

DOCKET NO. 2024-0668-MWD

APPLICATION BY
RIVER OAKS LAND PARTNERS II, LLC
FOR MAJ. AMEND TO TLAP PERMIT
NO. WQ0015559001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by River Oaks Land Partners II, LLC (Applicant) seeking a major amendment to Texas Land Application Permit (TLAP) Number WQ0015559001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Catherine Tabor on behalf of Brian Kieley and a request for reconsideration from Jami Strable.

Attached for Commission consideration are satellite maps of the area.

II. Description of Facility

River Oaks Land Partners II, LLC (the applicant), 14001 West State Highway 29 Suite 203, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TCEQ Permit No. WQ0015559001 to authorize to increase the flow in the Interim II phases from 0.180 MGD to 0.36 MGD; to change the acreage of the storage ponds from 15 acres to 8.34 acres; to change the total capacity of the storage ponds from 306 acre-ft to 131 acre-ft; and to change the irrigation area from 70 acres to 20 acres in the Interim I phase, and 70 acres to 108 acres in the Interim II phase.

The wastewater treatment facility and disposal site will be located approximately 1.0 mile northwest of the intersection of County Road 214 and San Gabriel Ranch Road, in Williamson County, Texas 78642.

The Northgate Ranch Wastewater Treatment Facility will consist of activated sludge process plant using the conventional mode in all phases. Treatment units in the Interim I phase will include a bar screen, an equalization basin, an anoxic basin, an aeration basin, two MBR basins, an aerobic digester, and a chlorine contact chamber. Treatment units in the Interim II and Final phases will include bar screen, an equalization basin, an anoxic basin, two aeration basins, two MBR basins, a RAS basin, an aerobic digester, and a chlorine contact chamber. The facility has not been constructed; however, one storage pond with surface area of 2.22 acres and capacity of 31 acre-feet has been constructed.

The effluent limitations in the draft permit, based on a daily average, are 10 mg/l biochemical oxygen demand (BOD5) and 15 mg/l total suspended solids (TSS). The effluent limitation in the draft permit, based on a single grab, is 35 mg/l BOD5, and 60 mg/l TSS. The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes based on peak flow.

III. Procedural Background

TCEQ received the application on September 29, 2022, and declared it administratively complete on March 15, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Williamson County Sun* on April 16, 2023. The application was determined technically complete on July 24, 2023. The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Williamson County Sun* on September 06, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

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

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- 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;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

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:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor 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:

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;

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 manner not common to members of the general public;

request a contested case hearing; and

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 responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. 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. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

whether the interest claimed is one protected by the law under which the application will be considered;

distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

"When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Request Complied with Section 55.201(c) and (d).

Catherine Tabor, on behalf of Brian Kieley, submitted a timely hearing request that raised issues presented during the public comment period that have not been withdrawn. She provided her client's name, address, email address, and requested a public hearing. She identified Mr. Kieley as a person with what she believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided disputed issues of fact she raised during the public comment period. Therefore, the Executive Director concludes that the hearing request of Catherine Tabor, on behalf of Brian Kieley, substantially complies with the section 55.201(c) and (d) requirements.

According to the information provided by Ms. Tabor, Mr. Kieley's property is adjacent to the facility. Mr. Kieley alleges that the notice of the permit application was invalid due to an incorrect location being provided for the facility. Mr. Kieley also raised concerns about how the proposed discharge will affect his property, as well as the health and welfare of the environment. Mr. Kieley alleges that his property is already being flooded by a recently constructed structure on Applicant's property and raises concerns that flooding will increase if the permit is granted.

Interference with use and enjoyment of property are issues that are protected by the laws under which the application will be considered. Thus, based on the location of their property and the issues raised, Brian Kieley has demonstrated that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and are affected persons.¹

The Executive Director recommends the Commission find that Brian Kieley is an affected person. Mr. Kieley raised issues 1-3 in his hearing request.

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The following issues were raised during the public comment period:

1. Whether the draft permit complied with applicable notice requirements. (RTC Response No. 1).

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit did not comply with applicable notice requirements, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

2. Whether the permit will be protective of the use and enjoyment of private property. (RTC Response No. 1).

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit might

¹ *Id.* § 55.203(a); *see also id.* § 55.211(c)(2) (addressing hearing requests from affected persons that will be granted).

interfere with the use and enjoyment of private property, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

3. Whether the draft permit will contribute to flooding. (RTC Response No. 1).

This is an issue of fact. However, it is not relevant and material to a decision on the application, as the TCEQ does not have jurisdiction over flooding. The Executive Director does NOT recommend referring this issue to SOAH.

VI. Analysis of Request for Reconsideration

The Chief Clerk received one timely request for reconsideration (RFR) by Jami Strable. As required by 30 Texas Administrative Code § 55.201(d), Jami Strable gave their request in writing and specifically requested reconsideration of the ED's decision on the River Oaks Partners II, LLC application. Jami Strable provided their name, address, and daytime telephone number.

The issues that Jami Strable brought up included smells, sounds, and property values in the area surrounding the facility. The RFR did not present any new information not already considered by the ED during the permitting process. Therefore, the ED recommends denial of the RFR.

VII. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Brian Kieley as an affected person and grant his hearing request;

Refer the following issues to SOAH:

Issue 1. Whether the draft permit complied with applicable notice requirements.

Issue 2. Whether the draft permit will be protective of the use and enjoyment of private property.

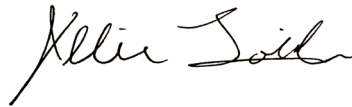
Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Executive Director

Erin. E. Chancellor, Director
Environmental Law Division

Charmaine Backens, Deputy Director
Environmental Law Division

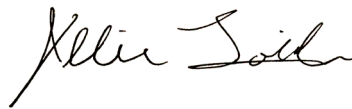


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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on June 3, 2024, the “Executive Director’s Response to Hearing Request” for a major amendment to TLAP Permit No. WQ0015559001 by River Oaks Land Partners II, LLC was filed with the TCEQ’s Office of the Chief Clerk, and a 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.



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MAILING LIST
River Oaks Land Partners II, LLC
TCEQ Docket No. 2024-0668-MWD; Permit No. WQ0015559001

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Liberty Hill, Texas 78642

Ratul Sengupta
3101 Vista Heights Drive
Leander, Texas 78641

Attachment A

Northgate Ranch Wastewater Treatment Facility

TPDES Permit WQ0015559001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/23/2024
CRF 0099934
Cartographer: AlOrtiz



- Kieley, Brian
- Facility Centroid
- 0.5 Miles from Facility Centroid
- 1.0 Miles from Facility Centroid
- 1.5 Miles from Facility Centroid
- Highway
- Stream/River
- Artificial Path
- County Boundary

Distance from Facility Centroid
to Kieley, Brian:
0.60 Miles

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.

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

0 0.3 0.6
Miles

Northgate Ranch Wastewater Treatment Facility

TPDES Permit WQ0015559001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/23/2024
CRF 0099934
Cartographer: AlOrtiz



- Kieley, Brian
- Facility Centroid
- 0.5 Miles from Facility Centroid
- 1.0 Miles from Facility Centroid
- 1.5 Miles from Facility Centroid
- Stream/River
- Artificial Path
- County Boundary

Distance from Facility Centroid
to Kieley, Brian:
0.60 Miles

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.

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

0 0.1 0.2
Miles