

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 13, 2016

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application by Beneficial Land Management, L.L.C. WQ0004666000; TCEQ
Docket No. 2016-0665-IWD

Dear Ms. Bohac:

I have enclosed a correction for the Executive Director's Recommendations on page 19 to the Executive Director's Response to Hearing Requests and Response to Requests for Reconsideration in the above-entitled matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ashley McDonald". The signature is written in black ink and is positioned above a horizontal line.

Ashley McDonald
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2016-0665-IWD

APPLICATION BY	§	BEFORE THE
BENEFICIAL LAND	§	
MANAGEMENT, L.L.C.	§	TEXAS COMMISSION ON
FOR	§	
TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0004666000		

Executive Director’s Response to Hearing Requests and Requests for Reconsideration

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Request (Response) on the application of Beneficial Land Management, L.L.C. (BLM) for renewal of Texas Discharge Pollutant Elimination System (TPDES) No. WQ00046660000. The Office of the Chief Clerk (OCC) received hearing requests from Erich Birch and John Riley on behalf of the Applicant, C. George Salzman on behalf of the City of LaCoste, J. Eric MaGee on behalf of Victoria County, Cynthia Doyle, Steve Holzeheuser, and Dorothy Simons.

Attached for Commission consideration are the following:

Attachment A— GIS Map

II. Description of the Facility

BLM applied to the TCEQ for renewal of permit No. WQ0004666000, to authorize the beneficial land application of Class B wastewater treatment plant (WWTP) sewage sludge at a rate not to exceed 8 dry tons per acre per year. The land application site is located on 726.1 acres within a larger approximately 2,881 acre parcel of land, which is located ten miles northwest of the City of Inez, on Farm-to-Market Road 444 and 2.5 miles northeast of the intersection of Karnes Road and Farm-to-Market Road 444, in Victoria County, Texas 77968.

The original draft permit proposed to authorized the permittee to land apply sewage sludge mixed with grit trap and grease trap waste (GG waste) under an experimental use authorization. The experimental use authorization was to expire on October 31, 2016 or one year from the date of permit issuance, whichever occurred first. However at the close of the public comment period, the Executive Director made changes to the draft permit by removing the experimental use authorization and all applicable provisions.

The land application site is located in the drainage area of Lavaca Bay and Chocolate Bay in Segment No. 2453 of the Lavaca-Guadalupe Coastal Basin. However, this permit does not authorize a discharge of pollutants into waters in the State and the Draft Permit's sludge provisions and requirements are in accordance with 30 TAC Chapter 312, the TCEQ's "Sludge Use, Disposal, and Transportation" rules (Sludge rules).

The Executive Director has completed the technical review of the application, prepared a draft permit, and made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The draft permit, if approved, establishes the conditions under which the facility must operate. In accordance with 30 TAC § 312.10(m) and Texas Health & Safety Code § 361.121, the draft permit will expire five years from the date of issuance.

III. Procedural History

The application was received on December 5, 2011 and declared administratively complete on January 24, 2013. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 16, 2014 in the Victoria Advocate. The Executive Director completed the technical review of the application on May 8, 2014 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on July 22, 2015 in the Victoria Advocate. The notice of public meeting was published on December 22, 2015 in the Victoria Advocate. A public meeting was held on January 21, 2016 in Victoria, Texas. The public comment period closed on January 21, 2016. The Executive Director's Response to Comment was filed on March 21, 2016 and the Executive Director's Final Decision Letter was mailed on March 28, 2016. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

IV. Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The Commission implemented House Bill 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The application was declared administratively complete on May 8, 2014; therefore it is subject to the procedural requirement of HB 801. Additionally, this application for renewal is subject to the procedural requirements of the Texas Health and Safety Code §361.121 for an application to land apply certain sludge.¹

¹ Texas Health and Safety Code, §361.121 (Land Application of Certain Sludge; Permit Required).

A. Response to Request

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;
- b) whether issues raised in the hearing request are disputed;
- c) whether the dispute involves questions of fact or of law;
- d) whether the issues were raised during the public comment period;
- e) whether the hearing request is based on issues 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 Executive Director's Response to Comment;
- f) whether the issues are relevant and material to the decision on the application; and
- g) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided...and may not be 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 Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- a) give the name, address, daytime 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 shall be responsible for receiving all official communications and documents for the group;
- b) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;
- c) request a contested case hearing;
- d) list all relevant and material disputed issues of fact that were raised 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 executive director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

e) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. "Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." Section 55.203 sets out who may be considered 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 general public does not qualify as a personal justiciable interest.
- b) Except as provided by 30 TAC § 55.103, government entities, including local governments and public agencies, with authority under state law over issues raised by the application,
- 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 the use of the impacted natural resource by the person; and
 - 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 50.203.

A group or association may also request a contested case hearing. In order for a group or association to request a contested case hearing, the group or association must show that it meets the following requirements:

- a) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- b) the interests the group or association seeks to protect are germane to the organization's purpose; and
- c) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). In addition the Executive Director, Public Interest Counsel, or the Applicant may request that a group or association provide an explanation of how the group or association meets the above requirements. 30 TAC § 55.205(b).

D. Referral to the State Office of Administrative Hearings (SOAH)

When the Commission grants a request for a contested case hearing, they are required to issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. “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; 2) was raised during the public comment period; and 3) is relevant and material to the decision on the application.” 30 TAC § 50.115(c).

E. Response to Request for Reconsideration

The Executive Director, the public interest counsel, and the applicant may submit written responses to the request for reconsideration. 30 TAC §55.209(d). The response should address the issues raised in the request. 30 TAC §55.209(f).

F. Request for Reconsideration Requirements

Any person may file a request for reconsideration of the Executive Director’s decision. However, for the Commission to consider the request, it must substantially comply with the following: give the name, address, daytime telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director’s decision; and give reasons why the decision should be reconsidered. 30 TAC §55.201(e).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with the requirements of the Commission rules, who qualifies as affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §55.201(c) and (d).

BLM, the City of LaCoste, Victoria County, Cynthia Doyle, Steve Holzheuser, and Dorothy Simons submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn.² The public comment period for this permit application ended on January 21, 2016. The period for timely filing a request for a contested case hearing on this permit application ended March 27, 2016. The hearing requestors provided their addresses and phone numbers, or those of their representative, and requested a hearing. They identified themselves as persons with what they believed to be personal justiciable interests

² The requestors filed their respective hearing requests on the following dates: Beneficial Land Management, August 20, 2015 and April 27, 2016; City of LaCoste, August 20, 2016; Victoria County, April 25, 2016; Cynthia Doyle, January 21, 2016; Steve Holzheuser, April 27, 2016; and Dorothy Simons, April 21, 2016.

affected by the application, which will be discussed in detail below, and provided a list of disputed of disputed facts that were raised during the public comment period.

The Executive Director concludes that the hearing requests of BLM, the City of LaCoste, Victoria County, Cynthia Doyle, Steve Holzheuser, and Dorothy Simons, substantially comply with the requirements of 30 TAC §55.201(c) and (d).

B. Whether the Individual Requestors Meet the Affected Person Requirements

1. Beneficial Land Management, L.L.C.

BLM applied to the TCEQ to renew its existing sludge beneficial land use permit TPDES Permit No. WQ0004666000 on December 5, 2011. On August 20, 2015, BLM submitted a hearing request on the draft permit. In their hearing requests BLM raised the following issues: 1) BLM is land applying sewage sludge, not grease and grit trap waste, 2) there is no prohibition of the land application of grease and grit trap waste, 3) whether the ED demonstrated that the Special Provision included in the Draft Permit, which would prohibit BLM from land applying WWTP sewage sludge from the LaCoste WWTP co-processed with grease and grit trap waste is technically justified and supported by state law and applicable TCEQ rules, 4) whether an experimental use authorization pursuant to 30 TAC §312.3(k) necessary to land apply domestic sewage sludge, and 5) If an experimental use authorization is necessary to authorize BLM to land apply domestic sludge, is there any legal, health, or environmental reason why such an experimental use authorization should not be included in the reissuance of the Permit No. WQ00046660000.

Under Commission rules, an Applicant has to the right to request a contested case hearing on its own permit application.³ Therefore, the Executive Director recommends that the Commission find that BLM has a right to a contested case hearing proscribed by rule.

2. City of LaCoste

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that the City of LaCoste is an affected person because the City does have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issue raised is included in the factors delineated in 30 TAC §55.203. In its hearing request, the City raised the issue that by the Executive Director imposing a timeline under the experimental use provision of the draft permit, this would interfere with BLM's longstanding land application practice, and adversely impact the City.

³ 30 Tex. Admin. Code §55.203(b).

The Executive Director considered whether the City of LaCoste has an interest that is not common with the general public. In its hearing request, the City stated that it owns a wastewater treatment facility that is co-located with a MSW Type V facility, operated by Partners Dewatering Industries (PDI). The City of LaCoste is an approved sludge source under BLM's existing and draft permit. The city claims an economic interest in this permit application, being that the revenue that the City of LaCoste receives from the operations of BLM and PDI is nearly double the amount that the City receives in ad valorem taxes. Given that a reasonable relationship exists between the interest claimed and the activity regulated, the City of LaCoste has an interest in the application not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that the City of LaCoste is an affected person.

3. Victoria County

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Victoria County is an affected person because the County is a governmental entity with authority under state law over issues raised by the application.⁴ In its hearing request, Victoria County raised the following issues: 1) potential for drainage and runoff which will contribute to the impairments of water quality in Arenosa Creek, Lavaca Bay and Matagorda Basin. Heavy metals and other contaminants constitute an unacceptable risk and threat to the public health, safety and welfare, 2) potential for leaching and contamination of groundwater which poses an unacceptable risk and threat to the public health safety, and welfare, 3) the potential for contamination of the soil and the potential of buildup of heavy metals and toxic substances is an unnecessary threat to public health, 4) inadequate buffer zones to protect surface water, and 5) groundwater protection, more specifically, ensuring that the sufficient groundwater monitoring will be established and maintained, that there is no potential for surface drainage pollution, and 6) that adequate protection from the escape of contaminants and toxic substances into the air is provided.

The Executive Director consider whether Victoria County has authority under state law over issues raised by the application. In its hearing request, Victoria County stated that as a subdivision of the state it is charged with statutory authority to protect the health, safety and welfare of the citizens of Victoria County, Texas and their property interest.⁵ The Executive Director also considered the issues in 30 TAC

⁴ 30 Tex. Admin. Code §55.203(b).

⁵ Hearing request letter from J. Eric Magee, on behalf of Victoria County, dated April 25, 2016, page 1. The letter states, "[t]he governing body of a municipality of the commissioners court of a county may enforce any law that is reasonably necessary to protect public health." Texas Health and Safety Code Ann. §121.003. Further Subchapter E of the Texas Water Code provides that a County has authority over water quality issues. Finally, Victoria County has authority relating to nuisances in Chapter 341 of the Texas Health and Safety Code and authority to enforce health and protection Chapters 361 and 364 of the Texas Health and Safety Code."

§55.203(c) and determined that there is a reasonable relationship between the issues raised by Victoria County and the proposed draft permit.

Based on issues raised by Victoria County and its statutory authority over the issues relevant to the application, the Executive Director recommends that the Commission finds that Victoria County is an affected person.

