Knox, Jean Ricciardello, Lindsey Bolline, Erin Richards, Laurie Galbreath, Daniel Applegate, Caroline Roeth, Gordon Wilson, Melisa Wagner, Shannon Lindley, Andrea Gatlin, Paul Wagner, Scott Story, Justin Homan, Michele Moore, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Julie Wilkie, Kayla Henderson, Robin Rackley, Rhonda McCormick, Janet Prater, Laura Caraway, Cynthia Werner, Angelique Toler, Neetu Kainthla, Larry Van Horn, Lallah Howard, Darlene Neeley, Sairoj Maknojia, Xue Fan, Gamal Akabani, Andrea Etheridge, Alison Urban, Stephen Smith, Brenda Nunley, Jamie Thomas, Abby Goerig, Shelly Templin, Tasha Homann, Paula Murphy, Tyler Chessman, Shane Phelps, Kim Pritchard, Reggi and Laura Holzer, Duane and Stacy Muehlbrad, Charles and Janet Galindo, Austin and Angee Wilcox, Marshall and Sandra Taylor, Sergiy and Joanna Butenko, and Herb and Lanell Flanagan. This Revised RTC adds the additional public comments received after the original close of the comment period on June 22, 2022, whether withdrawn or not, at the Public Meeting held on January 23, 2023. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ web site at <http://www.tceq.texas.gov>.

BACKGROUND

The Applicant applied for TPDES Permit No. WQ0016077001 (**proposed permit**), which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed a daily average flow of 100,000 or 0.1 million gallons per day (**MGD**) and authorizes sludge generated at the Smiling Mallard Site 2 Wastewater Treatment Facility (**proposed facility**) to be hauled by a registered transporter to Mount Houston Road MUD Wastewater Treatment Facility (**WWTF**), Permit No. WQ0005023000, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. Sludge is also authorized to be disposed of at any TCEQ-authorized land application site, co-disposal landfill, WWTF, or facility that further processes sludge.

Description of Facility

If this permit is ultimately issued, the proposed facility will be located approximately 2,000 feet southwest of the intersection of Mesa Verde Drive and State

Highway 6, in Brazos County, Texas 77845, serve the Mesa Verde Commercial Development at the Villages of Indian Lakes, and will be an activated sludge process plant operated in the conventional mode. Treatment units include bar screens, an aeration basin, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The proposed discharge route for the treated effluent is to an unnamed tributary of Peach Creek, then to Peach Creek, then to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

Technical Review

Staff in the ED's Water Quality Division, (**WQD staff**) performed multiple analyses for the Technical Review of the proposed permit, including but not limited to, a Receiving Water Assessment performed by WQD staff on the Standards Implementation Team (**Standards Team**) and Water Quality Modeling runs by WQD staff in the Water Quality Assessment Section (**Modeling Team**) that used an "uncalibrated QUAL-TX" model. The Receiving Water Assessment, along with other available information, allowed the Standards Team to preliminarily determined the aquatic life uses in the area of the proposed discharge's impact and assigned the corresponding Minimum Dissolved Oxygen (**DO**) criterion as stipulated in the Texas Surface Water Quality Standards (**TSWQS**) (30 TAC § 307.5) and the TCEQ's *Implementation procedures for the Texas Surface Water Quality Standards-June 2010 (IPs)*. For every new discharge, the Standards Team performs antidegradation analysis of the proposed discharge. Because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) of the TSWQS and determined that the unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and limited aquatic life use for Peach Creek with no receiving waters with exceptional, high, or intermediate aquatic life uses within the stream reach assessed, thereby not requiring a Tier 2 Antidegradation review. As with all determinations, reviews, or analyses related to the Technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases or assumptions employed in the applicable review, or analysis.

The designated uses for Segment No. 1209, as stated in the 2018 TSWQS-Appendix A (30 TAC § 307.10) are primary contact recreation, public water supply, and high aquatic life use. The Standards Team, in accordance with the TSWQS and the TCEQ's IPs, performed an Antidegradation Review of the receiving waters with the Tier 1 review preliminarily determining that existing water quality uses will not be impaired by the proposed discharge. Numerical and narrative criteria protecting existing uses will be maintained with no significant degradation of water quality expected in waterbodies within the discharge route with exceptional, high, or intermediate aquatic life uses.

