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June 6, 2021

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

Re: Request by 5th Ward Impact Community Action and Anna Ortiz for Comprehensive Public Participation Regarding Draft Renewal Permit/Compliance Plan 50343/ISWR No. 31547, Including Request for a Second Public Meeting and/or Extended Public Comment Period

Lone Star Legal Aid (“Lone Star”) submits this request on behalf of 5th Ward Impact Community Action (“Impact”) and Anna Ortiz (collectively, “Commenters”) regarding Union Pacific’s Railroad Company’s Draft Renewal/Compliance Plan 50343/ISWR No. 31547. Lone Star previously submitted comments on behalf of Commentators on December 11, 2018 (“First Set of Public Comments”) and on January 29, 2021 (“Second Set of Public Comments”) where multiple technical deficiencies with the permit materials were signaled for the TCEQ’s consideration. Commenters hereby incorporate the entirety of those comments as if fully stated herein.

I. COMMENTERS INTEREST IN REQUESTING MORE COMPREHENSIVE PUBLIC PARTICIPATION

Mrs. Ortiz, who is not a member of Impact, resides at 4605 Lucille Street, just over three and a half blocks from the discreet area that Union Pacific Railroad Company (“UPRR”) had

previously represented would compose part of the off-site Plume Management Zone (“PMZ”) and under a mile from the UPRR Site. She is affected in a manner not common to the general public. Of particular concern to Mrs. Ortiz is the possibility that in future the creosote/DNAPL plume will continue to migrate if the proper remediation and mitigation steps are not implemented to keep such an occurrence from happening. Being so close to the plume, it is not farfetched for Mrs. Ortiz to wonder and worry that the plume might migrate underneath her own property. While Mrs. Ortiz has a phone that will allow her to call into the Virtual Public Meeting on June 21st, she is hard of hearing and would benefit from a Public Meeting option that has a visual component.

Impact is a neighborhood association made up of *several* current long time and former residents of the Fifth Ward neighborhood who are concerned with various environmental and public health issues that plague their neighborhood, including the legacy environmental contamination that is the creosote/DNAPL plume. A handful of Impact’s members reside directly over the plume, including the following individuals:

1. Sandra Edwards who resides at 2925 Lavender Street which lies along the western edge of the previously proposed off-site PMZ and less than one block away from the UPRR Site. Ms. Edwards was born in 1965 and raised at the home on 2925 Lavender until 1985. She returned to live permanently in her childhood home in 2010.
2. Leisa Harris Glenn is the owner of 2924 Lavender Street, a property inside the previously proposed off-site PMZ and less than one block away from the UPRR Site. She moved to the home in 1984 when she was 27 years old and lived there with her mom and son until about 2000. Although she no longer resides in the area she often returns to her old home to visit her brother and nephew who continue to reside at 2924 Lavender.
3. Mary Hutchins who resides at 2938 Lavender, a property inside the previously proposed off-site PMZ and less than one block away from the UPRR Site. She has resided at this address for over 50 years.

While some of Impact’s members have access to the internet others do not. This latter group of members will instead have to avail themselves of the call-in option. Like Mrs. Ortiz some members of Impact are concerned that this call in option, without a visual component, will complicate their ability to participate in the Virtual Public Meeting.

II. IMPACT AND MRS. ORTIZ'S SPECIFIC REQUEST FOR MORE COMPREHENSIVE PUBLIC PARTICIPATION REGARDING THE DRAFT PERMIT

Currently, the TCEQ and UPRR have scheduled a Virtual Public Meeting for Monday, June 21st. Impact and Mrs. Ortiz applaud this long awaited meeting but are likewise disappointed that neither the TCEQ nor UPRR have taken steps to ensure the participation of concerned residents who will be unable to attend. Commenters are also concerned about the exclusively audio nature of this Virtual Public Meeting where instead of seeing the faces of representatives from TCEQ and UPRR attendees will instead only hear the voices of the representatives of both. Given these limitations on the Virtual Public Meeting, as well as conditions on the ground that are particular to the Fifth Ward/Kashmere Gardens neighborhood (which are outlined below), Lone Star makes the following request on behalf of Commenters and their neighbors, all of whom are intensely interested in hearing directly from the TCEQ and UPRR on how the permit will protect human health and the environment:

1. That a *Second Public Meeting* be scheduled to take place no earlier than sixty (60) days after the June 21st meeting. If this *Second Public Meeting* is to remain virtual then TCEQ and UPRR should make public spaces in the Fifth Ward and Kashmere Gardens available to residents that wish to participate but who would be unable to do so because of a lack of internet access in their homes. That is, UPRR and TCEQ would need to ensure that these public spaces are equipped with whatever technology is necessary to be able to broadcast the meeting, allow attendees to put forth their questions to the representatives of TCEQ and UPRR present, and of course submit comments following the question and answer phase of the meeting. Lone Star insists that this *Second Public Meeting* have a visual component as well as seeing the faces of those representatives of TCEQ or UPRR who are speaking at any one time, as well as the faces of fellow residents, will allow all attendees to better follow the flow of a meeting that will already be complicated given the nature of virtual meetings. Alternatively, the TCEQ might also consider hosting this *Second Public Meeting* in person and within the Fifth Ward/Kashmere Gardens later in the year (even later than 60 days after the June 21st Virtual Public Meeting) when COVID vaccination rates in the neighborhoods of concern have reached a level that it can be reasonably assumed that residents would not be taking an undue risk to their health by gathering indoors for such a meeting. Lone Star and Commenters recognize that the TCEQ and UPRR would need to consult with local authorities on when this can happen, in the interest of public health. In either case a second *Second Public Meeting* would have the effect of extending the comment period for this permit;
2. In the event that TCEQ does not grant request no. (1) above, then the TCEQ should extend the comment period for this permit by at least ninety (90) days from its current deadline of July 14, 2021. Doing so would allow time for those residents, community leaders, and community advocates who *are* able to attend the Virtual Public Meeting

on June 21st to reach out to their neighbors who *are unable* to attend and deliver vital information learned at the meeting. There would also be more time for this later group of residents to formulate comments based on the then newly acquired information and then submit those comments in the only real way available to them given their lack of access to the internet-by mail in comments.

III.LACK OF WIDESPREAD INTERNET ACCESSIBILITY AND LOW COVID-19 VACCINATION RATES SUPPORT THIS REQUEST

This request is informed by the lack of widespread internet access within the Fifth Ward/Kashmere Gardens neighborhoods *in combination* with the currently low-rates of COVID vaccination in this same area. There can be no doubt that the low vaccination rates will act as an impediment to those without internet access from gathering with those who do, given the risk to their personal health that such a meeting might entail.

To further understand the nature of this request please refer to Figure 1 below which shows the census tracts within the Fifth Ward/Kashmere Gardens neighborhoods nearest the UPRR Site: Census tracts 2111, 2112, 2113, 2116 & 2117.