4. Cynthia Doyle

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that the Cynthia Doyle is an affected person because she has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Cynthia Doyle raised the following issues in her hearing request: 1) the financial incentive to the Applicant if their application is approved, and 2) concerns regarding safety of land and water for future generations.

The Executive Director considered whether Ms. Doyle has an interest that is not in common with the general public. Based on the address provided by Ms. Doyle in her hearing request, her property located just south of land application site at Arenosa Creek Ranch. Because of Ms. Doyle's proximity to the land application site, she is more likely to be impacted than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Ms. Doyle raised and the proposed draft permit.

Ms. Doyle identified a personal justiciable interest that is not common to the members of the general public and identified a reasonable relationship between her issues and the land application activities authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Cynthia Doyle is an affected person.

5. Steve Holzheuser

The Executive Director reviewed all of the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Mr. Holzheuser is an affected person because he has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issues Mr. Holzheuser raised are included in the factors delineated in 30 TAC § 55.203. Specifically, Mr. Holzheuser raised the following issues 1) contamination of groundwater, 2) contamination of Arenosa Creek, 3) impact to property values, 4) negative effects on air quality, 5) and odor.

The Executive Director considered whether Steve Holzheuser has an interest that is not in common with the general public. In his hearing request, Mr.

Holzheuser stated that that he is the general partner of a family limited partnership that owns and operates land bordered by FM 444 North and US 59 South, near the location of the land application site and borders Arenosa Creek. Because of Ms. Holzheuser's proximity to the land application area, he is more likely to be impacted by the activities than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Mr. Holzheuser raised and the proposed draft permit.

Mr. Holzheuser identified a personal justiciable interest that is not common to the members of the general public and identified a reasonable relationship between his issues and the land application activities authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Steve Holzheuser is an affected person.

6. Ms. Dorothy Simons

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Simons is an affected person because she has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issues Ms. Simons raised are included in the factors delineated in 30 TAC § 55.203. Specifically Ms. Simons raised the following issues: 1) contamination of groundwater and surface water due to heavy metals and other contaminants in the sewage sludge, 2) potential for chemicals leaching into the groundwater, 3) runoff and drainage from the site during heavy rains, 4) inadequate buffer zones, and 5) potential health risks from air emissions.

The Executive Director considered whether Ms. Dorothy Simons has an interest that is not in common with the general public. In her hearing request, Ms. Simons stated that she is an adjacent landowner and affected person in the matter. Ms. Simon's property is listed on the Applicant's adjacent landowner list. Because of Ms. Simon's proximity to the land application area, she is more likely to be impacted by the activities than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Ms. Simons raised and the proposed draft permit.

Dorothy Simons raised issues that are not in common with the general public and there is a reasonable relationship between the issues she raised and the discharge authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Dorothy Simons is an affected person.

C. Whether Issues Raised Are Referable to the State Office of Administrative Hearings for a Contested Cased Hearing.

In addition to recommending to the Commission those persons who qualify as affected persons, the Executive Director analyzes issues raised in accordance with the regulatory criteria. All of the issues discussed below were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

Issue 1: Whether the land application of grit trap and grease trap waste is included in the Commission's definition of domestic sewage sludge under Chapter 312. (*Responses 1 and 11*)

This is a disputed mixed issue of fact and law that is relevant and material to a decision on the application. The Executive Director recommends the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 2: Whether the Executive Director's decision to include the Special Provision prohibiting the land application of sewage sludge co-processed with grease trap and grit trap waste is technically justified, supported by state law and applicable Commission rules.

This is a disputed issue of fact. However this issue was not raised during the public comment period. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 3: Whether an experimental use authorization pursuant to 30 TAC §312.3(k) necessary to land apply domestic sewage sludge, and if so, is there any legal, health or environmental reasons why such an experimental use authorization should be included in the draft permit.

This is a disputed issue of fact. However, this issue was not raised during the public comment period. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 4: Whether the proposed land application activities will pose a threat to human health. (*Response 18*)

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 5: Whether the proposed land application activities will adversely impact the health of livestock and wildlife in the area. (*Response 19*)

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 6: Whether there is a potential threat of leaching of heavy metals and other contaminants in the sewage sludge which will cause groundwater contamination. *(Response 3 and 4)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 7: Whether sufficient groundwater monitoring will be established and maintained, to ensure that there will be no potential for surface drainage pollution. *(Response 3, 8 and 9)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 8: Whether there is a potential for contamination of the soil and potential buildup of heavy metals and toxic substances. *(Response 4)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 9: Whether runoff and drainage from the land application area has potential to impair the water quality of Arenosa Creek. *(Responses 3 and 9)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 10: Whether the buffer zones of the land application area are adequate to protect from the possible contamination of surface and groundwater sources in the area. *(Responses 4, 8 and 10)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 11: Whether the land application activities would cause odor. *(Response 14)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 12: Whether the land application activities will contribute to adverse air pollution and emissions in the area. *(Response 14)*

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ has established management practices for nuisance and odor controls related to the land application of sewage sludge that are incorporated into the draft permit; however, issues regarding air quality and emissions are outside of the scope of the TCEQ's review of an application for a sewage sludge beneficial use permit. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 13: Whether the financial incentives to the Applicant in issuance of the draft permit were taken into consideration. (*Response 21*)

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ does not have jurisdiction to consider the financial incentives of a company when reviewing a sewage sludge beneficial use application permit. The TCEQ does not consider a company's profit motive in determining whether a permit should be issued or renewed. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 14: Whether the land application activities at the Arenosa Creek Ranch site will adversely impact surrounding property values. (*Response 22*)

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ does not have jurisdiction under the Texas Water Code, Texas Health and Safety Code or Commission regulations to address or consider property values in its determination of whether to issue a permit for the land application of sewage sludge for beneficial use. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

VI. Requests for Reconsideration

Issue: The Applicant, Beneficial Land Management, L.L.C., requests that the Commission remand the draft permit and the application to the Executive Director

for reconsideration with specific instructions to delete any language from the draft permit that would prohibit BLM from land applying the domestic sewage sludge commingled with grit trap and grease trap wastes from the City of La Coste's WWTP and to issue TCEQ Permit No. WQ0004666000.

Discussion:

A. BLM asserts that there is no legal justification for the Executive Director's decision to prohibit BLM from land applying the domestic sludge.

The Applicant, BLM, submitted an application to the TCEQ's Water Quality Division on December 5, 2011 for a renewal of its existing permit No. WQ0004666000 which authorizes the land application of Class B sewage sludge for beneficial use at the Arenosa Creek Ranch site. During the technical review of the permit application the Applicant requested to include an experimental use provision. BLM's existing permit does not authorize the land application of sewage sludge mixed with grit trap and grease trap waste (GG waste). On May 8, 2014 the Executive Director completed the technical review of BLM's application and prepared a draft permit which included experimental use under 30 Texas Administrative Code (TAC) Section 312.3(k) to authorize the land application of sewage sludge mixed with GG waste, for a period of one year after permit issuance or until October 31, 2016, whichever occurred first. The draft permit with the experimental use provision required the applicant to conduct soil sampling for total petroleum hydrocarbons (TPH), methyl tertiary-butyl ether (MTBE), benzene, toluene and other parameters associated with grit trap and grease trap wastes.

The Commission rules defines experimental use as, "[The] non-routine beneficial use land application or reclamation of projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects." The provisions at 30 TAC §312.3(k) are implemented on an as needed basis to be determined by the Executive Director. Nothing in this rule requires the Executive Director to authorize the experimental use provision at the request of an applicant.

During the comment period, the Executive Director received several comments from the public regarding the experimental use authorization of the draft permit. Additionally, BLM submitted a contested-case hearing request based upon TCEQ's inclusion of a prohibition of land applying GG waste beyond October 2016 in the draft permit. In its hearing request, BLM asserted that the existing regulations at 30 TAC Chapter 312 allow for the land application of GG waste, and therefore, the experimental use authorization and related provisions are not needed.⁶ After consideration of the comments received on this application and public concern, the

⁶ Hearing request letter from John A. Riley, Jackson Gilmour & Dobbs, PC, on behalf of Beneficial Land Management, L.L.C. dated August 20, 2015.

Executive Director removed the experimental use authorization and related provisions from the draft permit. The revised draft permit authorizes the land application of Class B sewage sludge only, and expressly prohibits the land application of grit trap or grease trap waste, or sewage sludge mixed with GG waste.⁷

The TCEQ's authority to issue permits for the land application of sewage sludge for beneficial reuse is granted through Texas Water Code⁸, Texas Health and Safety Code⁹ and Title 30 of the Texas Administrative Code¹⁰. Moreover, Chapter 312 of the Texas Administrative Code vests in the Executive Director or the Commission the authority to impose requirements for the use and disposal of sewage sludge that are more stringent than the requirements under Chapter 312, when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.¹¹ The Executive Director has made a preliminary decision that the revised draft permit without the experimental use provision, if issued, meets all statutory and regulatory requirements.

B. BLM contends that the land application of domestic sewage sludge is not the land application of grease and grit trap waste as contemplated by 312.3(I) because grease and grit trap waste alone is not being land applied.

The operation of this land application site must be in accordance with the 30 TAC Chapter 312 and Title 40 of the Code of Federal Regulations (40 CFR) Part 503 as they relate to land application of domestic sewage sludge for beneficial use. The Commission rules at 30 TAC §312.3(I) states "This chapter does not establish requirements for the land application of chemical toilet waste, grease and grit trap waste, milk solids, or similar non-hazardous municipal or industrial solid wastes." Conversely to the Applicant, TCEQ asserts that this provision further supports that the existing Commission rules at Chapter 312 do not address the mixture of domestic sewage sludge with grit trap or grease trap waste to be land applied under a beneficial use permit.

The draft permit was revised to remove GG wastes and only authorize the land application of Class B sewage sludge. The rules at 30 TAC Chapter 312 define sewage sludge as "Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works."¹² This definition of sewage

⁷ BLM draft permit, Special Provisions, Items F-H, pages 17 and 18.

⁸ Tex. Water Code §26.027.

⁹ Tex. Health & Safety Code §361.121.

¹⁰ 30 Tex. Admin. Code Chapters 281, 305 and 312.

¹¹ 30 Tex. Admin. Code §312.6.

¹² §30 Tex. Admin. Code §312.8(74).

sludge is consistent with the definition found in the Code of Federal Regulations Part 503, regarding Standards for the Use and Disposal of Sewage Sludge.¹³

In order for sewage sludge to be classified as Class B, the sewage sludge must be treated to meet specific standards set by both the EPA and the State of Texas before the treated sludge is land applied, including specific options for meeting the vector attraction reduction and pathogen reduction requirements. It is important to note that the supporting documentation for the development of the federal regulations at 40 CFR 503 are based on data obtained from sewage sludge generated at domestic wastewater treatment facilities located throughout the U.S. However, the data evaluated was not representative of grit trap and grease trap waste combined with domestic sewage sludge. Grease trap and grit trap wastes are known to include additional pollutants of concern and higher concentrations of pollutants than the sewage sludge evaluated during the development of the regulations. Therefore, the allowable pollutant concentrations, treatment options, and site management practices specified by the existing regulations for typical domestic sewage sludge have not been determined to be protective of human health and the environment when mixed with GG wastes.