The proposed permit's water quality-related effluent limitations (**limits**), established by WQD staff's uncalibrated QUAL-TX modeling results, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (**CBOD₅**), Total Suspended Solids (**TSS**), and Ammonia Nitrogen (**NH₃-N**), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan. The proposed discharge is less than 0.2 MGD, and was evaluated consistent with the modeling Memoranda Of Agreement between the TCEQ and the United States Environmental Protection Agency (**USEPA**).

Based on WQD staff's modeling results, effluent limits of 10.0 mg/L CBOD₅, 3.0 mg/L NH₃-N, and 4.0 mg/L DO, based on a 30-day average, are predicted to ensure that DO will be maintained above the criterion established by the Standards Team for the unnamed tributary of Peach Creek (2.0 mg/L DO), Peach Creek (3.0 mg/L DO), and Segment No. 1209 (5.0 mg/L). Coefficients and kinetics used in the model are a combination of site specific, standardized default, and estimated values.

Segment No. 1209 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria in the portion of Navasota River from the confluence with Camp Creek upstream to Lake Limestone Dam in Robertson County (Assessment Unit [AU] 1209_05). However, the proposed permit includes a requirement that the Applicant use chlorine for disinfection and a bacteria limit of 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml; and this facility, when operated properly, is designed to provide adequate disinfection and should not add to the bacterial impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 111 has been approved for this segment: *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. On August 28, 2019, the TCEQ adopted *Two Total Maximum Daily Loads for Indicator Bacteria in the Navasota River below Lake Limestone*. The EPA approved the TMDLs on October 25, 2019. The TMDL addresses elevated levels of bacteria in one classified segment (Navasota River Below Lake Limestone - 1209, AUs _03 and _05) of this watershed. This project takes a watershed approach, but the TMDL only applies to AU 1209_03 and the AUs and additional unclassified segments upstream of it (1209_04, 1209_05, 1209_H, 1209G, 1209J, 1209K, and 1209P).

The waste load allocation (WLA) for WWTFs was established as the final permitted flow for each WWTF multiplied by the geometric mean criterion for bacteria multiplied by a conversion factor (to get to units per day). The allocated loads were calculated for *Escherichia coli* (*E. coli*). Future growth from existing or new permitted sources is not limited by these TMDLs as long as the sources do not exceed the limits provided. To ensure that the effluent limits in the proposed permit are consistent with the WLAs provided in the TMDL, a concentration-based effluent limitation of 126 CFU or MPN per 100 ml for *E. coli* was added to the proposed permit.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-10, effective 7/22/2010) and the EPA-approved portions of the TSWQS (effective 3/6/2014). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with pH criteria in the TSWQS when the discharge authorized is from a minor facility and the unclassified waterbodies have minimal or limited aquatic life uses. This technology-based approach reasonably assures instream compliance with TSWQS due to relatively smaller discharge volumes authorized by these permits. TCEQ sampling conducted throughout Texas indicating instream buffering quickly restores pH levels to ambient conditions, informs this conservative approach.

The Houston toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within Segment No. 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the Texas' authorization of the TPDES permitting program (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for

TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species. However, the determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment No. 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is determined that the proposed facility's discharge is not expected to impact the Houston toad.

Procedural Background

The TCEQ received the application on November 29, 2021, and declared it administratively complete on March 15, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Brazos County, Texas in the *Eagle Newspaper* on March 18, 2022. The ED completed the technical review of the application on April 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Brazos County, Texas in the *Eagle Newspaper* on May 25, 2022. The public comment period ended on June 24, 2022, and the ED's original RTC was filed on August 29, 2022. On September 1, 2022, the ED approved a Public Meeting Request from Texas State Representative Kyle Kacal. On December 23, 2022 the Applicant published the Notice of Public Meeting in the *Eagle Newspaper*. On January 23, 2023, at 7:00pm, a Public Meeting was held at the Embassy Suites in College Station, located at 201 University Drive East, 77840. The reopened comment period closed on January 23, 2023, at the close of the Public Meeting. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

Access to Rules, Laws and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Current TCEQ Rules," then "Download TCEQ Rules");
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.) http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:** <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select "use our online form") or by sending an email to the following address: cmplaint@TCEQ.state.tx.us.

