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FILED RECORD EXHIBIT
APPLICANT'S RESPONSE TO THE EXECUTIVE DIRECTOR'S
EXCEPTION TO PFD BY SELF-REPRESENTED LITIGANT

FOR DOCKET NUMBER
582-22-1885
2021-1442-MWD

RECEIVED ON
05/24/2023 12:57 PM

FILED BY
STEVE SELINGER
APPLICANT, *PRO SE*

E-MAIL: STEVE_SELINGER@YAHOO.COM

SOAH DOCKET NO. 582-22-1885
TCEQ DOCKET NO. 2021-216-MWD

APPLICATION BY STEPHEN SELINGER
FOR NEW TEXAS POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT NO. WQ1593201

APPLICANT'S RESPONSE TO THE EXECUTIVE DIRECTOR'S EXCEPTION TO PROPOSAL FOR DECISION

I. THE EXECUTIVE DIRECTOR CHANGED ITS POSITION DURING THE COURSE OF THIS HEARING

The Executive Director's Exception to the Proposal states as the **only** ground to deny the permit that:

"the application should be denied because the Applicant did not own the land on which the facility would be located at the time the application was filed." (pages 3-4)

This contrasts with the prior position of the Executive Director which required **both** that the Applicant not own the land at the time the application was filed **and** that the Applicant not be the current owner of the land. The prefiled testimony of the Executive Director witness Abdur Rahim, in response to the question from the Executive Director's attorney Aubrey Pawelka, states:

Q: If the Administrative Law Judge finds that Stephen Selinger was not the owner of the land on which the proposed facility was to be located at the time he filed for the application, **and** is not the owner of the land today, would the ED recommend denial of the application? (emphasis added)

A: Yes.

In going through this process, the Executive Director changed from requiring **both** that Selinger not have owned the land at the time of the application **and** that he not currently own the land, to opposing the application **solely** because Selinger did not own the land at the time the application was filed. It appears the Executive Director is worried that the charade that Selinger does not own the land currently will eventually break down and has now adopted a fall back position that lack of record ownership on

the date the application was filed is itself sufficient to deny the application. That is the first time the Executive Director has taken this position in this very lengthy proceeding and by itself hurts the credibility of the position of the Executive Director.

In view of the very late change of position of the Executive Director, and in view of the statement in the Proposal that recognizes record land ownership is not required with the written consent of the landowner, and in view of the fact the Applicant was prohibited from any rebuttal at the Hearing, the Applicant is attaching an affidavit showing he had the written consent of the landowner at the time of the filing of the application. A concurrent motion to include this permission is included.

The written consent from Poetry Road to continue the application was prefiled on November 14, 2022. The email showing the filing, along with the written consent of Poetry Road is attached as Exhibit 1 to this filing. In view of the admission by the ALJ (page 37 of Proposal) that written consent from the landowner is sufficient if the Applicant does not own the land, the ALJ should revise the Proposal in that regard. The ALJ said that nothing in the record included the written consent of the owner but in fact the filing of November 14, 2022 showed such written consent and this was filed prior to the January 10 deadline. In fact, such written consent of the owner was commented upon by the Executive Director in its motion to include landownership as an issue in its December 5 filing so this prefiling of November 14, 2022 is obviously part of the record. Unfortunately, the Executive Director misinterpreted and twisted the straight forward language of Poetry Road LLC giving permission to Selinger into a statement that Selinger signed the petition on “behalf” of Poetry Road LLC—which the Unsworn Declaration signed by Selinger on November 11, 2022 certainly does **not** say. Since the permission of Poetry Road LLC is in the record, the ALJ should revise the Proposal in light of her statement on Page 37. The ALJ should state that the written consent of Poetry Road LLC is in the record and the permit should be issued.

However, the consent of Poetry Road LLC does not resolve the **new** challenge of the Executive Director that lack of landownership on the date of the filing is itself sufficient to deny the application. However, in light of the ALJ’s recognition that land ownership is not required with written consent of the owner, and in light of the new challenge by the Executive Director, the Applicant attaches his affidavit and emails showing that he had the written consent of the landowner at the time he filed his initial application. The email from Gary Giles to Stephen Selinger, dated August 18, 2020, contained an attachment giving the written consent of the landowner, Waxahachie Creek LLC “to apply for a waste water treatment plant and permit for this property.”