BLM also asserts in its hearing requests that the exclusion listed at 30 TAC 312.3(d) allows for the land application of domestic sewage sludge made up of domestic wastewater treatment plant sludge co-processed with grease and grit trap waste. The Executive Director does not agree with this interpretation of the rule. The exclusion listed at 30 TAC §312.3(d) states:

“...If a facility that primarily treats domestic wastewater combines domestic sewage with any type of industrial solid waste, any resulting sludge, process waste or wastewater generated at the facility will be considered to be domestic sludge and must be processed, stored, or disposed of in accordance with the applicable requirements of this chapter.”

The rule references the mixture of domestic sewage and industrial solid waste being combined prior to treatment at a wastewater treatment facility. Thereafter, any resulting sludge from the wastewater treatment process is considered to be domestic sewage sludge regulated under 30 TAC Chapter 312. This language is intended to clarify that when industrial waste is routed via the collection system, the resulting sludge following treatment within the domestic wastewater treatment plant, is subject to the requirements of 30 TAC Chapter 312. This distinction is necessary since sludge resulting from the treatment of industrial wastewater is subject to separate regulatory requirements under 30 TAC §335 for industrial solid waste.

In this instance, domestic sewage sludge from the City of LaCoste’s WWTP and GG waste are combined in an aerated mixing tank and dewatered, within Partners Dewatering International, L.L.C.’s (PDI) Type V authorized facility prior to land

¹³ 40 C.F.R. Part 503, Subpart A, §503.9(w).

application. There is no additional treatment after the activated sewage sludge from the WWTP plant is mixed with the GG waste. Again, the existing state and federal regulations for beneficial use were not designed to address the mixing of GG wastes (or other solid wastes) with domestic sewage sludge occurring after the domestic sewage sludge is removed from the wastewater treatment facility. Based on the Applicant's interpretation, any type of waste, regardless of its characteristics would be considered domestic sewage sludge once combined with domestic sewage sludge outside of the wastewater treatment system.

The letter referenced in BLM's hearing requests from Dr. Richard C. Carmichael, dated September 7, 2009, states that "...after the treatment of restaurant grease trap waste by anaerobic digester, the restaurant grease trap waste is no longer classified as grease trap waste and would be considered digester byproduct material".¹⁴ There is a distinction to be made in the industrial process being referred to in this letter. First, PDI's facility is receiving a mixture of both grease trap and grit trap waste, not solely grease trap waste. Secondly, the letter is for an industrial facility which was generating methane gas via digestion of cow manure. The addition of grease acts as a catalyst, improving the efficiency of the gas production process. Since the letter is in regards to an industrial process, it is not germane to the Applicant's position.

Next, BLM states that through the issuance of other permits and through its favorable inspections of the BLM and PDI facilities, TCEQ has repeatedly determined that the land application of domestic sludge made up of WWTP sewage sludge co-processed with grease and grit trap was in compliance with TCEQ rules. More specifically, BLM asserts that the Executive Director has previously authorized the land application activities at Arenosa Creek Ranch by i) approving PDI's MSW registration and site operation plan, and ii) authorizing the City of LaCoste as source of sludge for land application at Arenosa Creek Ranch.

1. Municipal Solid Waste Type V Facility Registration

On May 30, 2002, the Municipal Solid Waste Registration No. 40311 was issued to the City of LaCoste. On April 2, 2008 Partners DeWatering International, L.L.C. submitted a modification to their Site Operation Plan (SOP) for MSW Registration No. 40311, which included information on how PDI would conduct operations at the Type V facility co-located at the City of LaCoste's WWTP. A SOP is a required part of the MSW program's registration and authorization process. The SOP submitted by an applicant includes provisions regarding site management, and operational and maintenance requirements.¹⁵ The source-separated recycling permit exemption in 30 TAC §330.9(f), allows qualifying MSW transfer facilities (such as an MSW Type V

¹⁴ Hearing request letter from John A. Riley, Jackson Gilmour & Dobbs, PC, on behalf of Beneficial Land Management, L.L.C. dated August 20, 2015. Exhibit A.

¹⁵ 30 Tex. Admin. Code §330.127

facility) to operate under a registration rather than a permit.¹⁶ The registration for a MSW Type V processing facility authorizes the use of grease trap waste¹⁷, grit trap waste¹⁸, or septage¹⁹ or a combination of these three liquid wastes for storage and processing with no expiration date.²⁰ This information was submitted by PDI to the TCEQ's Municipal Waste Registrations Division for review and approval of PDI's MSW Type V registration.²¹

As part of this registration exemption for Type V facilities, Commission rules require that the transfer facility recovers 10 percent or more by weight or weight equivalent of the incoming waste stream for reuse or recycling.²² This rule provision requires the owner/operator of a Type V facility to identify its plans to meet the 10% recycling requirement, and maintain records and submit a report on a quarterly basis to the MSW program demonstrating that at least 10% of the volume of waste received at the facility is being recycled. As part of the MSW registration application process, the SOP identifies an applicant's plans to beneficially reuse the recycled materials in order to meet the 10 percent materials recovery and recycling requirements set forth at 30 TAC 330.9 and document that the recycling requirement is achieved. Therefore, it is common practice for an Applicant's SOP to identify that it plans to send its recyclable materials derived from the facility to either an authorized composting facility, land application site, or landfill to comply with the application requirements for the Type V registration.

As mentioned by BLM's request for reconsideration, the modified SOP submitted by PDI for its Type V registration did identify that PDI's Type V processing facility "will be accepting WWTP sludge, grease trap waste, grit trap waste and septage that will be processed to result in sewage sludge that can be disposed of in a MSW landfill,...eligible for composting...or that can be eligible for land application for (beneficial use)".²³ However, it is the Applicant's ultimate responsibility to comply with all applicable Commission rules regarding composting²⁴ and land application for beneficial reuse.²⁵ To merely assume that the agency authorizes the use and disposal of domestic sewage sludge mixed with GG waste through the approval of an SOP for a MSW registration is not sufficient. The Agency's Municipal Solid Waste registration

¹⁶ This provision to operate under a registration instead of a permit is distinct from other provisions for registration of a transfer facility based on the population of the area served, waste acceptance rate, and location within a permitted facility. 30 Tex. Admin. Code §330.9(b).

¹⁷ 30 Tex. Admin. Code §330.3(59).

¹⁸ 30 Tex. Admin. Code §330.3 (60).

¹⁹ 30 Tex. Admin. Code §330.3(138).

²⁰ 30 Tex. Admin. Code §330.9 (f).

²¹ 30 Tex. Admin. Code §330.9.

²² 30 Tex. Admin. Code §330.9(f).

²³ Request for Reconsideration Letter from Erich Birch, Birch, Becker & Moorman, L.L.P. on behalf of Beneficial Land Management, L.L.C., dated April 27, 2016, page 5.

²⁴ 30 Tex. Admin. Code Chapter 332 (Composting).

²⁵ 30 Tex. Admin. Code Chapter 312.

application and approval procedure is a distinct and separate authorization from the Water Quality Division's permitting process for a beneficial land use site.

2. Additional Sludge Source Approval

On May 31, 2007 the TCEQ granted BLM a permit to land apply wastewater treatment plant sludge at Arenosa Creek Ranch (TPDES No. WQ0004666000); the City of LaCoste was not listed as a source of sludge within BLM's original permit application. Later in the year, on August 1, 2007 the TCEQ's Water Quality Division received a request from BLM to add the City of LaCoste as an additional source for land application. As a part of BLM's beneficial use land application permit, the permit language states that anytime the permittee plans to accept WWTP sludge from any source(s) other than those listed in the application and approved for this permit, the permittee must notify and receive authorization from the Water Quality Division, Municipal Permits Team of the TCEQ prior to receiving new sludge.²⁶ In addition to submitting the request to add a sewage sludge source, BLM was required by the agency's WQD to submit a summary of levels and limits of PCBs, total metal pollutants, and Toxicity Leaching Procedure of the new source, and associated lab results indicating these levels. They were also required to submit certification that the sludge meets the Class B sewage sludge requirements for pathogens and vector attraction measures to meet the Class B sewage sludge requirements found at 30 TAC Chapter 312. The analytical data submitted with BLM's request did meet this requirement, however, it was not identified that the additional source of sludge from the City of LaCoste's WWTP was being commingled with grease trap and grit trap waste from the MSW Type V facility.

In an effort to address this issue, BLM and TCEQ entered into a compliance agreement on July 6, 2011 that would allow for the land application of sewage sludge mixed with grit and grease trap waste, along with stringent testing and monitoring frequencies that was to be submitted to the agency in quarterly reports. Under the compliance agreement, BLM conducted soil sampling of additional parameters associated with grit trap and grease trap wastes. The intent of the compliance agreement was to provide BLM with a sufficient time to come into compliance with the terms of its existing permit which did not allow for the land application of the grit and grease trap mixture and to closely monitor the related land application activities. TCEQ informed the Applicant that a regulatory change to the existing rule would be needed to authorize beneficial reuse of grit trap and grease trap wastes under 30 TAC Chapter 312.

C. BLM stated that the Executive Director's staff has not contested the results of BLM's permit-required sampling and monitoring nor has the Executive Director's technical staff contested the results of the sludge and soil sampling and testing associated with the 2011 sampling plan or the 2014 demonstration project.

²⁶ Permit Conditions, Section IV. General Requirements, Item No. 7, page 3.

The Executive Director acknowledges that program staff has not contested the sampling and monitoring results submitted by BLM in compliance with its existing permit or in its proposed demonstration project for experimental use; nonetheless, the Executive Director strongly opposes the unauthorized land application of sewage sludge mixed with grit trap and grease trap waste at the Arenosa Creek Ranch BLU site.

However, the agency recently conducted its own environmental sampling event at Arenosa Creek Ranch in response to public concern regarding possible contamination at the site.²⁷ Between October 1, 2015 and January 7, 2016, the agency conducted several sampling events at Arenosa Creek, accessible groundwater wells adjacent to the land application site, the land application site, a recreational lake, and a wetland. Samples were collected and analyzed to determine if contaminants were present at detectable levels. There were no violations associated with this compliance investigation.²⁸

Conclusion: After reviewing the Applicant's request for reconsideration, the Executive Director did not find any cause for altering the draft permit. Because the Executive Director recommends granting the Applicant's hearing request and continues to support the draft permit, the Executive Director recommends denying the request for reconsideration.

VII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that the Applicant has the right to a hearing under 30 TAC §55.201(b)(3).
2. The Executive Director recommends that the Commission find that the City of LaCoste, Victoria County, Cynthia Doyle, Dorothy Simons and Steve Holzehauser are affected persons under 30 TAC §55.203 (a) and (b).

²⁷ The environmental sampling event was conducted in response to a complaint received by the TCEQ on September 4, 2015, (Incident No. 232060). The complainant expressed concerns regarding contamination of groundwater and surface water from the land application of waste on Arenosa Creek Ranch.

²⁸ TCEQ Investigation of Beneficial Land Management, L.L.C., Compliance Investigation No. 132940.

3. The Executive Director recommends that the Commission deny the Applicant's request for reconsideration.
4. If referred to SOAH, the Executive Director recommends referring the following issues:

Issue 1: Whether the land application of grit trap and grease trap waste is included in the Commission's definition of sewage sludge under Chapter 312.

Issue 2: Whether the Executive Director's decision to include the Special Provision prohibiting the land application of sewage sludge co-processed with grease trap and grit trap waste is technically justified, supported by state law and applicable Commission rules.