Commission records for the Proposed facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor

(Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the at the Brazos County Clerk's Office located at East 26th Street, Suite 1430, Bryan, Texas 77083, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 9) in Waco, TX at (254) 751-0335 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENTS AND RESPONSES

COMMENT 1:

Michele Moore, Jean Ragusa, Jeff Knox, Jean Ricciardello, Lindsey Bolline, Erin Richards, Laurie Galbreath, Daniel Applegate, Sergiy Butenko, Caroline Roeth, Gordon Wilson, Melisa Wagner, Shannon Lindley, Andrea Gatlin, Paul Wagner, Scott Story, Justin Homan, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Janet Galindo, Julie Wilkie, Kayla Henderson, Robin Rackley, Rhonda McCormick, Janet Prater, Laura Caraway, Angelique Toler, Neetu Kainthla, Larry Van Horn, Lallah Howard, Joanna Butenko, Darlene Neeley, Sairoj Maknojia, Xue Fan, Gamal Akabani, Andrea Etheridge, Alison Urban, Stephen Smith, Brenda Nunley, Jamie Thomas, Abby Goerig, Shelly Templin, Tasha Homann, Paula Murphy, Tyler Chessman, Reggi and Laura Holzer, Duane and Stacy Muehlbrad, and Charles and Janet Galindo, Austin and Angee Wilcox, Marshall and Sandra Taylor, and Sergiy and Joanna Butenko all commented in opposition to the proposed permit and facility, and specifically the proposed facility's location.

RESPONSE 1:

The ED acknowledges the opposition to the proposed permit, facility, and the proposed location of the proposed facility. Texas Water Code (TWC) § 26.027 authorizes the TCEQ to issue permits for discharges into water in the state. The ED evaluates applications for wastewater treatment plants based on the information provided in the application. The ED can recommend issuance or denial of an application based on whether the application complies with the TWC and TCEQ regulations.

The Applicant is the entity that proposes the location of the facility, point of discharge, and the discharge route rather than the ED. The ED's review evaluates the impact of the discharge on the receiving waters; however, the TCEQ's permitting authority does not include the ability to mandate a different location for the facility if

the location in the application complies with 30 TAC Chapter 309, Subchapter B (Location Standards), specifically 30 TAC § 309.13 pertaining to “Unsuitable Site Characteristics” for a treatment facility.

Instead, the ED may only evaluate a proposed location for a wastewater treatment facility according to the Location Standards in the TCEQ regulations and the effect(s) of the treated wastewater on the uses of the receiving stream starting at the point of discharge. The ED must provide the proper effluent limitations to protect these uses.

If the Applicant revises its application with a different location and discharge route for the proposed facility, the ED will reevaluate the new location and discharge route to make sure that the proposed permit contains proper limits and conditions for the revised discharge route and location, which may require notice to additional landowners because of the new facility and discharge route.

COMMENT 2:

Daniel Applegate, Cynthia Werner, Jean Ricciardello, Duane and Stacy Muehlbrad, Sergiy and Joanna Butenko, Melissa Wagner, Scott Story, Justin Homan, Linda Morgan, Carla Shaw, Tara McGuire, Sherry Sutton, Brenda Nunley, Sandra Taylor, Rhonda McCormick, Michele Moore, Xue Fan, Tyler Chessman, Gamal Akabani, and Stephen Smith all commented about air contaminants from the proposed facility negatively impacting area residents’ quality of life and their health, as well as the health of wildlife in the area.

RESPONSE 2:

The health concerns of residents, as well as those of the public, are considered in reviewing an application for a domestic wastewater discharge permit. The TCEQ takes the concerns and comments expressed by the public relating to water quality, human health, and protecting the State’s rivers and lakes into consideration in deciding whether to issue a wastewater discharge permit. However, WWTFs do not contribute significant amounts of air contaminants to the atmosphere; and thus, the air contaminants from a WWTF have a negligible impact on human health and the environment.