Given the ALJ's statement that written consent of the landowner can be used in lieu of record ownership, and the attached written consent of both Waxahachie Creek LLC and Poetry Road LLC, the Executive Director and ALJ should drop their opposition to the application and recommend that it be granted.

However, there are multiple other problems with the position of the Executive Director. First, there is **nothing** in the TAC that supports the Executive Director's position that the date on which the application was initially filed—as opposed to the date upon which the application will be acted upon by decision makers—is to be afforded a unique and privileged position. That is, the Applicant is still the exact same Applicant on the date the application was first filed as on the date that the ALJ, Commission, or District Court will rule on the application. If the facts “on the ground changed”, or new information appears in going through the process, why should the no longer accurate information used earlier in the process take precedence over newer and more accurate information? It is not a defensible position to say the decision makers should use information that is no longer accurate but yet that is the position of the Executive Director, ie, the ED says to only look at ownership on the date the application was filed and to not look at ownership at the current time. The Director makes no attempt to justify its position by citing the TAC for there is no provision in the TAC that states older, inaccurate information is to take precedence over newer and correct information when evaluating an application.

The TAC does not contain a definition of “Applicant” but does of “Application”. TAC 305.2 (1) defines “Application” as:

“A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all material and documents submitted to complete the application.”

Note that nothing in this definition of application states that the application is to be judged by information relative to the date the application was filed as opposed to any different and current information. That is, there is nothing in the TAC that supports the position of the Executive Director that information different from when the application was initially submitted should not be used in judging the application by decision makers. As such, there is no specific state or federal law that issuance of the Draft Permit would violate and it should be issued.

It would be nonsensical to advance a position that newer and more correct information regarding, eg, water chemistry, location of the outfall, that is available to the decision makers should be discarded in favor of inaccurate information that existed on the date of the initial application. Yet this is the **absurd** position the Executive Director advances with respect to land ownership.

The ALJ's Proposal mistakenly states that the Applicant "contends that he is allowed to make revisions to the Application throughout the permitting process, including at the SOAH contested case hearing on the Draft Permit." (page 36 of Proposal) This statement by the ALJ in her Proposal reflects a fundamental misunderstanding by the ALJ. Nothing in the permit has changed from the initial application as Stephen Selinger was the Applicant on day one and is still the Applicant now. What has changed are the facts on the ground, ie, Selinger was the equitable owner but not the legal owner on the day the Application was filed but is now the legal owner and still the exact same Applicant.

Second, the Executive Director has a battery of lawyers at its disposal and should know that its question of land ownership is ambiguous and can mean either "equitable ownership" or "record or legal ownership." A party in contract to purchase a piece of property holds equitable title to the property (Westlaw: "In the context of an acquisition of real property, the purchaser holds equitable title to the property from the date the purchase and sale agreement is executed, although legal title is not transferred until the deed to the property is transferred from the seller to the purchaser.") and the position of the Executive Director glides over this essential distinction and makes no effort to clarify (much less defend) its ambiguous question regarding whether the ownership is equitable title or legal title, and whether it should be opposing an application based upon its own ambiguous question.

Third, if there was any doubt that legal/record ownership of land is not required for a facility owner to apply for a permit for a new facility, Section 305.43(c) removes all doubt. For that section allows the applicant to apply with the written consent of the landowner, ie, the applicant need not be the record owner of the land. Selinger was prevented from introducing into evidence such written consent of the landowners when he was unlawfully denied any rebuttal at the Hearing but such written consent is attached to this filing. The written consent from Poetry Road LLC was previously filed with the court and the written consent of the record owner at the time of the filing of the application is attached to this filing. The written consent of the owner should end any debate about whether the Application should be denied because Selinger was not the

landowner as there is an express authorization of to file for a new facility with consent of the landowner.