Issue 3: Whether an experimental use authorization pursuant to 30 TAC §312.3(k) necessary to land apply domestic sewage sludge, and if so, is there any legal, health or environmental reasons why such an experimental use authorization should be included in the draft permit.
2: Whether the proposed land application activities will pose a threat to human health.

Issue 4: Whether the proposed land application activities will adversely impact the health of livestock and wildlife in the area.

Issue 5: Whether there is a potential threat of leaching of heavy metals and other contaminants in the sewage sludge will cause groundwater contamination.

Issue 6: Whether sufficient groundwater monitoring will be established and maintained, to ensure that there will be no potential for surface drainage pollution.

Issue 7: Whether there is a potential for contamination of the soil and potential buildup of heavy metals and toxic substances.

Issue 8: Whether runoff and drainage from the land application area has potential to impair the water quality of Arenosa Creek.

Issue 9: Whether the buffer zones of the land application area are adequate to protect from the possible contamination of surface and groundwater sources in the area.

Issue 10: Whether the land application activities would cause odor.

5. If referred to SOAH, the Executive Director recommends that the duration of the hearing between the preliminary hearing and the presentation of a proposal for decision before the Commission be less than **nine** months.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Robert Martinez, Director
Environmental Law Division



Ashley S. McDonald, Staff Attorney
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 June 13, 2016, the original and seven copies of the "Executive Director's Response to Hearing Requests" for Beneficial Land Management, L.L.C. TPDES Permit No. WQ0004666000 were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Ashley S. McDonald, Staff Attorney
Environmental Law Division
State Bar No. 24086775

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DOCKET NO. 2016-0665-IWD; PERMIT NO. WQ0004666000

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REQUESTER(S)/INTERESTED
PERSON(S):

See attached list.

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ATTACHMENT A

Beneficial Land Management, L.L.C.

TPDES Permit No. WQ0004666000

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

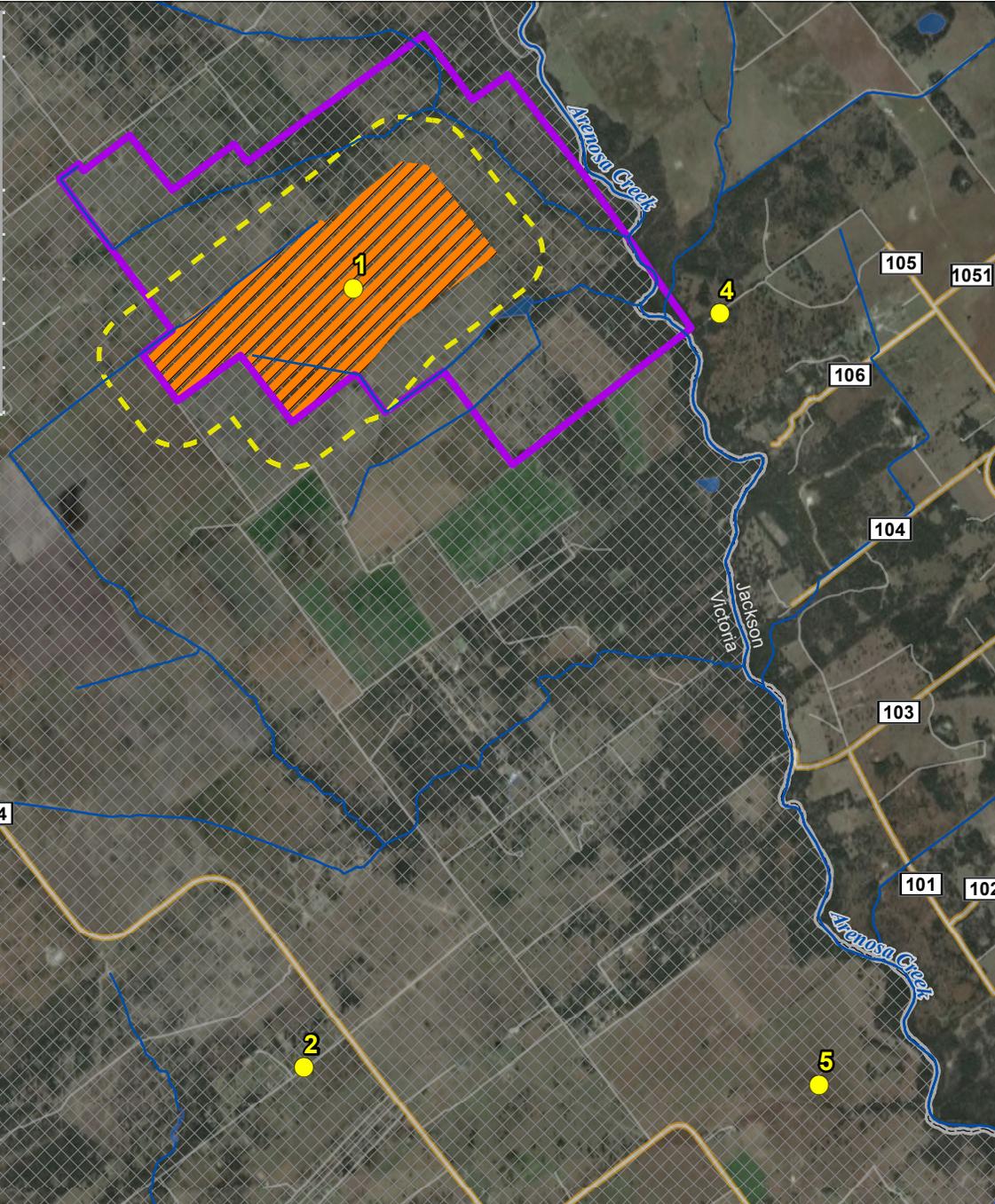


Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 5/3/2016



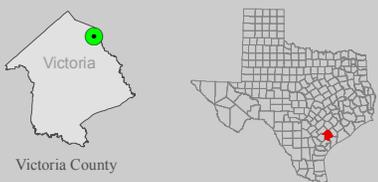
ID	Name
	Beneficial Land Management, Arenosa Creek Ranch
1	Cynthia Doyle
2	City of Lacoste
3	Dorothy Simons
4	Steve Holzheuser
5	Victoria County



- Applicant Property Boundary
- Land Application Area
- 0.25 mi radial distance from land application area
- Watercourse
- Waterbody
- Intermediate Roads
- Minor Roads
- County Boundary
- Requesters
- Victoria County

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. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

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 Victoria 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 Victoria County (red) in the state of Texas.

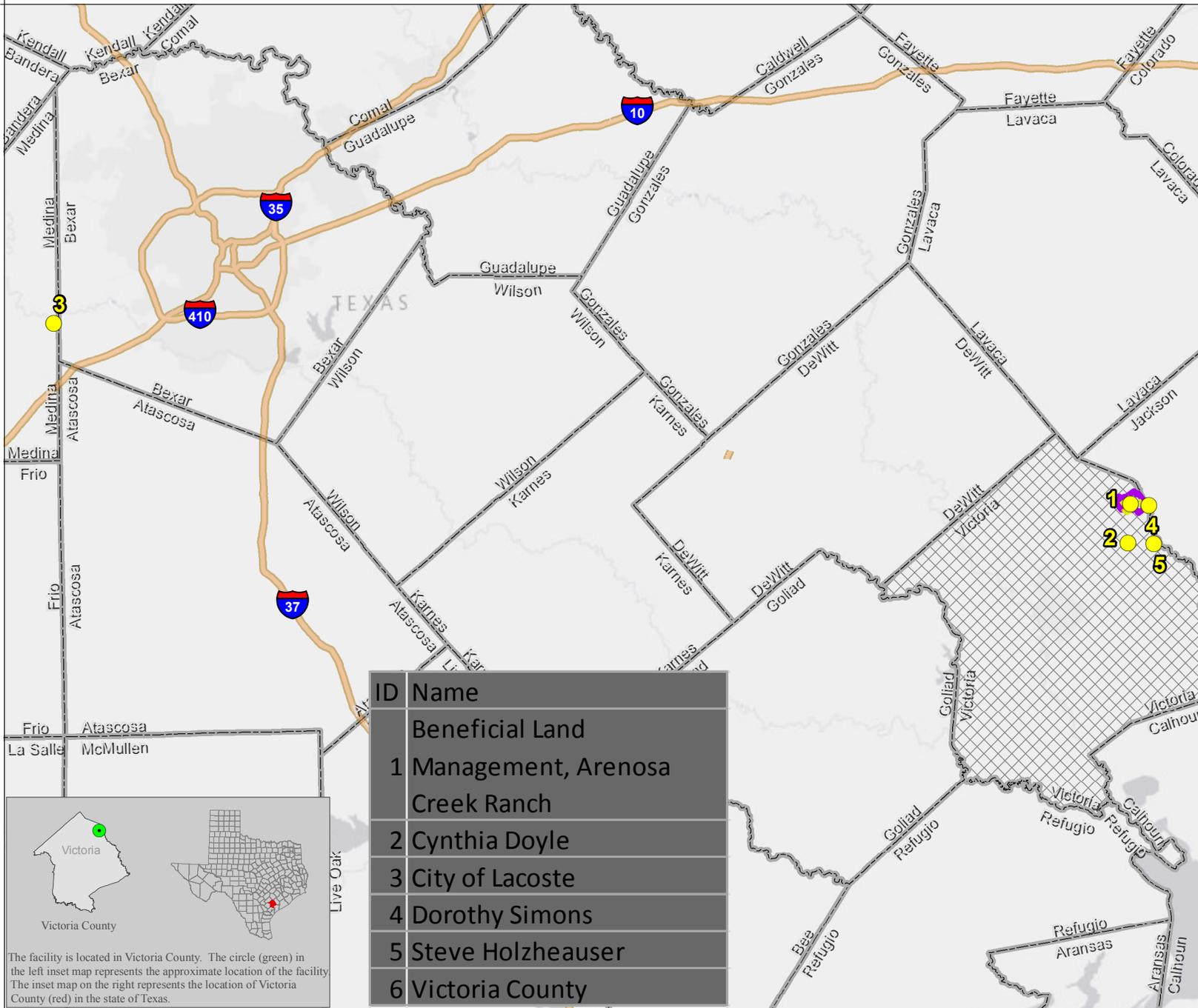
Beneficial Land Management, L.L.C. TPDES Permit No. WQ0004666000

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



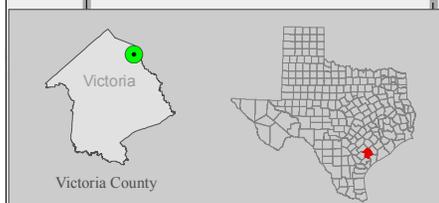
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 5/3/2016



-  Applicant Property Boundary
-  Land Application Area
-  0.25 mi radial distance from land application area
-  Interstate
-  County Boundary
-  Requesters
-  Victoria County

ID	Name
	Beneficial Land Management, Arenosa Creek Ranch
1	Cynthia Doyle
2	City of Lacoste
3	Dorothy Simons
4	Steve Holzheuser
5	Victoria County



The facility is located in Victoria 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 Victoria County (red) in the state of Texas.