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

Similarly, the TCEQ oversees the protection of water quality with federal regulatory authority, such as the TPDES program, over discharges of pollutants into Texas surface waterbodies. The TCEQ has legislative authority to protect water quality in Texas and under TWC, Chapter 26, to authorize TPDES discharge permits subject to

the regulations in 30 TAC Chapters 305, 307, and 309, including specific rules for wastewater treatment systems under Chapters 217 and 309.

WQD staff evaluated the application as an authorization to discharge treated wastewater into water in the State. Thus, the quality of the effluent and the method of achieving that quality must follow the TWC, the Federal Clean Water Act, and the TSWQS. Further, WQD Staff developed the proposed permit to preclude significant degradation of water quality in the waterbodies within the discharge route. The proposed permit includes effluent limitations and monitoring requirements designed to ensure protection of the receiving waters in accordance with TCEQ rules and procedures.

Chapter 26 of the TWC and TCEQ rules relating to water quality are geared towards the protection of public health, aquatic life, and the environment. Accordingly, the stated policy of both the Water Code and the TSWQS is:

to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; 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 require the use of all reasonable methods to implement this policy.¹

Likewise, the TPDES program mandates that discharges of treated effluent into water in the state from facilities regulated by TPDES permits must meet the requirements of the TSWQS. The TSWQS is a primary mechanism for the TCEQ to protect surface water quality, groundwater quality, human health, aquatic life, the environment, and designated uses of the receiving waters. Development of the proposed permit was in accordance with the TSWQS (30 TAC Chapter 307) and the TCEQ IPs to be protective of water quality, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements.

The TSWQS require that discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals, not degrade receiving waters, and not result in situations that impair existing, attainable, or designated uses.

The methodology outlined in the TCEQ IPs is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health.

As specified by the methodologies outlined in the TCEQ IPs, TPDES permits issued by the TCEQ must maintain water in the state to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. In addition, permits must prevent adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The design of the proposed permit ensures these water quality standards will be supported.

¹ Texas Water Code § 26.003 and 30 TAC § 307.1.

To achieve the goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process WQD Staff review all applications in accordance with the TSWQS and the TCEQ IPs. The proposed permit contains several water quality specific parameters that limit the potential impact of the discharge on the receiving waters, such as the effluent limits that were developed by WQD Staff on the Modeling Team to maintain and protect the existing uses of the receiving waters (primary contact recreation, public water supply, and high aquatic life), which were identified by WQD Staff on the Standards Team.

The Modeling Team developed protective effluent limits by performing Dissolved Oxygen or DO modeling analyses. DO concentrations in a waterbody are critical for the waterbody's health and protection of aquatic life. In many cases, effluent discharges decrease DO levels in waterbodies. To ensure that discharges do not lower DO levels below criteria established for those water bodies by the Standards Team, DO modeling analyses are performed to evaluate whether the proposed permit's effluent limits are predicted to ensure the DO concentrations in the discharge route will be maintained above the criteria established by the Standards Team.

Based on the model results, the effluent set in the proposed permit in all phases, based on a 30-day average, are 10 mg/l BOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N, 126 colony forming units or most probable number of *E. coli* per 100 ml; and the effluent must contain a minimum DO of 4.0 mg/l, which must be monitored once per week by grab sample. The effluent must be free of visible oil and, other than in trace amounts, floating solids, or visible foam.

Additional protection of human health comes from the rule in 30 TAC § 309.3(g)(1) (Disinfection), which requires disinfection of domestic wastewater into water in the state in a manner conducive to the protection of both public health and aquatic life. The rules do not mandate a specific method of disinfection, as a permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval from the ED. Whichever form is used, the design criteria for chemical disinfection by chlorine, including safety requirements, in 30 TAC Chapter 217, Subchapter K must be observed. Therefore, in accordance with the TCEQ rules (30 TAC § 309.3(g)(1)), the proposed permit requires the treated effluent to be disinfected prior to discharge in a manner conducive to protect both the public health and aquatic life.

