

Nancy Koon (adpce.ad)

From: Nina Jackson <njackson@richmayslaw.com>
Sent: Monday, December 12, 2022 12:12 PM
To: Water Draft Permit Comment
Cc: Richard Mays
Subject: Comments Submission
Attachments: Comments.pdf

Please see attached Comments and Exhibits re Permit No. AR0053210; AFIN No. 60-05010



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December 12, 2022

Ms. Loretta Carstens, P.E.
Water Permitting Division
Arkansas Department of Energy & Environment
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

Re: Revised Draft Discharge Permit and 208 Plan
Operator: Pulaski County property Owners Multipurpose
District No. 2021-2
Facility Name: Paradise Valley Subdivision WWTP, Roland, AR
Permit No. AR0053210; AFIN No. 60-05010

Dear Ms. Carstens:

Pursuant to the Public Notice published in the Arkansas Democrat-Gazette on November 13, 2022, relative to the Revised Draft Discharge Permit and 208 Plan ("the Permit") for the captioned facility, I do hereby submit the following comments on the proposed Permit and the procedure being utilized by the Division of Environmental Quality ("DEQ") relating to such Permit. These comments are being submitted as an attorney for and on behalf of the Pinnacle Mountain Community Coalition (PMCC), a not-for-profit organization organized and existing under the State of Arkansas, and consisting of persons who live, work, and frequent the area of the proposed subdivision and wastewater treatment facility.

Additional comments may be submitted on behalf of PMCC, its individual members or related entities. Any comments submitted herein are supplemental to any such additional comments, and not in lieu of any such comments.

The comments that I have to make on the Permit are as follows:

1. A lawsuit is now pending in the Circuit Court of Pulaski County, Arkansas, 12th Division, entitled *Christina Centofante et al, v. Rick Ferguson, et al*, Docket No. 60CV-22-6659. The Plaintiffs in the case are PMCC and individual members of PMCC. The Defendants in the case are the developer, Mr. Rick Ferguson; various limited liability companies that Mr. Ferguson owns or controls that are, or may be, involved in the development of the Paradise Valley Subdivision; The Pulaski County Property Owners Multipurpose Improvement District No. 2021-2, owner of the proposed wastewater treatment plant for Paradise Valley Subdivision; and Pulaski County, whose Planning Commission approved the Preliminary Plat of the Paradise Valley Subdivision.

Among the claims asserted in the lawsuit are that the Planning Commission erred and violated its own regulations in approving the Preliminary Plat of the Paradise Valley Subdivision, and that such approval should be rescinded and voided. Other claims assert that the development of the Waterview Subdivision and others in the area upgradient of the Paradise Valley Subdivision have caused surface waters to be diverted onto the properties of the Plaintiffs, causing flooding and damages to such properties, and that the development of Paradise Valley Subdivision will exacerbate that flooding and damages.

In addition, the Preliminary Plat for the Paradise Valley Subdivision has been changed since its approval by the Pulaski County Planning Commission ("Commission"), in that an area in the southeast portion of the Subdivision, formerly designated as a "recreational area" has been changed to a stormwater detention pond with a spillway adjacent to the Roland Cutoff Road. That change could adversely impact the highway right-of-way and the drainage under Roland Cutoff Road. In times of heavy precipitation, stormwater run-off also overflows that Road, which could undermine the pavement and roadbed. The developer is required to submit that change to the Commission.

We believe that DEQ has a responsibility to consider these factors in its permitting decision, and should (i) deny the permit, or (ii) alternatively, withhold any decision on the permit until the conclusion of the lawsuit.

2. A very obvious problem with the proposed Permit is that it will discharge directly into an unnamed tributary of Mill Bayou, and thence into Mill Bayou. There is ample evidence that the unnamed tributary of Mill Bayou and Mill Bayou itself are not continuous flowing water bodies, but are without any water whatsoever at various times of the year, depending on weather conditions. In this year (2022), for example, there were long periods of time when the unnamed tributary and Mill Bayou itself were dry. Attached as Exhibits 1 through 4 to

these comments are photographs of the tributary and Mill Bayou that were taken this year during the extended drought that existed, showing only puddles of water present.

Under these circumstances, the discharge of wastewater from the proposed treatment plant would constitute the entire flow in the unnamed tributary and Mill Bayou, posing a potential health hazard and environmental harm for plant and animal life in the area, and for the people who live near those areas. For this reason alone, the Permit should be denied.

3. The applicant for the permit appears to be a “nonmunicipal domestic sewage treatment works” as defined in Ark. Code Ann. §8-4-203. As such, it is subject to the requirements of Subsection (b)(1)(A)(iii) of that statute. We believe that the applicant has not met those requirements.

We would point out that Mr. Rick Ferguson, the person (or entities owned by him) who are developing the Paradise Valley Subdivision have been the subject of numerous administrative orders and other enforcement measures as a result of his or their non-compliance with environmental laws and regulations. Pursuant to Ark. Code Ann. §8-1-106(b)(3) and (c), DEQ may, and should, deny the issuance of this permit, license, certification or operational authority on the basis that the applicant or an affiliated person has a history of noncompliance with environmental laws of the state or any other jurisdiction.

4. The wastewater treatment facility for the subdivision is not located on the subdivision property, but on a separate tract located across Roland Cutoff Road. That separate tract is also owned by an entity that is not the Paradise Valley Subdivision LLC. Having a privately-owned wastewater treatment facility that is not owned by the Subdivision that it serves presents a myriad of potential problems regarding access, and responsibility for operation and maintenance. Those problems could affect, not only the residents of the subdivision, but also owners of property in the area of the treatment plant and other members of the public. The permit should be denied because of lack of common ownership and control.

We request that the Permit be denied, or, in the alternative, that it be held in abeyance pending the resolution of the issues involved in the above-described lawsuit.

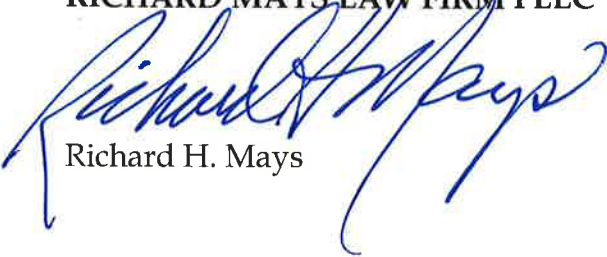
Richard Mays Law Firm PLLC

Again, these comments are supplemental to, and not in lieu of, any additional comments submitted or to be submitted by the PMCC or any of its members or attorneys.

Thank you for the opportunity to submit these comments. I request that I be notified of any action taken on the permit application by the Division.

Sincerely,

RICHARD MAYS LAW FIRM PLLC

A handwritten signature in blue ink, appearing to read "Richard H. Mays", is written over the typed name and firm name.

Richard H. Mays

RHM/nj
Enclosures: Photos