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. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

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Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 13, 2016

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application by Beneficial Land Management, L.L.C. WQ0004666000; TCEQ
Docket No. 2016-0665-IWD

Dear Ms. Bohac:

I have enclosed the Executive Director's Response to Hearing Requests and Response to Requests for Reconsideration in the above-entitled matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ashley McDonald". The signature is written in black ink and is positioned above a solid horizontal line.

Ashley McDonald
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2016-0665-IWD

APPLICATION BY	§	BEFORE THE
BENEFICIAL LAND	§	
MANAGEMENT, L.L.C.	§	TEXAS COMMISSION
FOR	§	
TPDES PERMIT NO.	§	ON
WQ0004666000	§	ENVIRONMENTAL QUALITY

Executive Director’s Response to Hearing Requests and Requests for Reconsideration

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Request (Response) on the application of Beneficial Land Management, L.L.C. (the Applicant or BLM) for renewal of Texas Discharge Pollutant Elimination System (TPDES) No. WQ00046660000. The Office of the Chief Clerk (OCC) received hearing requests from Erich Birch and John Riley on behalf of the Applicant, C. George Salzman on behalf of the City of LaCoste, J. Eric MaGee on behalf of Victoria County, Cynthia Doyle, Steve Holzeheuser, and Dorothy Simons.

Attached for Commission consideration are the following:

Attachment A— GIS Map

II. Description of the Facility

BLM applied to the TCEQ for renewal of permit No. WQ0004666000, to authorize the beneficial land application of Class B wastewater treatment plant (WWTP) sewage sludge at a rate not to exceed 8 dry tons per acre per year. The land application site is located on 726.1 acres within a larger approximately 2,881 acre parcel of land, which is located ten miles northwest of the City of Inez, on Farm-to-Market Road 444 and 2.5 miles northeast of the intersection of Karnes Road and Farm-to-Market Road 444, in Victoria County, Texas 77968.

The original draft permit proposed to authorized the permittee to land apply sewage sludge mixed with grit trap and grease trap waste (GG waste) under an experimental use authorization. The experimental use authorization was to expire on October 31, 2016 or one year from the date of permit issuance, whichever occurred first. However, at the close of the public comment period, the Executive Director made changes to the draft permit by removing the experimental use authorization and all applicable provisions.

The land application site is located in the drainage area of Lavaca Bay and Chocolate Bay in Segment No. 2453 of the Lavaca-Guadalupe Coastal Basin. However, this permit does not authorize a discharge of pollutants into waters in the State and the Draft Permit's sludge provisions and requirements are in accordance with 30 TAC Chapter 312, the TCEQ's "Sludge Use, Disposal, and Transportation" rules (Sludge rules).

The Executive Director has completed the technical review of the application, prepared a draft permit, and made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The draft permit, if approved, establishes the conditions under which the facility must operate. In accordance with 30 TAC § 312.10(m) and Texas Health & Safety Code § 361.121, the draft permit will expire five years from the date of issuance.

III. Procedural History

The application was received on December 5, 2011 and declared administratively complete on January 24, 2013. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 16, 2014 in the Victoria Advocate. The Executive Director completed the technical review of the application on May 8, 2014 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on July 22, 2015 in the Victoria Advocate. The notice of public meeting was published on December 22, 2015 in the Victoria Advocate. A public meeting was held on January 21, 2016 in Victoria, Texas. The public comment period closed on January 21, 2016. The Executive Director's Response to Comment was filed on March 21, 2016 and the Executive Director's Final Decision Letter was mailed on March 28, 2016. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

IV. Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The Commission implemented House Bill 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The application was declared administratively complete on May 8, 2014; therefore, it is subject to the procedural requirement of HB 801. Additionally, this application for renewal is subject to the procedural requirements of the Texas Health and Safety Code §361.121 for an application to land apply certain sludge.¹

¹ Texas Health and Safety Code, §361.121 (Land Application of Certain Sludge; Permit Required).

A. Response to Request

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;
- b) whether issues raised in the hearing request are disputed;
- c) whether the dispute involves questions of fact or of law;
- d) whether the issues were raised during the public comment period;
- e) whether the hearing request is based on issues 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 Executive Director's Response to Comment;
- f) whether the issues are relevant and material to the decision on the application; and
- g) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided...and may not be 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 Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- a) give the name, address, daytime 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 shall be responsible for receiving all official communications and documents for the group;
- b) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;
- c) request a contested case hearing;
- d) list all relevant and material disputed issues of fact that were raised 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 executive director's response to comments that the requestor

- disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- e) provide any other information specified in the public notice of application.
- 30 TAC § 55.201(d).

C. “Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected person.” Section 55.203 sets out who may be considered 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 general public does not qualify as a personal justiciable interest.
- b) Except as provided by 30 TAC § 55.103, government entities, including local governments and public agencies, with authority under state law over issues raised by the application,
- 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 the use of the impacted natural resource by the person; and
 - 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 50.203.

A group or association may also request a contested case hearing. In order for a group or association to request a contested case hearing, the group or association must show that it meets the following requirements:

- a) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- b) the interests the group or association seeks to protect are germane to the organization’s purpose; and
- c) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). In addition the Executive Director, Public Interest Counsel, or the Applicant may request that a group or association provide an explanation of how the group or association meets the above requirements. 30 TAC § 55.205(b).

D. Referral to the State Office of Administrative Hearings (SOAH)

When the Commission grants a request for a contested case hearing, they are required to issue an order specifying the number and scope of the issues to be

referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. "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; 2) was raised during the public comment period; and 3) is relevant and material to the decision on the application." 30 TAC § 50.115(c).

E. Response to Request for Reconsideration

The Executive Director, the public interest counsel, and the applicant may submit written responses to the request for reconsideration. 30 TAC §55.209(d). The response should address the issues raised in the request. 30 TAC §55.209(f).

F. Request for Reconsideration Requirements

Any person may file a request for reconsideration of the Executive Director's decision. However, for the Commission to consider the request, it must substantially comply with the following: give the name, address, daytime telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director's decision; and give reasons why the decision should be reconsidered. 30 TAC §55.201(e).

A. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with the requirements of the Commission rules, who qualifies as affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §55.201(c) and (d).

BLM, the City of LaCoste, Victoria County, Cynthia Doyle, Steve Holzheuser, and Dorothy Simons submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn.² The public comment period for this permit application ended on January 21, 2016. The period for timely filing a request for a contested case hearing on this permit application ended March 27, 2016. The hearing requestors provided their addresses and phone numbers, or those of their representative, and requested a hearing. They identified themselves as persons with what they believed to be personal justiciable interests affected by the application, which will be discussed in detail below, and provided a list of disputed of disputed facts that were raised during the public comment period.

² The requestors filed their respective hearing requests on the following dates: Beneficial Land Management, August 20, 2015 and April 27, 2016; City of LaCoste, August 20, 2016; Victoria County, April 25, 2016; Cynthia Doyle, January 21, 2016; Steve Holzheuser, April 27, 2016; and Dorothy Simons, April 21, 2016.

The Executive Director concludes that the hearing requests of BLM, the City of LaCoste, Victoria County, Cynthia Doyle, Steve Holzhauser, and Dorothy Simons, substantially comply with the requirements of 30 TAC §55.201(c) and (d).

B. Whether the Individual Requestors Meet the Affected Person Requirements

1. Beneficial Land Management, L.L.C.

BLM applied to the TCEQ to renew its existing sludge beneficial land use permit TPDES Permit No. WQ0004666000 on December 5, 2011. On August 20, 2015, BLM submitted a hearing request on the draft permit. In their hearing requests BLM raised the following issues: 1) BLM is land applying sewage sludge, not grease and grit trap waste, 2) there is no prohibition of the land application of grease and grit trap waste, 3) whether the ED demonstrated that the Special Provision included in the Draft Permit, which would prohibit BLM from land applying WWTP sewage sludge from the LaCoste WWTP co-processed with grease and grit trap waste is technically justified and supported by state law and applicable TCEQ rules, 4) whether an experimental use authorization pursuant to 30 TAC §312.3(k) necessary to land apply domestic sewage sludge, and 5) If an experimental use authorization is necessary to authorize BLM to land apply domestic sludge, is there any legal, health, or environmental reason why such an experimental use authorization should not be included in the reissuance of the Permit No. WQ0004666000.

Under Commission rules, an Applicant has to the right to request a contested case hearing on its own permit application.³ Therefore, the Executive Director recommends that the Commission find that BLM has a right to a contested case hearing proscribed by rule.

2. City of LaCoste

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that the City of LaCoste is an affected person because the City does have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issue raised is included in the factors delineated in 30 TAC §55.203. In its hearing request, the City raised the issue that by the Executive Director imposing a timeline under the experimental use provision of the draft permit, this would interfere with BLM's longstanding land application practice, and adversely impact the City.

The Executive Director considered whether the City of LaCoste has an interest that is not common with the general public. In its hearing request, the City stated that it owns a wastewater treatment facility that is co-located with a MSW Type V

³ 30 Tex. Admin. Code §55.203(b).

facility, operated by Partners Dewatering Industries (PDI). The City of LaCoste is an approved sludge source under BLM's existing and draft permit. The city claims an economic interest in this permit application, being that the revenue that the City of LaCoste receives from the operations of BLM and PDI is nearly double the amount that the City receives in ad valorem taxes. Given that a reasonable relationship exists between the interest claimed and the activity regulated, the City of LaCoste has an interest in the application not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that the City of LaCoste is an affected person.

3. Victoria County

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Victoria County is an affected person because the County is a governmental entity with authority under state law over issues raised by the application.⁴ In its hearing request, Victoria County raised the following issues: 1) potential for drainage and runoff which will contribute to the impairments of water quality in Arenosa Creek, Lavaca Bay and Matagorda Basin. Heavy metals and other contaminants constitute an unacceptable risk and threat to the public health, safety and welfare, 2) potential for leaching and contamination of groundwater which poses an unacceptable risk and threat to the public health safety, and welfare, 3) the potential for contamination of the soil and the potential of buildup of heavy metals and toxic substances is an unnecessary threat to public health, 4) inadequate buffer zones to protect surface water, and 5) groundwater protection, more specifically, ensuring that the sufficient groundwater monitoring will be established and maintained, that there is no potential for surface drainage pollution, and 6) that adequate protection from the escape of contaminants and toxic substances into the air is provided.

The Executive Director consider whether Victoria County has authority under state law over issues raised by the application. In its hearing request, Victoria County stated that as a subdivision of the state it is charged with statutory authority to protect the health, safety and welfare of the citizens of Victoria County, Texas and their property interest.⁵ The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues raised by Victoria County and the proposed draft permit.

⁴ 30 Tex. Admin. Code §55.203(b).

⁵ Hearing request letter from J. Eric Magee, on behalf of Victoria County, dated April 25, 2016, page 1. The letter states, "[t]he governing body of a municipality of the commissioners court of a county may enforce any law that is reasonably necessary to protect public health." Texas Health and Safety Code Ann. §121.003. Further Subchapter E of the Texas Water Code provides that a County has authority over water quality issues. Finally, Victoria County has authority relating to nuisances in Chapter 341 of the Texas Health and Safety Code and authority to enforce health and protection Chapters 361 and 364 of the Texas Health and Safety Code."

Based on issues raised by Victoria County and its statutory authority over the issues relevant to the application, the Executive Director recommends that the Commission finds that Victoria County is an affected person.

4. Cynthia Doyle

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that the Cynthia Doyle is an affected person because she has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Cynthia Doyle raised the following issues in her hearing request: 1) the financial incentive to the Applicant if their application is approved, and 2) concerns regarding safety of land and water for future generations.

The Executive Director considered whether Ms. Doyle has an interest that is not in common with the general public. Based on the address provided by Ms. Doyle in her hearing request, her property located just south of land application site at Arenosa Creek Ranch. Because of Ms. Doyle's proximity to the land application site, she is more likely to be impacted than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Ms. Doyle raised and the proposed draft permit.

Ms. Doyle identified a personal justiciable interest that is not common to the members of the general public and identified a reasonable relationship between her issues and the land application activities authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Cynthia Doyle is an affected person.

5. Steve Holzheuser

The Executive Director reviewed all of the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Mr. Holzheuser is an affected person because he has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issues Mr. Holzheuser raised are included in the factors delineated in 30 TAC § 55.203. Specifically, Mr. Holzheuser raised the following issues 1) contamination of groundwater, 2) contamination of Arenosa Creek, 3) impact to property values, 4) negative effects on air quality, 5) and odor.

The Executive Director considered whether Steve Holzheuser has an interest that is not in common with the general public. In his hearing request, Mr. Holzheuser stated that that he is the general partner of a family limited partnership that owns and operates land bordered by FM 444 North and US 59 South, near the location of the land application site and borders Arenosa Creek. Because of Ms.

Holzheuser's proximity to the land application area, he is more likely to be impacted by the activities than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Mr. Holzheuser raised and the proposed draft permit.

Mr. Holzheuser identified a personal justiciable interest that is not common to the members of the general public and identified a reasonable relationship between his issues and the land application activities authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Steve Holzheuser is an affected person.

6. Ms. Dorothy Simons

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Simons is an affected person because she has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public, and the issues Ms. Simons raised are included in the factors delineated in 30 TAC § 55.203. Specifically, Ms. Simons raised the following issues: 1) contamination of groundwater and surface water due to heavy metals and other contaminants in the sewage sludge, 2) potential for chemicals leaching into the groundwater, 3) runoff and drainage from the site during heavy rains, 4) inadequate buffer zones, and 5) potential health risks from air emissions.

The Executive Director considered whether Ms. Dorothy Simons has an interest that is not in common with the general public. In her hearing request, Ms. Simons stated that she is an adjacent landowner and affected person in the matter. Ms. Simon's property is listed on the Applicant's adjacent landowner list. Because of Ms. Simon's proximity to the land application area, she is more likely to be impacted by the activities than members of the general public. The Executive Director also considered the issues in 30 TAC §55.203(c) and determined that there is a reasonable relationship between the issues Ms. Simons raised and the proposed draft permit.

Dorothy Simons raised issues that are not in common with the general public and there is a reasonable relationship between the issues she raised and the discharge authorized by the proposed permit; therefore, the Executive Director recommends that the Commission find that Dorothy Simons is an affected person.

C. Whether Issues Raised Are Referable to the State Office of Administrative Hearings for a Contested Cased Hearing.

In addition to recommending to the Commission those persons who qualify as affected persons, the Executive Director analyzes issues raised in accordance with the regulatory criteria. All of the issues discussed below were raised during the public

comment period and addressed in the RTC. None of the issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

Issue 1: Whether the land application of grit trap and grease trap waste is included in the Commission's definition of domestic sewage sludge under Chapter 312. (*Responses 1 and 11*)

This is a disputed mixed issue of fact and law that is relevant and material to a decision on the application. The Executive Director recommends the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 2: Whether the Executive Director's decision to include the Special Provision prohibiting the land application of sewage sludge co-processed with grease trap and grit trap waste is technically justified, supported by state law and applicable Commission rules.

This is a disputed issue of fact that is relevant and material to a decision on the application. This comment was raised by the Applicant in response to the Executive Director's decision to remove the experimental use provision and prohibit the land application of grit trap and grease trap waste. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 3: Whether an experimental use authorization pursuant to 30 TAC §312.3(k) necessary to land apply domestic sewage sludge, and if so, is there any legal, health or environmental reasons why such an experimental use authorization should be included in the draft permit.

This is a disputed issue of fact that is relevant and material to a decision on the application. This comment was raised by the Applicant in response to the Executive Director's decision to remove the experimental use provision and prohibit the land application of grit trap and grease trap waste. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 4: Whether the proposed land application activities will pose a threat to human health. (*Response 18*)

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 5: Whether the proposed land application activities will adversely impact the health of livestock and wildlife in the area. (*Response 19*)

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 6: Whether there is a potential threat of leaching of heavy metals and other contaminants in the sewage sludge which will cause groundwater contamination. *(Response 3 and 4)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 7: Whether sufficient groundwater monitoring will be established and maintained, to ensure that there will be no potential for surface drainage pollution. *(Response 3, 8 and 9)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 8: Whether there is a potential for contamination of the soil and potential buildup of heavy metals and toxic substances. *(Response 4)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 9: Whether runoff and drainage from the land application area has potential to impair the water quality of Arenosa Creek. *(Responses 3 and 9)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 10: Whether the buffer zones of the land application area are adequate to protect from the possible contamination of surface and groundwater sources in the area. *(Responses 4, 8 and 10)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 11: Whether the land application activities would cause odor. *(Response 14)*

This is a disputed issue of fact that is relevant and material to a decision on the application. The Executive Director recommends that the Commission refer this issue to SOAH if it grants the hearing requests.

Issue 12: Whether the land application activities will contribute to adverse air pollution and emissions in the area. *(Response 14)*

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ has established management practices for nuisance and odor controls related to the land application of sewage sludge that are incorporated into the draft permit; however, issues regarding air quality and emissions are outside of the scope of the TCEQ's review of an application for a sewage sludge beneficial use permit. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 13: Whether the financial incentives to the Applicant in issuance of the draft permit were taken into consideration. (*Response 21*)

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ does not have jurisdiction to consider the financial incentives of a company when reviewing a sewage sludge beneficial use application permit. The TCEQ does not consider a company's profit motive in determining whether a permit should be issued or renewed. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

Issue 14: Whether the land application activities at the Arenosa Creek Ranch site will adversely impact surrounding property values. (*Response 22*)

This is a disputed issue of fact, however, it is not relevant and material to a decision on the application. The TCEQ does not have jurisdiction under the Texas Water Code, Texas Health and Safety Code or Commission regulations to address or consider property values in its determination of whether to issue a permit for the land application of sewage sludge for beneficial use. The Executive Director recommends that the Commission not refer this issue to SOAH if it grants the hearing requests.

B. Requests for Reconsideration

Issue: The Applicant, Beneficial Land Management, L.L.C., requests that the Commission remand the draft permit and the application to the Executive Director for reconsideration with specific instructions to delete any language from the draft permit that would prohibit BLM from land applying the domestic sewage sludge commingled with grit trap and grease trap wastes from the City of La Coste's WWTP and to issue TCEQ Permit No. WQ0004666000.

Discussion:

A. BLM asserts that there is no legal justification for the Executive Director's decision to prohibit BLM from land applying the domestic sludge.

The Applicant, BLM, submitted an application to the TCEQ's Water Quality Division on December 5, 2011 for a renewal of its existing permit No. WQ0004666000 which authorizes the land application of Class B sewage sludge for beneficial use at

the Arenosa Creek Ranch site. During the technical review of the permit application the Applicant requested to include an experimental use provision. BLM's existing permit does not authorize the land application of sewage sludge mixed with grit trap and grease trap waste (GG waste). On May 8, 2014 the Executive Director completed the technical review of BLM's application and prepared a draft permit which included experimental use under 30 Texas Administrative Code (TAC) Section 312.3(k) to authorize the land application of sewage sludge mixed with GG waste, for a period of one year after permit issuance or until October 31, 2016, whichever occurred first. The draft permit with the experimental use provision required the applicant to conduct soil sampling for total petroleum hydrocarbons (TPH), methyl tertiary-butyl ether (MTBE), benzene, toluene and other parameters associated with grit trap and grease trap wastes.

The Commission rules defines experimental use as, "[The] non-routine beneficial use land application or reclamation of projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects." The provisions at 30 TAC §312.3(k) are implemented on an as needed basis to be determined by the Executive Director. Nothing in this rule requires the Executive Director to authorize the experimental use provision at the request of an applicant.

During the comment period, the Executive Director received several comments from the public regarding the experimental use authorization of the draft permit. Additionally, BLM submitted a contested-case hearing request based upon TCEQ's inclusion of a prohibition of land applying GG waste beyond October 2016 in the draft permit. In its hearing request, BLM asserted that the existing regulations at 30 TAC Chapter 312 allow for the land application of GG waste, and therefore, the experimental use authorization and related provisions are not needed.⁶ After consideration of the comments received on this application and public concern, the Executive Director removed the experimental use authorization and related provisions from the draft permit. The revised draft permit authorizes the land application of Class B sewage sludge only, and expressly prohibits the land application of grit trap or grease trap waste, or sewage sludge mixed with GG waste.⁷

The TCEQ's authority to issue permits for the land application of sewage sludge for beneficial reuse is granted through Texas Water Code⁸, Texas Health and Safety Code⁹ and Title 30 of the Texas Administrative Code¹⁰. Moreover, Chapter 312 of the Texas Administrative Code vests in the Executive Director or the Commission the authority to impose requirements for the use and disposal of sewage sludge that are more stringent than the requirements under Chapter 312, when necessary to protect

⁶ Hearing request letter from John A. Riley, Jackson Gilmour & Dobbs, PC, on behalf of Beneficial Land Management, L.L.C. dated August 20, 2015.

⁷ BLM draft permit, Special Provisions, Items F-H, pages 17 and 18.

⁸ Tex. Water Code §26.027.

⁹ Tex. Health & Safety Code §361.121.

¹⁰ 30 Tex. Admin. Code Chapters 281, 305 and 312.

public health and the environment from any adverse effect of a pollutant in the sewage sludge.¹¹ The Executive Director has made a preliminary decision that the revised draft permit without the experimental use provision, if issued, meets all statutory and regulatory requirements.

B. BLM contends that the land application of domestic sewage sludge is not the land application of grease and grit trap waste as contemplated by 312.3(I) because grease and grit trap waste alone is not being land applied.

The operation of this land application site must be in accordance with the 30 TAC Chapter 312 and Title 40 of the Code of Federal Regulations (40 CFR) Part 503 as they relate to land application of domestic sewage sludge for beneficial use. The Commission rules at 30 TAC §312.3(I) states "This chapter does not establish requirements for the land application of chemical toilet waste, grease and grit trap waste, milk solids, or similar non-hazardous municipal or industrial solid wastes." Conversely to the Applicant, TCEQ asserts that this provision further supports that the existing Commission rules at Chapter 312 do not address the mixture of domestic sewage sludge with grit trap or grease trap waste to be land applied under a beneficial use permit.

The draft permit was revised to remove GG wastes and only authorize the land application of Class B sewage sludge. The rules at 30 TAC Chapter 312 define sewage sludge as "Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works."¹² This definition of sewage sludge is consistent with the definition found in the Code of Federal Regulations Part 503, regarding Standards for the Use and Disposal of Sewage Sludge.¹³

In order for sewage sludge to be classified as Class B, the sewage sludge must be treated to meet specific standards set by both the EPA and the State of Texas before the treated sludge is land applied, including specific options for meeting the vector attraction reduction and pathogen reduction requirements. It is important to note that the supporting documentation for the development of the federal regulations at 40 CFR 503 are based on data obtained from sewage sludge generated at domestic wastewater treatment facilities located throughout the U.S. However, the data evaluated was not representative of grit trap and grease trap waste combined with domestic sewage sludge. Grease trap and grit trap wastes are known to include additional pollutants of concern and higher concentrations of pollutants than the sewage sludge evaluated during the development of the regulations.

¹¹ 30 Tex. Admin. Code §312.6.

¹² §30 Tex. Admin. Code §312.8(74).

¹³ 40 C.F.R. Part 503, Subpart A, §503.9(w).

Therefore, the allowable pollutant concentrations, treatment options, and site management practices specified by the existing regulations for typical domestic sewage sludge have not been determined to be protective of human health and the environment when mixed with GG wastes.

BLM also asserts in its hearing requests that the exclusion listed at 30 TAC 312.3(d) allows for the land application of domestic sewage sludge made up of domestic wastewater treatment plant sludge co-processed with grease and grit trap waste. The Executive Director does not agree with this interpretation of the rule. The exclusion listed at 30 TAC §312.3(d) states:

“...If a facility that primarily treats domestic wastewater combines domestic sewage with any type of industrial solid waste, any resulting sludge, process waste or wastewater generated at the facility will be considered to be domestic sludge and must be processed, stored, or disposed of in accordance with the applicable requirements of this chapter.”

The rule references the mixture of domestic sewage and industrial solid waste being combined prior to treatment at a wastewater treatment facility. Thereafter, any resulting sludge from the wastewater treatment process is considered to be domestic sewage sludge regulated under 30 TAC Chapter 312. This language is intended to clarify that when industrial waste is routed via the collection system, the resulting sludge following treatment within the domestic wastewater treatment plant, is subject to the requirements of 30 TAC Chapter 312. This distinction is necessary since sludge resulting from the treatment of industrial wastewater is subject to separate regulatory requirements under 30 TAC §335 for industrial solid waste.

In this instance, domestic sewage sludge from the City of LaCoste's WWTP and GG waste are combined in an aerated mixing tank and dewatered, within Partners Dewatering International, L.L.C.'s (PDI) Type V authorized facility prior to land application. There is no additional treatment after the activated sewage sludge from the WWTP plant is mixed with the GG waste. Again, the existing state and federal regulations for beneficial use were not designed to address the mixing of GG wastes (or other solid wastes) with domestic sewage sludge occurring after the domestic sewage sludge is removed from the wastewater treatment facility. Based on the Applicant's interpretation, any type of waste, regardless of its characteristics would be considered domestic sewage sludge once combined with domestic sewage sludge outside of the wastewater treatment system.

The letter referenced in BLM's hearing requests from Dr. Richard C. Carmichael, dated September 7, 2009, states that “...after the treatment of restaurant grease trap waste by anaerobic digester, the restaurant grease trap waste is no longer classified as grease trap waste and would be considered digester

byproduct material".¹⁴ There is a distinction to be made in the industrial process being referred to in this letter. First, PDI's facility is receiving a mixture of both grease trap and grit trap waste, not solely grease trap waste. Secondly, the letter is for an industrial facility which was generating methane gas via digestion of cow manure. The addition of grease acts as a catalyst, improving the efficiency of the gas production process. Since the letter is in regards to an industrial process, it is not germane to the Applicant's position.

Next, BLM states that through the issuance of other permits and through its favorable inspections of the BLM and PDI facilities, TCEQ has repeatedly determined that the land application of domestic sludge made up of WWTP sewage sludge co-processed with grease and grit trap was in compliance with TCEQ rules. More specifically, BLM asserts that the Executive Director has previously authorized the land application activities at Arenosa Creek Ranch by i) approving PDI's MSW registration and site operation plan, and ii) authorizing the City of LaCoste as source of sludge for land application at Arenosa Creek Ranch.

1. Municipal Solid Waste Type V Facility Registration

On May 30, 2002, the Municipal Solid Waste Registration No. 40311 was issued to the City of LaCoste. On April 2, 2008 Partners DeWatering International, L.L.C. submitted a modification to their Site Operation Plan (SOP) for MSW Registration No. 40311, which included information on how PDI would conduct operations at the Type V facility co-located at the City of LaCoste's WWTP. A SOP is a required part of the MSW program's registration and authorization process. The SOP submitted by an applicant includes provisions regarding site management, and operational and maintenance requirements.¹⁵ The source-separated recycling permit exemption in 30 TAC §330.9(f), allows qualifying MSW transfer facilities (such as an MSW Type V facility) to operate under a registration rather than a permit.¹⁶ The registration for a MSW Type V processing facility authorizes the use of grease trap waste¹⁷, grit trap waste¹⁸, or septage¹⁹ or a combination of these three liquid wastes for storage and processing with no expiration date.²⁰ This information was submitted by PDI to the TCEQ's Municipal Waste Registrations Division for review and approval of PDI's MSW Type V registration.²¹

¹⁴ Hearing request letter from John A. Riley, Jackson Gilmour & Dobbs, PC, on behalf of Beneficial Land Management, L.L.C. dated August 20, 2015. Exhibit A.

¹⁵ 30 Tex. Admin. Code §330.127

¹⁶ This provision to operate under a registration instead of a permit is distinct from other provisions for registration of a transfer facility based on the population of the area served, waste acceptance rate, and location within a permitted facility. 30 Tex. Admin. Code §330.9(b).

¹⁷ 30 Tex. Admin. Code §330.3(59).

¹⁸ 30 Tex. Admin. Code §330.3 (60).

¹⁹ 30 Tex. Admin. Code §330.3(138).

²⁰ 30 Tex. Admin. Code §330.9 (f).

²¹ 30 Tex. Admin. Code §330.9.

As part of this registration exemption for Type V facilities, Commission rules require that the transfer facility recovers 10 percent or more by weight or weight equivalent of the incoming waste stream for reuse or recycling.²² This rule provision requires the owner/operator of a Type V facility to identify its plans to meet the 10% recycling requirement, and maintain records and submit a report on a quarterly basis to the MSW program demonstrating that at least 10% of the volume of waste received at the facility is being recycled. As part of the MSW registration application process, the SOP identifies an applicant's plans to beneficially reuse the recycled materials in order to meet the 10 percent materials recovery and recycling requirements set forth at 30 TAC 330.9 and document that the recycling requirement is achieved. Therefore, it is common practice for an Applicant's SOP to identify that it plans to send its recyclable materials derived from the facility to either an authorized composting facility, land application site, or landfill to comply with the application requirements for the Type V registration.

As mentioned by BLM's request for reconsideration, the modified SOP submitted by PDI for its Type V registration did identify that PDI's Type V processing facility "will be accepting WWTP sludge, grease trap waste, grit trap waste and septage that will be processed to result in sewage sludge that can be disposed of in a MSW landfill,...eligible for composting...or that can be eligible for land application for (beneficial use)".²³ However, it is the Applicant's ultimate responsibility to comply with all applicable Commission rules regarding composting²⁴ and land application for beneficial reuse.²⁵ To merely assume that the agency authorizes the use and disposal of domestic sewage sludge mixed with GG waste through the approval of an SOP for a MSW registration is not sufficient. The Agency's Municipal Solid Waste registration application and approval procedure is a distinct and separate authorization from the Water Quality Division's permitting process for a beneficial land use site.

2. Additional Sludge Source Approval

On May 31, 2007 the TCEQ granted BLM a permit to land apply wastewater treatment plant sludge at Arenosa Creek Ranch (TPDES No. WQ0004666000); the City of LaCoste was not listed as a source of sludge within BLM's original permit application. Later in the year, on August 1, 2007 the TCEQ's Water Quality Division received a request from BLM to add the City of LaCoste as an additional source for land application. As a part of BLM's beneficial use land application permit, the permit language states that anytime the permittee plans to accept WWTP sludge from any source(s) other than those listed in the application and approved for this permit, the permittee must notify and receive authorization from the Water Quality Division, Municipal Permits Team of the TCEQ prior to receiving new sludge.²⁶ In addition to

²² 30 Tex. Admin. Code §330.9(f).

²³ Request for Reconsideration Letter from Erich Birch, Birch, Becker & Moorman, L.L.P. on behalf of Beneficial Land Management, L.L.C., dated April 27, 2016, page 5.

²⁴ 30 Tex. Admin. Code Chapter 332 (Composting).

²⁵ 30 Tex. Admin. Code Chapter 312.

²⁶ Permit Conditions, Section IV. General Requirements, Item No. 7, page 3.

submitting the request to add a sewage sludge source, BLM was required by the agency's WQD to submit a summary of levels and limits of PCBs, total metal pollutants, and Toxicity Leaching Procedure of the new source, and associated lab results indicating these levels. They were also required to submit certification that the sludge meets the Class B sewage sludge requirements for pathogens and vector attraction measures to meet the Class B sewage sludge requirements found at 30 TAC Chapter 312. The analytical data submitted with BLM's request did meet this requirement, however, it was not identified that the additional source of sludge from the City of LaCoste's WWTP was being commingled with grease trap and grit trap waste from the MSW Type V facility.

In an effort to address this issue, BLM and TCEQ entered into a compliance agreement on July 6, 2011 that would allow for the land application of sewage sludge mixed with grit and grease trap waste, along with stringent testing and monitoring frequencies that was to be submitted to the agency in quarterly reports. Under the compliance agreement, BLM conducted soil sampling of additional parameters associated with grit trap and grease trap wastes. The intent of the compliance agreement was to provide BLM with a sufficient time to come into compliance with the terms of its existing permit which did not allow for the land application of the grit and grease trap mixture and to closely monitor the related land application activities. TCEQ informed the Applicant that a regulatory change to the existing rule would be needed to authorize beneficial reuse of grit trap and grease trap wastes under 30 TAC Chapter 312.

C. BLM stated that the Executive Director's staff has not contested the results of BLM's permit-required sampling and monitoring nor has the Executive Director's technical staff contested the results of the sludge and soil sampling and testing associated with the 2011 sampling plan or the 2014 demonstration project.

The Executive Director acknowledges that program staff has not contested the sampling and monitoring results submitted by BLM in compliance with its existing permit or in its proposed demonstration project for experimental use; nonetheless, the Executive Director strongly opposes the unauthorized land application of sewage sludge mixed with grit trap and grease trap waste at the Arenosa Creek Ranch BLU site.

However, the agency recently conducted its own environmental sampling event at Arenosa Creek Ranch in response to public concern regarding possible contamination at the site.²⁷ Between October 1, 2015 and January 7, 2016, the agency conducted several sampling events at Arenosa Creek, accessible groundwater wells adjacent to the land application site, the land application site, a recreational

²⁷ The environmental sampling event was conducted in response to a complaint received by the TCEQ on September 4, 2015, (Incident No. 232060). The complainant expressed concerns regarding contamination of groundwater and surface water from the land application of waste on Arenosa Creek Ranch.

lake, and a wetland. Samples were collected and analyzed to determine if contaminants were present at detectable levels. There were no violations associated with this compliance investigation.²⁸

Conclusion: After reviewing the Applicant's request for reconsideration, the Executive Director did not find any cause for altering the draft permit. Because the Executive Director recommends granting the Applicant's hearing request and continues to support the draft permit, the Executive Director recommends denying the request for reconsideration.

C. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that the Applicant has the right to a hearing under 30 TAC §55.201(b)(3).
2. The Executive Director recommends that the Commission find that the City of LaCoste, Victoria County, Cynthia Doyle, Dorothy Simons and Steve Holzehauser are affected persons under 30 TAC §55.203 (a) and (b).
3. The Executive Director recommends that the Commission deny the Applicant's request for reconsideration.
4. If referred to SOAH, the Executive Director recommends referring the following issues:

Issue 1: Whether the land application of grit trap and grease trap waste is included in the Commission's definition of sewage sludge under Chapter 312.

Issue 2: Whether the proposed land application activities will pose a threat to human health.

Issue 3: Whether the proposed land application activities will adversely impact the health of livestock and wildlife in the area.

Issue 4: Whether there is a potential threat of leaching of heavy metals and other contaminants in the sewage sludge will cause groundwater contamination.

²⁸ TCEQ Investigation of Beneficial Land Management, L.L.C., Compliance Investigation No. 132940.

Issue 5: Whether sufficient groundwater monitoring will be established and maintained, to ensure that there will be no potential for surface drainage pollution.

Issue 6: Whether there is a potential for contamination of the soil and potential buildup of heavy metals and toxic substances.

Issue 7: Whether runoff and drainage from the land application area has potential to impair the water quality of Arenosa Creek.

Issue 8: Whether the buffer zones of the land application area are adequate to protect from the possible contamination of surface and groundwater sources in the area.

Issue 9: Whether the land application activities would cause odor.

5. If referred to SOAH, the Executive Director recommends that the duration of the hearing between the preliminary hearing and the presentation of a proposal for decision before the Commission be less than **nine** months.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Robert Martinez, Director
Environmental Law Division

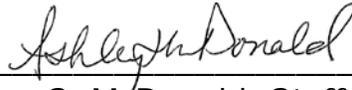


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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 13, 2016, the original and seven copies of the "Executive Director's Response to Hearing Requests" for Beneficial Land Management, L.L.C. TPDES Permit No. WQ0004666000 were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Ashley S. McDonald, Staff Attorney
Environmental Law Division
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DOCKET NO. 2016-0665-IWD; PERMIT NO. WQ0004666000

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ATTACHMENT A

Beneficial Land Management, L.L.C.

TPDES Permit No. WQ0004666000

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

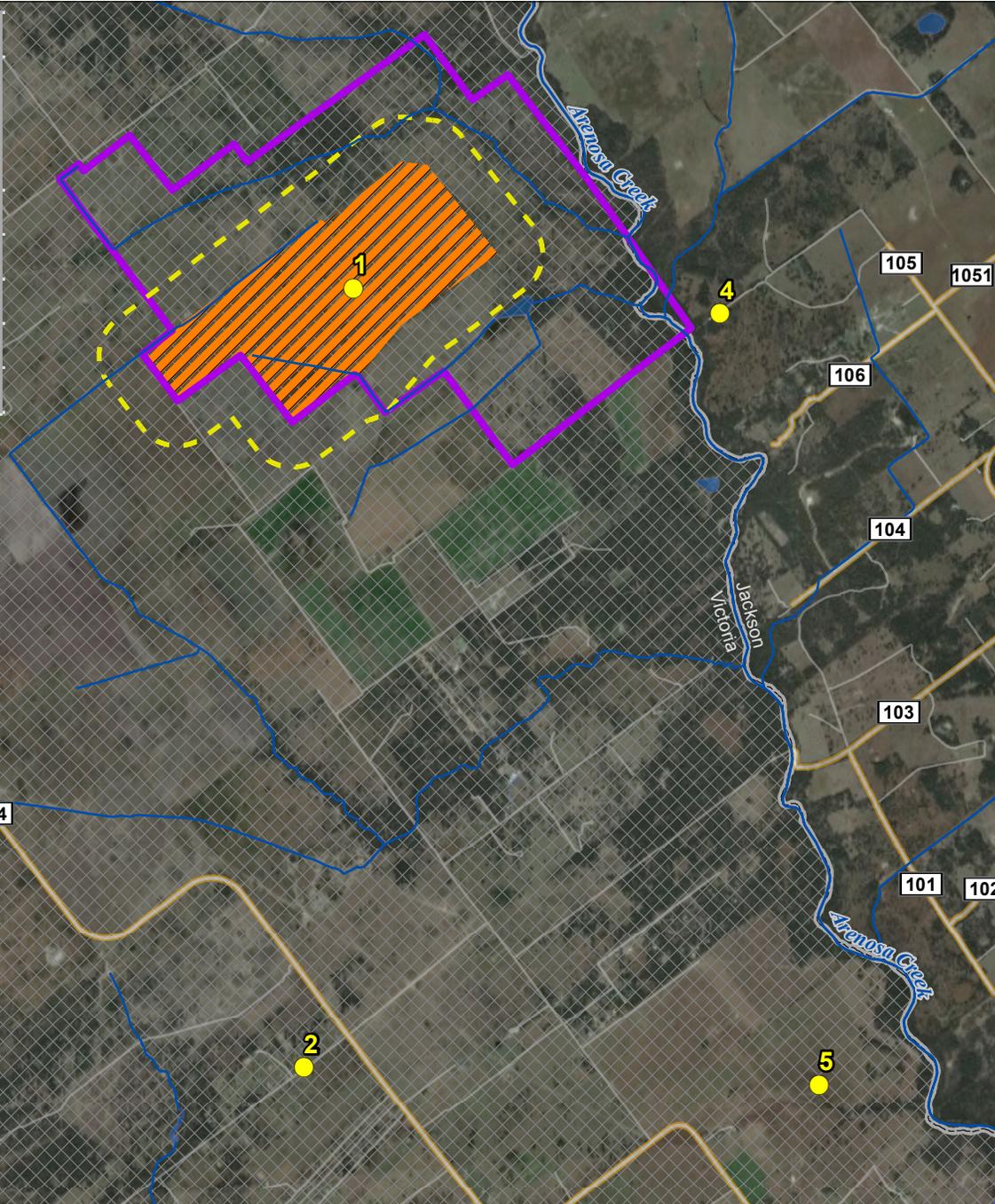


Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
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Austin, Texas 78711-3087

Date: 5/3/2016



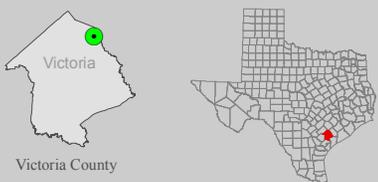
ID	Name
	Beneficial Land
1	Management, Arenosa Creek Ranch
2	Cynthia Doyle
3	City of Lacoste
4	Dorothy Simons
5	Steve Holzheuser
6	Victoria County



- Applicant Property Boundary
- Land Application Area
- 0.25 mi radial distance from land application area
- Watercourse
- Waterbody
- Intermediate Roads
- Minor Roads
- County Boundary
- Requesters
- Victoria County

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. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

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 Victoria 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 Victoria County (red) in the state of Texas.

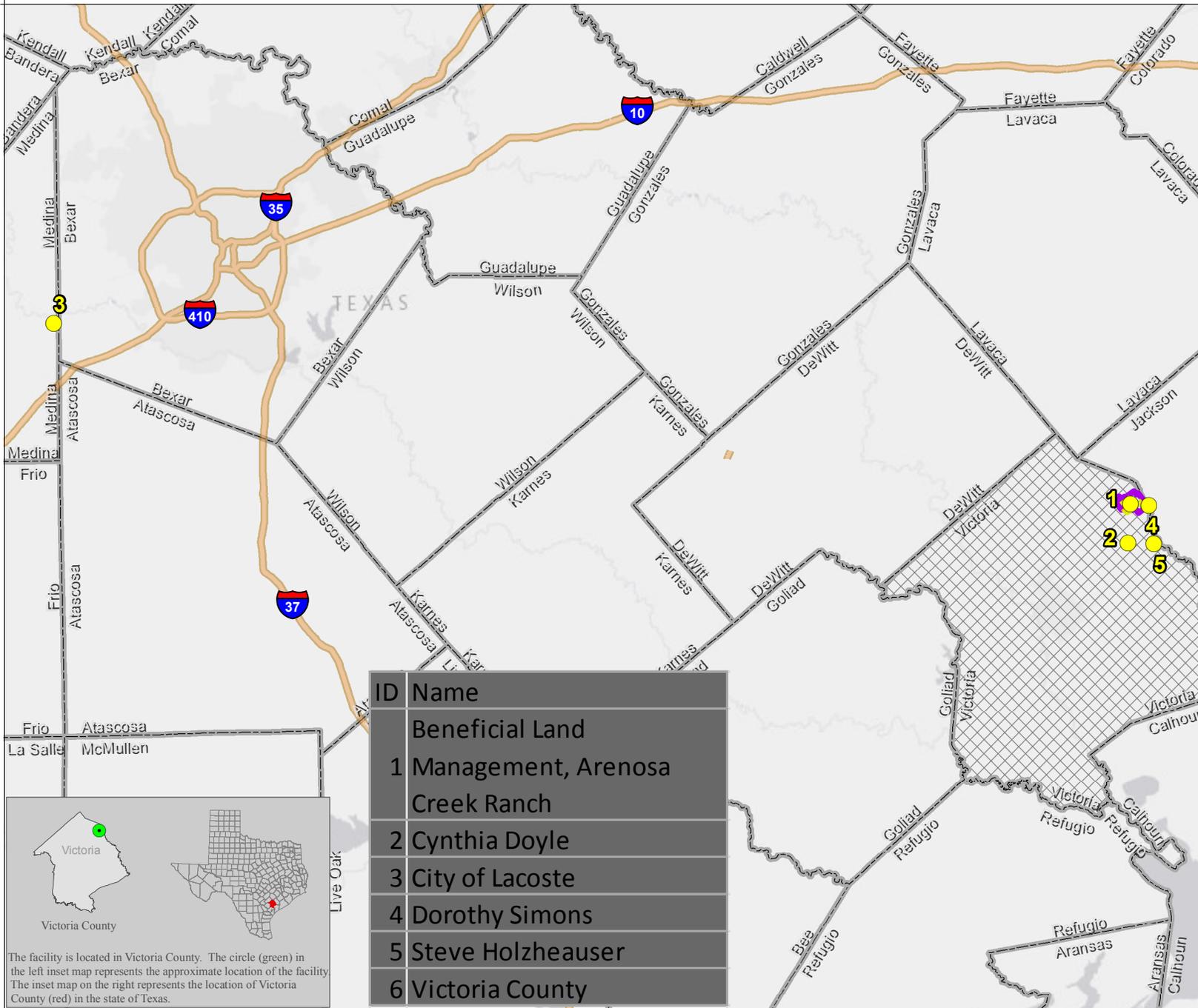
Beneficial Land Management, L.L.C. TPDES Permit No. WQ0004666000

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



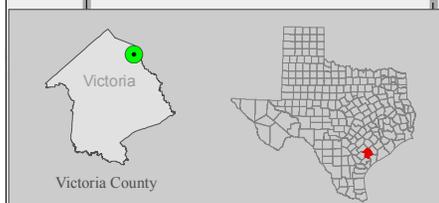
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- Applicant Property Boundary
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ID	Name
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