For the proposed facility, the Applicant has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms. Chlorine is one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.² The effluent from the proposed facility, disinfected with chlorine, must contain a chlorine residual of at least 1.0 mg/l. The permit limit for maximum total chlorine residual is 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), which must be monitored five times per week by grab sample.³

Also protecting the water quality of the creeks and waterbodies of the discharge route are the assigned aquatic life uses themselves, which govern what uses and criteria will apply to protect Segment No. 1209 of the Brazos River Basin and the

² U.S. EPA *Wastewater Technology Fact Sheet- Chlorine Disinfection* (EPA 832-F-99-062)

³ Smiling Mallard Dev. Ltd. Draft Permit, Effluent Limitations and Monitoring Requirements, page 2; see also 30 TEX. ADMIN. CODE § 309.3(g)(2)

creeks upstream of Segment No. 1209, their uses and the aquatic life that dwell in them, as well as consumption by terrestrial wildlife. The proposed facility is a minor municipal facility that will discharge to first an unnamed tributary of Peach Creek, which is unclassified and, like Peach Creek, has a “limited aquatic life” use. However, the discharge also enters the Navasota River Below Lake Limestone in Segment No. 1209, which has a “high aquatic life” use. Waterbodies that support an exceptional and high aquatic life uses have associated criteria that protect both the aquatic life that live in the waterbodies and terrestrial wildlife that use the waterbodies as a source of water or food. Additionally, Minor municipal facilities, with conventional domestic sewage do not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing wastewater. However, the proposed facility does not, and the proposed discharge will have to meet a high DO criterion to support an aquatic community with exceptional and high-existing aquatic life uses. The proposed permit’s limits will protect the uses and quality of the receiving waters of the discharge route for the benefit of the aquatic life and terrestrial wildlife that depend on it.

WQD staff developed and designed the proposed permit to be protective of the uses of all water bodies that could be potentially affected by the proposed discharge. In addition, the discharge cannot cause significant degradation of water quality in any water bodies that exceed fishable/swimmable quality, such as Segment No. 1209. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in or on the water. To achieve the goal of supporting a level of water quality sufficient to protect existing water body uses, the proposed permit contains several water quality-specific parameter requirements that limit the potential impact of the discharge on the receiving waters. It is the mission of WQD staff to provide appropriate effluent limitations to protect the uses of the receiving waterbody.

Because Waters in the State must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three, the WQD Staff determined that the proposed permit includes provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of aquatic life, human health, and the environment.

COMMENT 3:

Duane and Stacy Muehlbrad, Lindsey Bolline, Shannon Lindley, Andrea Gatlin, Michele Moore, Julie Wilkie, Lallah Howard, Larry Van Horn, Andrea Etheridge, Brenda Nunley, Jamie Thomas, Tyler Chessman, Justin Homan, Angelique Toler, and Jamie Thomas all commented that the neighborhood is all on septic systems and the proposed discharge would not benefit the neighborhood at all.

RESPONSE 3:

TWC § 26.027, authorizes the TCEQ to issue permits for discharges into waters in the state. The TCEQ does not have the authority to mandate the method of disposal of treated effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309. If the Applicant decides to

utilize individual septic tanks to serve the proposed residential area, it will be subject to 30 TAC Chapter 285, relating to “On-site Sewage Facilities (OSSF).”⁴

Instead, WQD staff evaluate applications for WWTFS based on the information provided in the application. It is the sole responsibility of the Applicant to propose the manner of treatment and disposal of the effluent. TCEQ’s permitting authority does not include the authority to mandate the manner of treatment or method of disposal of the effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309. WQD staff, after evaluation of the proposed wastewater treatment technology and the effect(s) of the treated wastewater on the uses of the receiving waterbody starting at the point of discharge, can recommend issuance or denial of an application based on whether the application complies with the TWC and TCEQ regulations.