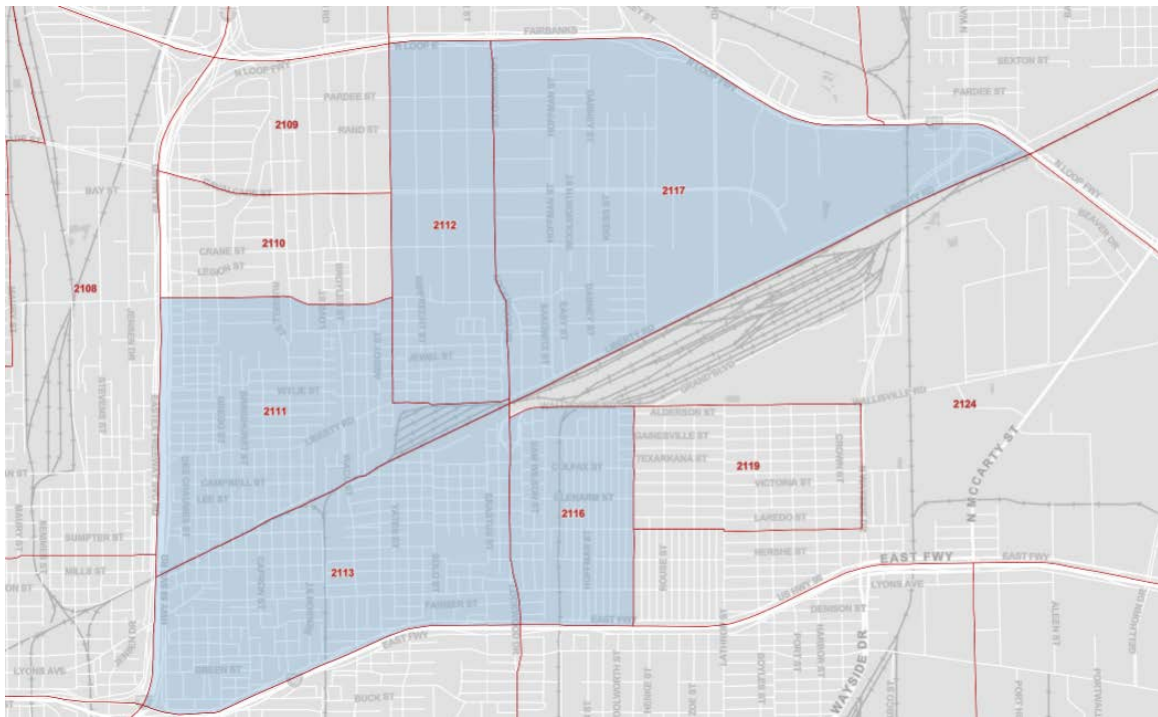


Figure 1 Census Tracts Closest to the UPRR Site

Below, in Figure 2, a map of the Fifth Ward/Kashmere Gardens neighborhoods which also shows zip codes. The three zip codes relevant for consideration in the area are: 77020, 77026, and 77028.

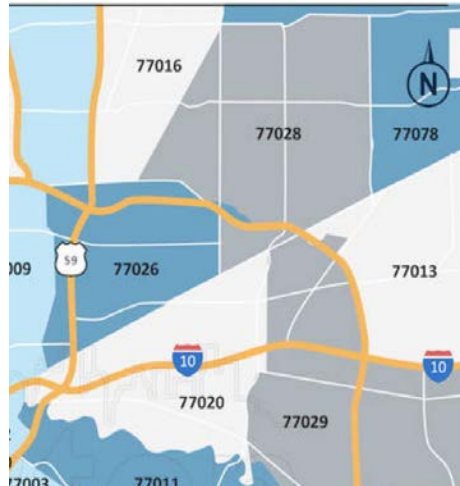


Figure 2 Zip Codes of the Fifth Ward/Kashmere Gardens Neighborhoods

Below, in Figure 3, a map of the extent of the groundwater PCLE zone according to Golder, UPRR’s contractor, as of October 2019. Lavender Street, where some of Impact’s members either currently live or own property, is clearly over the groundwater PCLE zone as well as the PCLE zone for arsenic.

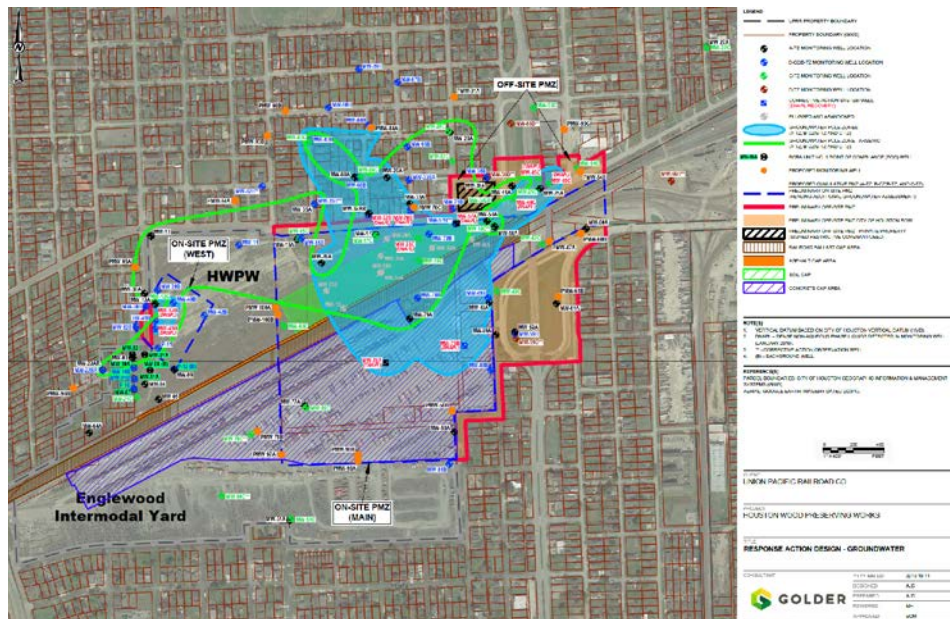


Figure 3 Showing, Amongst Other Data, Extent of Groundwater PCLE Zones Plume According To October 23, 2019 Golder Letter to TCEQ on Behalf of UPRR

As can be seen, the creosote/DNAPL plume is entirely within census tract 2112 and entirely within zip code 77026. Nevertheless it lies very close to census tracts 2111, 2113, 2116 and 2117 as well as to zip codes 77020 and 77028, and is therefore of concern to residents in those areas. Data on internet subscriptions pulled from <https://www.census.gov/data.html> for the five census tracts nearest the offsite plume shows a dismally low level of internet connectivity for residents living in these areas.