Fourth, the fact that Selinger did not attach a lease or easement to the application is entirely irrelevant to whether Selinger accurately answered the application by stating he was the owner—contrary to what the ALJ’s “Analysis” mistakenly claims on page 40. Since Selinger was the equitable owner, there was no reason to file a lease agreement or recorded easement. Selinger was not going to be merely leasing the property, or merely having an easement over the property but equitably owned the entire property at the time of the filing and would be the record owner in the future. It was entirely accurate and appropriate for him to leave those sections blank as Selinger was. the equitable owner of the entire property and not merely buying an easement or lease on the property. It begs the question to assert that Selinger should have filed an easement or lease agreement because if the ownership is equitable, there is no reason to have filed a lease or easement agreement.

II. THE EXECUTIVE DIRECTOR HAS DEMONSTRATED A LACK OF INTEGRITY THROUGHOUT THIS PROCESS

Both in her closing argument, and in her Response to Closing Arguments, the Executive Director advocated positions she knew were false. At the closing argument, the Executive Director stated:

“The Executive Director respectfully recommends that the ALJ find that there is no evidence in the record that Steve Selinger was the owner of the land at the time he submitted the application, or during the contested case hearing process, and therefore deny the application.” (page 8)

In the Executive Director’s Response to closing arguments (page 5), she states:

“However, there is no evidence in the record to prove that Selinger is the current landowner.”

These statements of the Executive Director are demonstrably false, and **the Executive Director must have known they were false**. For Tim Osting, witness for the Protestants, testified as follows in cross examination from Selinger:

“Q. Sir, the-- do you know as of today [January 25, 2023 the Hearing Date] who is the record owner of the subject property, what the --the deeds show?

A. I have seen as of the end of December a change. I don't recall the exact name, but I believe it's Mr. Selinger.

Q. You believe what?

A. Selinger”

Mr. Osting was a sworn witness of the Protestests (no less). His testimony under oath is evidence in the record that there was a change in ownership as of late December, 2022 and Selinger owned the property. Yet the Executive Director **twice** falsely claims that there is no evidence in the record that Selinger was the owner “during the contested case hearing” or “is the current owner.”

The Executive Director had to know her statements were false. She had representatives at the Hearing and was provided a transcript of the Hearing. Moreover, Selinger's Closing Argument highlighted and emphasized the admission of Osting. Yet in spite of the clear evidence in the record, the Executive Director repeatedly promulgated the falsehood that Selinger did not own the property at the Hearing Date. It is impossible to write this mistake of the Executive Director off as an honest mistake. When the record is clear, and the record is repeatedly pointed out, the mistake can only be willful.

Promptly after the Executive Director filed her motion (on December 5) to include land ownership as an issue because Selinger was not the record owner of the land, Selinger recorded a deed to the property in his name on December 7 and informed the Executive Director of such in his filing of December 12. At that point, a forthright Executive Director would have dismissed her motion to include land ownership as an issue at that point as there was no longer as issue after Selinger documented to her he was the record owner. Yet the Executive Director “doubled down” by pretending there is no evidence in the record that Selinger owns the property, and conjuring up a new theory that only information existing on the date the application was filed should be used to evaluate an application as opposed to changed and correct information referenced later in the application process.

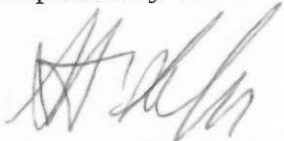
Interim Executive Director Erin Chancellor and her staff attorney Aubrey Pawelka have a legal and ethical duty to defend the Draft Permit at SOAH. Selinger's filings of December 12 and December 19 both contained the Deed showing that Selinger owned the property as of December 7, 2022, and were served on the Executive Director and her attorney. While Selinger prefiled the Deed before the January 10 deadline, in furtherance of their legal and ethical duties to defend the Draft Permit at SOAH, both Chancellor and Pawelka should **also** have prefiled the Deed as it shows that Selinger owned the property and would have been useful in fulfilling their legal duty to defend the Draft Permit. But neither Chancellor nor Pawelka prefiled the Deed and have pretended it does not exist—violating their legal duty to defend the Draft Permit.

Not content to merely shirk their legal and ethical duties to defend the Draft Permit, the Executive Director and her attorney went on the actively **lie** about the record in this case by stating there is nothing in the record to show that Selinger owned the property at the time of the Contested Hearing or is the current owner of the property.

The current Executive Director is an interim appointee and perhaps more of a target of political influence as waste-water treatment plants are frequently opposed by local politicians, and were certainly opposed in this case. No matter, however, as a citizen of Texas deserves a fair hearing and honest treatment when going through the process. There is no polite way to say it except to say that the Executive Director **repeatedly lied** by stating that there is no evidence in the record that Selinger owned the property at the time of the Hearing or is the current owner. And after the Executive Director took the lead in lying, she had a willing customer for her prevarications in the ALJ—who also was at the Hearing, had access to the transcript, and Applicant's closing argument and yet went along with the Executive Director's mendacity.

The citizens of the state of Texas deserve better. If neither the Executive Director nor ALJ correct their mistakes, then the Commission, District Court, Attorney General, or public opinion should put a spotlight on this behavior and see that it does not happen again. This behavior should not be tolerated.

Respectfully submitted,



Stephen Selinger
620 Truelove Trail, Southlake, TX 76092

steve_selinger@yahoo.com
817-421-0731

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 26 day of May, 2023, a true and correct copy of the above and foregoing document was forwarded via e-mail or regular mail to the parties on the Service.



Stephen Selinger

SOAH DOCKET NO. 582-22-1885
TCEQ DOCKET NO. 2021-1442-MWD

APPLICATION OF STEPHEN SELINGER
FOR NEW TEXAS POLLUTANT
DISCHARGE ELIMINATION SYSTEM PERMIT
NO. WQ0015932001

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS


My name is Stephen Selinger. This is an unsworn declaration pursuant to section 132.001 of the Texas Civil Practice and Remedies Code. I have personal knowledge of the matters stated herein, and I declare under penalty of perjury that the statements in this declaration are true and correct.

1. I had the written consent of the landowner to file the wastewater treatment application at the time I filed the application. Attached to this declaration is an email from Gary Giles, the real estate broker on the transaction in which I was in contract to purchase. The email is dated August 18, 2020. Attached to it is the written consent of the landowner, Waxahachie Creek Ranch LLC, to file for the permit.

2. I also attach an email dated November 14, 2022 I sent to the parties in the subject case with my prefiled testimony. An attachment to this prefiled testimony includes a November 11, 2022 declaration in which Poetry Road LLC gives its written consent to Stephen Selinger to be applying for the subject permit.

My name is Stephen Selinger, my birthdate is 04-15-1953 and my address is 620 Truelove Trail, Southlake, TX 76092. I declare under penalty of perjury that the above statements are true and correct.

Signed,


Stephen Selinger Dated 5/24/23

TCEQ app

From: Gary Giles (gary@garygiles.net)

To: steve_selinger@yahoo.com

Date: Tuesday, August 18, 2020 at 04:00 PM CDT

Steve,

Here is the TCEQ application. Will put the original in the mail.

Texas Real Estate Commission Information About Brokerage Services

Gary Q. Giles

Accredited Land Consultant

Gary Giles Real Estate

215 W. Franklin St., Suite 100C

Waxahachie, TX 75165

214-356-1104

gary@garygiles.net

(NOTE NEW OFFICE ADDRESS)

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WCR-TCEQApplication.pdf

53.8kB

August 18, 2020

TO: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Stephen Selinger is in contract with us to purchase approximately 530 acres located off of FM 984 in Ellis County. He has our permission to apply for a waste water treatment plant and permit for this property.

Agreed,

Waxahachie Creek Ranch LLC

Partner - Monty J. Selinger
Reggie Dewitt

Prefiled Testimony of Applicant Stephen Selinger; SOAH 582-22-1836 (TCEQ 2021-1560-DIS)

From: Steve Selinger (steve_selinger@yahoo.com)

To: info@tceq.texas.gov; erogers@bickerstaff.com; eli.martinez@tceq.texas.gov; aubrey.pawelka@tceq.texas.gov; ceeinc@ceeinc.org; jkatz@bickerstaff.com

Date: Monday, November 14, 2022 at 03:27 PM CST

Please find the prefiled testimony of Selinger expert Charles Gillespie.

Selinger requests the order of witnesses to:

- 1) Charles Gillespie
- 2) any witnesses of Protestants
- 3) any witnesses of the Executive Director



Exhibit 2 SOQ.pdf
274.9kB



Exhibit3.pdf
2.1MB



Exhibit4.pdf
945.4kB



Exhibit 5 Waxahachie.pdf
895.5kB



Exhibit1-Gillespie Prefiled Testimony 11-14-22 (1).odt
31.8kB

**SOAH DOCKET NO. 582-22-1885
TCEQ DOCKET NO. 2021-1442-MWD**

**APPLICATION OF STEPHEN SELINGER
FOR NEW TEXAS POLLUTANT
DISCHARGE ELIMINATION SYSTEM
PERMIT NO. WQ0015932001**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

My name is Stephen Selinger. This is an unsworn declaration pursuant to section 132.001 of the Texas Civil Practice and Remedies Code. I have personal knowledge of the matters stated herein, and I declare under penalty of perjury that the statements in this declaration are true and correct.

1. Poetry Road LLC is the record owner of the approximate 530 acres upon which the wastewater facility described in permit no. WQ0015932001 would be located.
2. Stephen Selinger is the managing member of Poetry Road LLC.
3. Stephen Selinger is authorized to apply for the subject permit by Poetry Road LLC and has its consent to do so.

My name is Stephen Selinger, my birthdate is 04-15-1953, and my address is 620 Truelove Trail, Southlake, TX 76092. I declare under penalty of perjury that the above statements are true and correct.

Signed,



Poetry Road LLC, by Stephen Selinger its Manager Dated 11/11/2022

Zimbra**generaldocketfax@soah.labusa.com**

filing for SOAH DOCKET NO. 582-22-1885; TCEQ DOCKET NO. 2021-216-MWD

From : Steve Selinger <steve_selinger@yahoo.com>

Wed, May 24, 2023 01:57 PM

Subject : filing for SOAH DOCKET NO. 582-22-1885; TCEQ
DOCKET NO. 2021-216-MWD 1 attachment**To :** SOAH <generaldocketfax@soah.labusa.com>

Please file the attached response to the Executive Director's Exceptions and serve on all parties and the ALJ.

**executivedirectorresponse.pdf**4 MB

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 75977462

Filing Code Description: Reply to Exceptions

Filing Description: Applicant's Response to Exception to PFD

Status as of 5/25/2023 8:14 AM CST

Associated Case Party: OPIC

Name	BarNumber	Email	TimestampSubmitted	Status
Garrett Arthur		garrett.arthur@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT
Eli Martinez		eli.martinez@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Natalie Scott		nscott@coatsrose.com	5/24/2023 4:25:58 PM	SENT
Joshua Katz		jkatz@bickerstaff.com	5/24/2023 4:25:58 PM	SENT
Natalie Bivins Scott	24027970	nscott@coatsrose.com	5/24/2023 4:25:58 PM	SENT
Garrett Arthur		garrett.arthur@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT
Rae Fregeolle-Burk		rfburk@bickerstaff.com	5/24/2023 4:25:58 PM	SENT
Stefanie Albright		salbright@bickerstaff.com	5/24/2023 4:25:58 PM	SENT
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT
Stephen Selinger		Steve_Selinger@yahoo.com	5/24/2023 4:25:58 PM	SENT
Emily Rogers		erogers@bickerstaff.com	5/24/2023 4:25:58 PM	SENT
OLS Legal Support		TCEQsoah@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT
Vic McWherter		vic.mcwherter@tceq.texas.gov	5/24/2023 4:25:58 PM	ERROR
Steve Selinger		steve_selinger@yahoo.com	5/24/2023 4:25:58 PM	SENT

Associated Case Party: Executive Director

Name	BarNumber	Email	TimestampSubmitted	Status
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	5/24/2023 4:25:58 PM	SENT