The wastewater strength, or organic loading, of CBOD₅ and NH₃-N in untreated sewage from a residential subdivision is estimated to be 250-400 mg/l and 15 - 75 mg/l, respectively.⁵ The proposed permit, for example, requires that the treated effluent shall not exceed 10 mg/l CBOD₅ with 2.0 mg/l NH₃-N.⁶ Therefore, the proposed facility will be required to achieve a more than 90%-95% reduction in BOD₅/CBOD₅ concentration in the treated effluent prior to discharge. In comparison, a well-maintained septic tank treats sewage to approximately 100 mg/l BOD₅ prior to discharging into the underground drain field or soil absorption field.

Treated effluent may also be disposed of via land application. A Texas Land Application Permit (TLAP) authorizes the disposal of treated effluent by means of surface irrigation, subsurface irrigation, or evaporation. The effluent must be treated to the pollutant concentrations prescribed in 30 TAC § 309.4.

Further, treated effluent may also be utilized for beneficial use pursuant to 30 TAC Chapter 210, relating to “Use of Reclaimed Water;” however this is an authorization that requires either a TPDES or TLAP permit be obtained first.

Any suggestions to the Applicant for a different method for disposal of wastewater would need to be made directly to and negotiated with the Applicant and would be separate from the permitting process for this TPDES permit.

COMMENT 4:

Laurie Galbreath, Daniel Applegate, Linda Morgan, Tyler Chessman, Gordon Wilson, Andrea Gatlin, Carla Shaw, Tara McGuire, Angee Wilcox, Janet Prater, Brenda Nunley, and Duane Muehlbrad all commented expressing concerns about foul odors from the proposed facility.

RESPONSE 4:

Instances of foul odors from a discharge of treated wastewater can exist when there are insufficient levels of dissolved oxygen (DO) present in the effluent. To prevent odors from occurring the number of oxygen-demanding constituents must be controlled. The proposed effluent limitations, specifically the minimum dissolved oxygen limit, restrict the amount of oxygen-demanding constituents and are set at

⁴ 30 TEX. ADMIN. CODE § 285.4

⁵ 30 TEX. ADMIN. CODE § 217.32(a)(3)

⁶ Smiling Mallard Dev. Ltd. Draft Permit, Effluent Limitations and Monitoring Requirements, page 2

levels to significantly reduce the odors in the effluent being discharged and prevent degradation of the receiving waters.

However, all wastewater treatment facilities have the potential to generate odors. To control and abate odors, the TCEQ rules require domestic WWTPs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides options for applicants to satisfy the nuisance odor abatement and control requirements. The options are: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant; or 3) providing nuisance odor control.

According to the application, the proposed facility intends to comply with the requirement to abate and control nuisance odors by locating the treatment units at least 150 feet from the nearest property line and by legal restrictions prohibiting residences within the buffer zone. These requirements and legal restrictions are incorporated in the proposed permit. Therefore, nuisance odors are not expected to occur because of the permitted activities at the proposed facility if the Applicant operates the proposed facility in compliance with TCEQ's rules and the terms and conditions of the proposed permit.

The proposed permit does not limit a landowner's ability to seek private action against the Applicant, and if anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may reported to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Regional Office (Region 9) in Waco at (254) 751-0335. Complaints may be filed electronically by using the methods described in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

COMMENT 5:

Duane and Stacy Muehlbrad, Andrea Gatlin, Justin Homan, Linda Morgan, Angelique Toler, Darlene Neeley, and Tasha Homann all commented expressing concern over the application's notice process.

RESPONSE 5:

Notice provisions for Applicants and the Commission are found in 30 TAC Chapter 39 (Public Notice). When the ED determines that an application is administratively complete, the Chief Clerk mails this determination, along with a Notice of Receipt of Application and Intent to Obtain Permit (NORI), to the Applicant.⁷ Not later than 30 days after the ED determines that the application is administratively complete, the Applicant must publish the NORI in the newspaper that has the largest circulation within the county or municipality in which the facility is located.⁸ The Applicant must also make a copy of the administratively complete application available for public viewing in the county in which the facility is located.⁹ Finally, the Applicant, using county deed records, must identify all landowners adjacent to the proposed facility and discharge and submit the list to the TCEQ Chief Clerk's office so

⁷ 30 TAC § 39.418(a).

⁸ 30 TAC § 39.405(f).

⁹ 30 TAC § 39.405(g).

it can mail timely copies of the public notices for the application to the adjacent landowners.

After completing the technical review of an application, the ED files its preliminary determination and the draft permit with the Chief Clerk.¹⁰ The Chief Clerk must mail the preliminary decision, along with the Notice of Application and Preliminary Decision (NAPD), to the Applicant, who must then publish the NAPD in the same newspaper as the NORI.¹¹ The Chief Clerk must also mail the NAPD to adjacent landowners and to persons who have filed public comment or hearing requests.¹²

The NAPD must set a deadline for filing public comments with the Chief Clerk that is no earlier than 30 days after its publication in a newspaper.¹³ If the ED holds a public meeting on the application after the 30 day period, then the public comment period is automatically extended to the end of the public meeting.¹⁴ The ED may hold a public meeting at any time in the county where the facility is located if there is evidence of substantial public interest or if a legislator representing the general area where the facility will be located requests a meeting.¹⁵ As the public comment period has ended, the ED must file this Response to Public Comments, addressing all timely, relevant and material, or significant public comments submitted during the comment period, regardless of whether the comments were withdrawn.¹⁶

In this case, the TCEQ received the application on November 29, 2021, and declared it administratively complete on March 15, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Brazos County, Texas in the *Eagle Newspaper* on March 18, 2022. The ED completed the technical review of the application on April 21, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Brazos County, Texas in the *Eagle Newspaper* on May 25, 2022. The comment period for this application closed on June 24, 2022. The notices are not intended to provide a full description of the application, but rather to provide instructions on where to obtain additional information, such as more comprehensive description of the information in the application. Documents associated with the application are made public at the locations below to allow the public to review them and determine if they have additional comments or questions.

The permit application has been available for viewing and copying at the at the Brazos County Clerk's Office located at East 26th Street, Suite 1430, Bryan, Texas 77083, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the NAPD. Additionally, during regular business hours, the public may review or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

¹⁰ 30 TAC § 39.419(a).

¹¹ 30 TAC § 39.419(b).

¹² 30 TAC § 39.413.

¹³ 30 TAC § 39.551(c)(3).

¹⁴ 30 TAC § 55.152(b).

¹⁵ 30 TAC § 55.154(c).

¹⁶ 30 TAC § 55.156.

COMMENT 6:

Reggi & Laura Holzer, Daniel Applegate, Sergiy Butenko, Gordon Wilson, Andrea Gatlin, Linda Morgan, Tara McGuire, Angee Wilcox, Janet Prater, Cynthia Werner, Xue Fan, Andrea Etheridge, Brenda Nunley, and Tyler Chessman all commented on the proposed facility's adverse impact to the Villages at Indian Lakes by affecting property values and the marketability of the neighborhood. Laurie Galbreath and Angie Wilcox commented expressing concern over the visual aesthetics of the proposed facility and the noise from the proposed facility.

RESPONSE 6:

The ED acknowledges the significance of these concerns; however, the TCEQ does not have the authority to address these types of issues as part of the wastewater permitting process. While the ED encourages the participation of all citizens in the environmental permitting process, there are certain concerns of citizens that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED's jurisdiction in a TPDES application is limited to the issues set out by statute. The Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes, and coastal waters. The ED, through his Water Quality Division, has no jurisdiction to address noise, aesthetics, property values, or the marketability of neighboring properties in the wastewater permitting process, which is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's waterbodies.

TPDES permits establish terms and conditions that are intended to provide water quality pollution control. The TCEQ's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. Likewise, section 26.027 of the TWC authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of state waters. As such, the water quality permitting process is limited to controlling the discharge of pollutants into water in the state. The TCEQ, in its determination of whether to issue a water quality permit, does not have jurisdiction under the TWC or its regulations to address or consider property values, the marketability of surrounding properties, visual aesthetics and noise, nor the types of subdivisions.

Alternatively, nothing in the proposed permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property.

Nor does the proposed permit limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to the TCEQ Region 9 Waco Office at (254) 751-0335, or by calling the statewide toll-free number at 1-888-777-3186. Complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records).

Finally, the issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. In addition, the scope of

TCEQ's regulatory jurisdiction does not, nor does the proposed permit, limit the ability of nearby landowners to seek relief from a court or use common law remedies in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred.

COMMENT 7:

Shane Phelps commented on the proposed facility's location, possible foul odors, negative impacts to quality of life, property values, aesthetics, and on human and wildlife health.

RESPONSE 7:

To avoid repeating the responses in the ED's original RTC that is above, the proposed facility's location was addressed in Response 1 (Pg. 5), human health and wildlife health were addressed in Response 2 (pg. 6), foul odors were addressed by Response 4 (Pg. 4), and property values, aesthetics, and quality of life were addressed by Response 6 (Pg. 11).

COMMENT 8:

Daniel Applegate commented on whether the proposed permit complied with TCEQ's Regionalization policy.

RESPONSE 8:

According to Texas Water Code (TWC) § 26.081, the State's policy is 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," otherwise known as "Regionalization."

Likewise, TWC § 26.0282 provides that "in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as area wide or regional disposal systems by Commission Order. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater."

To implement the Regionalization policy, TCEQ's domestic wastewater application requires information, in sections 1 of the Domestic Technical Report 1.0 and 1.A of the Domestic Technical Report 1.1, regarding the applicant's proposed flows and need for each of the facility's phases. The information requested includes the design flow and estimated construction start date of each phase, estimated start dates for effluent disposal, and justification for any phase beyond the facility's initial phase. The ED's staff uses all submitted information to evaluate whether the Commission should grant the application and, if so, whether each of the proposed phases should be incorporated into a permit.

Further, when evaluating the need for a proposed facility, TCEQ's regionalization policy requires applicants to identify the existing permitted facilities within a 3-mile radius of the proposed facility. Applicants are then required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility does have the capacity and is willing to accept the proposed wastewater, Applicants must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion. Finally, Applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed facility regarding regionalization with their system. According to the application information submitted by the Applicant, there is one wastewater treatment facility or collection system within three miles of the site of the proposed facility. The Applicant sent a letter to the City of College Station inquiring whether they had capacity to accept the proposed wastewater volumes included in the application. However, no response was received from the City.

COMMENT 9:

Herb Flanagan commented on the aesthetics of the proposed facility, the direction the wind blows in the area and how often it changes as it relates to foul odors from the proposed facility, and the development plan for the Applicant's project.

RESPONSE 9:

The ED's original RTC above, addressed the proposed facility's aesthetics in Response 6 (Pg. 11), and foul odors were addressed by Response 4 (Pg. 10).

The Applicant's development plan is outside the TCEQ's jurisdiction in the wastewater permitting context.

COMMENT 10:

Kim Pritchard commented on the Navasota ladies'-tress and its critical habitat, which was enlisted as an endangered species on May 6, 1982.

RESPONSE 10:

During the Technical Review process described above, an endangered species evaluation was performed. The *Houston toad* (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within the Segment 1209's watershed. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment 1209 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Running Creek in Leon County, which is farther up the watershed from the facility associated with this permit action. Based upon this information, it is

determined that the facility's discharge is not expected to impact the *Houston toad*. No other endangered species were identified during the study.

COMMENT 11:

Lanell Flanagan commented that the handouts or materials provided by the Applicant at the public meeting were last minute. Ms. Flanagan also commented on using septic tanks instead of discharging.

RESPONSE 11:

The ED acknowledges that the Applicant's handouts and materials were provided at the beginning of the public meeting, but the ED has no control over what information the Applicant provides at a public meeting or when this information is provided.

Related to septic tanks, the ED's original RTC above, addressed the use of septic tanks in Response 3 (Pg. 9).

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor,
Interim Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 18, 2023, the Executive Director's Response to Public Comment for Permit No. WQ0016077001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

A handwritten signature in black ink, appearing to read "Michael T. Parr II", is written over a horizontal line.

Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936