Label	Census Tract 2111, Harris County, Texas			
	Total		Percent	
	Estimate	Margin of Error	Estimate	Margin of Error
▼ Total households	1,903	±158	(X)	(X)
▼ TYPES OF COMPUTER				
▼ Has one or more types of computing devices:	1,326	±195	69.7%	±8.0
> Desktop or laptop	659	±185	34.6%	±9.3
> Smartphone	1,205	±189	63.3%	±8.2
> Tablet or other portable wireless computer	577	±196	30.3%	±9.7
> Other computer	14	±23	0.7%	±1.2
No computer	577	±155	30.3%	±8.0
▼ TYPE OF INTERNET SUBSCRIPTIONS				
> With an Internet subscription:	909	±221	47.8%	±10.7
Without an Internet subscription	994	±215	52.2%	±10.7
▼ HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2019 INFLATION-ADJUSTED DOLLARS)				
> Less than \$20,000:	743	±185	(X)	(X)
> \$20,000 to \$74,999:	930	±208	(X)	(X)
> \$75,000 or more:	230	±138	(X)	(X)

Figure 4 Census Tract 2111 Data From Census.Gov

Label	Census Tract 2112, Harris County, Texas			
	Total		Percent	
	Estimate	Margin of Error	Estimate	Margin of Error
▼ Total households	1,012	±125	(X)	(X)
▼ TYPES OF COMPUTER				
▼ Has one or more types of computing devices:	652	±159	64.4%	±13.3
> Desktop or laptop	440	±154	43.5%	±13.7
> Smartphone	525	±163	51.9%	±14.2
> Tablet or other portable wireless computer	324	±130	32.0%	±11.9
> Other computer	0	±14	0.0%	±4.1
No computer	360	±141	35.6%	±13.3
▼ TYPE OF INTERNET SUBSCRIPTIONS				
> With an Internet subscription:	526	±165	52.0%	±14.1
Without an Internet subscription	486	±151	48.0%	±14.1
▼ HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2019 INFLATION-ADJUSTED DOLLARS)				
> Less than \$20,000:	490	±135	(X)	(X)
> \$20,000 to \$74,999:	428	±118	(X)	(X)
> \$75,000 or more:	94	±54	(X)	(X)

Figure 5 Census Tract 2112 Data From Census.Gov

Label	Census Tract 2113, Harris County, Texas				
	Total		Percent		
	Estimate	Margin of Error	Estimate	Margin of Error	Margin of Error
✓ Total households	2,105	±155	(X)		(X)
✓ TYPES OF COMPUTER					
✓ Has one or more types of computing devices:	1,608	±185	76.4%		±6.5
> Desktop or laptop	1,007	±150	47.8%		±6.5
> Smartphone	1,458	±179	69.3%		±6.8
> Tablet or other portable wireless computer	718	±160	34.1%		±6.9
> Other computer	33	±37	1.6%		±1.7
No computer	497	±140	23.6%		±6.5
✓ TYPE OF INTERNET SUBSCRIPTIONS					
> With an Internet subscription:	1,478	±177	70.2%		±6.5
Without an Internet subscription	627	±144	29.8%		±6.5
✓ HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2019 INFLATION-ADJUSTED DOLLARS)					
> Less than \$20,000:	807	±171	(X)		(X)
> \$20,000 to \$74,999:	1,084	±184	(X)		(X)
> \$75,000 or more:	214	±97	(X)		(X)

Figure 6 Census Tract 2113 Data From Census.Gov

Label	Tract 2116, Harris County, Texas				Census Tract 2117, Harris County, Texas			
	Total		Percent		Total		Percent	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	
✓ Total households	1,160	±85	(X)	(X)	1,458	±129	(X)	
✓ TYPES OF COMPUTER								
✓ Has one or more types of computing devices:	918	±119	79.1%	±7.9	1,026	±159	70.4%	
> Desktop or laptop	607	±108	52.3%	±8.8	683	±155	44.8%	
> Smartphone	830	±120	71.6%	±8.3	935	±156	64.1%	
> Tablet or other portable wireless computer	464	±111	40.2%	±9.4	372	±118	25.5%	
> Other computer	49	±44	4.2%	±3.9	22	±25	1.5%	
No computer	242	±91	20.9%	±7.9	432	±143	29.6%	
✓ TYPE OF INTERNET SUBSCRIPTIONS								
> With an Internet subscription:	769	±114	66.3%	±8.3	927	±153	63.6%	
Without an Internet subscription	391	±99	33.7%	±8.3	531	±166	36.4%	
✓ HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2019 INFLATION-ADJUSTED DOLLARS)								
> Less than \$20,000:	395	±96	(X)	(X)	392	±127	(X)	
> \$20,000 to \$74,999:	602	±123	(X)	(X)	892	±166	(X)	
> \$75,000 or more:	163	±71	(X)	(X)	173	±77	(X)	

Figure 7 Census Tracts 2116 and 2117 Data From Census.Gov

For ease of comprehension, Lone Star extracts the percentages of households that are estimated to not have an internet subscription and compile them below. As can be seen in Table 1, anywhere from one third to one half of households within the census tracts of concern do not have an internet subscription and will thus be unable to participate in the June 21st, 2021 Virtual Public Meeting unless they are able to call in to the meeting :

Table 1: Percentage of Households Without Internet By Census Tract

<i>Census Tract</i>	<i>Percentage of Households Without Internet Connection</i>
<i>2111</i>	52%
<i>2112</i>	48%
<i>2113</i>	29.8%
<i>2116</i>	33.7%
<i>2117</i>	36,4%

Although residents are able to avail themselves of the call-in option in order to participate in the Virtual Public Meeting, these phone calls are often plagued with connectivity issues, poor sound quality, and the inability to decipher who is speaking at any one time because representatives will not be visible on the call. Additionally those who are only able to call in will not be able to see whatever visual presentations that might be shared with other attendees.

Data from the City of Houston Health Department shows that for the three relevant zip codes, COVID vaccination rates amongst residents remain troubling low:

Table 2: COVID Vaccination Rate by Zip Code

<i>Zip Code In The Fifth Ward/Kashmere Gardens Neighborhoods</i>	<i>COVID-19 Vaccination Rate as of May 27, 2021</i>
<i>77020</i>	37.7%
<i>77026</i>	34.1%
<i>77028</i>	37.1%

Additionally, the City of Houston currently lists all three zip codes as amongst those that are “most vulnerable.” As such the Houston Health Department recognizes that there are long-standing inequities in the communities that comprise the Fifth Ward and Kashmere Gardens neighborhoods. Inequities that have only been exacerbated by the COVID-19 pandemic. See the announcement from the Houston Health Department, dated February 22, 2021, at the following link: <https://www.houstontx.gov/health/NewsReleases/houston-health-department-and-harris->

[county-public-health-partnering-to-serve-most-vulnerable-and-underserved-at-nrg-mass-vaccination-site.html](#)

According to the website above, “Houston’s high risk zip codes are geographic areas with people more vulnerable to severe COVID-19 illness as identified by positivity rate, underlying health condition, economic, and social data.” The recent data about vaccination rates within these same zip codes, all of which are under 38%, demonstrate that the Fifth Ward and Kashmere Gardens are neighborhoods that continue to remain at a complete disadvantage in the face of the COVID-19 pandemic.

While the TCEQ and UPRR might be of the opinion that the Virtual Public Meeting is the perfect solution in the face of these startling statistics on health disparities (as it allows those residents who are unvaccinated--who make up a majority of the residents in the concerned neighborhoods--to participate from the comfort of their home without any risk to contracting COVID), this opinion must change once the facts about the area’s lack of internet access are laid bare. For the incredibly large amount of people who do not have an internet subscription, congregating with family members, friends, fellow parishioners, and neighbors, in the homes of those who *do* have an internet subscription is an unappealing option from a personal and public health standpoint, given the very low COVID-19 vaccination rate for the area. Calling-in for the meeting, while an option, does not allow for the same level of engagement, has the increased possibility of those calling-in to not be able to follow the meeting, and won’t allow those on the phone to see who is speaking or see any visual presentations made during the meeting. What is more, these mass call-in style public meeting are often plagued by connectivity and poor audio quality issues.

IV. CONCLUSION

By limiting the opportunity that residents have to ask questions of both the TCEQ and UPRR to the current Virtual Public Meeting, the TCEQ is essentially ensuring that large amounts of concerned residents will be unable to either ask questions about the Permit or submit comments and concerns based on answers to their questions. These residents could potentially signal very important facts for the consideration of the TCEQ regarding the adequacy of the draft permit to protect human health and the environment. Instead, those concerns will go completely unaddressed simply because another opportunity to meet with TCEQ and UPRR has not been provided to them. To put it plainly, the single Virtual Public Meeting on June 21st is an

inadequate response to the intense interest in the area regarding UPRR's requested permit when confronted with the circumstances in the surrounding communities related to a documented and widespread lack of internet access and the public health concern that is under-vaccination to COVID-19 in these neighborhoods. The TCEQ can remedy this less than ideal response by granting Impact and Mrs. Ortiz's request number one (1) as outlined above or, in the alternative, by granting request number two (2) as outlined above.

Please feel free to contact the undersigned counsel with any questions.

Respectfully submitted,
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