

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 3, 2024

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY RIVER OAKS LAND PARTNERS II, LLC FOR MAJOR AMENDMENT TO PERMIT NO. WQ0015559001 TCEQ DOCKET NO. 2024-0668-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-0668-MWD

APPLICATION BY RIVER OAKS	§	BEFORE THE
LAND PARTNERS II, LLC FOR	§	
A MAJOR AMENDMENT TO	§	TEXAS COMMISSION ON
PERMIT NO. WQ0015559001	§	
	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING AND REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Request for Hearing and Requests for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by River Oaks Land Partners II, LLC (River Oaks or Applicant) for a major amendment to Texas Land Application Permit (TLAP) Permit No. WQ0015559001. The Commission received a hearing request from Catherine Tabor on behalf of Brian Kieley, and requests for reconsideration from Catherine Tabor on behalf of Brian Kieley and from Jami Strable. For the reasons stated herein, OPIC respectfully recommends the Commission find that Brian Kieley is an affected person, and further recommends that the Commission grant Catherine Tabor’s hearing request on his behalf. OPIC recommends the denial of all requests for reconsideration.

B. Description of Application and Facility

River Oaks applied to the TCEQ for a major amendment to Permit No. WQ0015559001 to authorize an increase in flow during the Interim II phase from 0.180 million gallons per day (MGD) to 0.350 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-feet to 131 acre-feet; 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 Northgate Ranch Wastewater Treatment Facility would consist of an activated sludge process plant using the conventional mode in all phases. Treatment units in the Interim I phase would include a bar screen, an equalization basin, an aeration basin, two membrane bioreactor (MBR) basins, an aerobic digester, and a chlorine contact chamber. Treatment units in the Interim II and Final phases would include a bar screen, an equalization basin, an anoxic basin, two aeration basins, two MBR basins, a recirculating aquaculture system basin, an aerobic digester, and a chlorine contact chamber. The facility has not been constructed; however, one storage pond with a surface area of 2.22 acres and a capacity of 31 acre-feet has been constructed.

The effluent limitations in the draft permit, based on a daily average, are 10 milligrams per liter (mg/l) biochemical oxygen demand (BOD₅) and 15 mg/l total suspended solids (TSS). The effluent limitations in the draft permit, based on a single grab, are 35mg/l BOD₅, and 60 mg/l TSS. The effluent must 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.

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

C. Procedural Background

River Oaks' application was received on September 29, 2022, and declared administratively complete on March 15, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Williamson County Sun* on April 16, 2023. The Notice of Application and Preliminary Decision was published in the *Williamson County Sun* on September 6, 2023. The public comment period ended on October 6, 2023. The Executive Director's (ED) Response to Comments was mailed on December 12, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was January 11, 2024.

II. APPLICABLE LAW

A. Hearing Requests

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been

withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor'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;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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. Relevant factors to be considered in determining whether a person is affected include:

- (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 use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by

filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUEST

A. Whether the requestor is an affected person

Catherine Tabor submitted a timely comment and hearing request on behalf of Brian Kieley. Mr. Kieley's address is 116 Taylor Creek Way, Liberty Hill. According to the map created by ED staff, this property is 0.60 miles from the facility centroid. This proximity is reiterated by Mr. Kieley's presence on the Applicant's adjacent landowner map, which indicates that Mr. Kieley shares a property boundary with the development's property boundary. Ms. Tabor discussed Mr. Kieley's concerns about environmental impacts, including effluent runoff and potential flooding.

Brian Kieley's concerns about environmental impacts such as effluent runoff, when combined with his proximity to the site, give Mr. Kieley a personal justiciable interest in this matter which is not common to the general public. Also, his concern regarding effluent runoff is protected by the law under which this application is considered, and a reasonable relationship exists between that interest and the regulation of the facility. Finally, the location of Mr. Kieley's property increases the likelihood of impacts to health, safety, and use of property. Therefore, OPIC finds that Brian Kieley qualifies as an affected person.

B. Which issues raised in the hearing request are disputed

The affected requestor raised the following disputed issues:

1. Whether effluent runoff will impact adjacent property.
2. Whether the proposed facility will increase the likelihood of flooding.

C. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised here are issues of fact.

D. Whether the issues were raised during the public comment period

Issues Nos. 1-2 in Section III.B. were specifically raised by an affected requestor during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

F. Whether the issues are relevant and material to the decision on the application

The hearing request raised an issue that is relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Effluent Runoff

Though TLAP permits do not allow for the discharge of treated effluent, wastewater treatment and effluent limitations at wastewater treatment facilities must maintain water quality in accordance with the TCEQ's surface water quality standards. 30 TAC § 309.1(a). