

**TCEQ DOCKET NO. 2016-0787-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>NANTUCKET HOUSING, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>FOR TPDES PERMIT NO.</b>	<b>§</b>	<b>ON</b>
<b>WQ0015381001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**PROTESTANTS CHARLES BERTANI, PHILIP NEISEL, AND CLAYTON TERRY'S  
REPLY TO APPELLANT'S RESPONSES TO HEARING REQUESTS**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY:

Protestants Charles Bertani, Philip Neisel, and Clayton Terry file this Reply to the Appellant's Responses to Hearing Requests in the above-styled matter.

On November 12, 2015, we filed hearing requests and comments on Nantucket Housing's application for TPDES Permit No. WQ0015381001 on behalf of Mr. Bertani, Mr. Neisel, and Mr. Terry. Additionally, each of these individuals filed hearing requests on their own behalves. In our timely hearing requests, we complied with 30 TEX. ADMIN. CODE § 55.201(d), identifying the affected persons' names, addresses, and telephone numbers; identifying their personal justiciable interested affected by the application and the requesters' locations and distance relative to the facility; requested a contested case hearing; and listed material disputed issues of fact that were the basis of the hearing requests. Mr. Bertani, Mr. Neisel, and Mr. Terry are all landowners adjacent to the Nantucket housing development site and are all affected persons under the factors found in 30 TEX. ADMIN. CODE § 55.203(c).

Both the Executive Director for the TCEQ and the Office of Public Interest Counsel recommended granting the hearing requests of all three individuals.

In its Responses to the Hearing Requests, the Applicant identifies seven individuals (several together with their spouses) whose property is directly adjacent to and/or downstream

from the proposed facility who might qualify as affected persons. Applicant's Resp. at 3–9. The issues raised by Mr. Bertani, Mr. Neisel, and Mr. Terry are all specifically discussed. *Id.* However, the Applicant then takes the surprising position that only Mr. Bertani and Mr. Neisel are affected persons and that only issues related to impacts on water quality be referred to the State Office of Administrative Hearings. *See* Applicant's Resp. at 17. The Applicant recognizes that Mr. Terry was included in our comment letter, but simply asserts that Mr. Terry's only issues were those raised in a form document. *Id.*

The Applicant's position on Mr. Terry's affected person status and position on which issues should be referable to SOAH for a contested case hearing must be rejected. Mr. Terry raised the same issues—*i.e.*, whether the discharged wastewater will adversely affect surface water quality; whether discharge will impair recreational uses of the discharge route; whether the facility complies with TCEQ's regionalization policy; whether nuisance conditions will affect him and his property; whether the site will cause odor problems or otherwise violate Chapter 309 rules; and whether the discharge route is mischaracterized—as the other two requestors, and these are issues of fact or mixed issues of fact and law that are relevant and material to a decision on the application. *See* Executive Director Resp. at 29–32.

Mr. Terry has raised issues that are not in common with the general public, and there is a reasonable relationship between these issues and the discharge authorized by the proposed permit. Mr. Terry raised these and other issues in written form on two separate occasions and has fully complied with TCEQ rules governing requests for a contested case hearing. Singling Mr. Terry out from Mr. Bertani and Mr. Neisel is a particularly unreasonable position for the Applicant to take, given the almost identical form and substance of their comments.

For these reasons, we respectfully urge that the Commission grant the requests of all of Mr. Bertani, Mr. Neisel, and Mr. Terry, on all issues timely raised.

Sincerely,

Irvine & Conner, PLLC

/s/ Charles W. Irvine

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2016, a copy of Protestants Charles Bertani, Philip Neisel, and Clayton Terry's Reply to Appellant's Responses to Hearing Requests was filed with the Chief Clerk of the TCEQ, and a copy was served to the Executive Director, the public interest counsel, and the applicant, pursuant to 30 TEX. ADMIN. CODE § 55.26(f).

/s/ Charles W. Irvine  
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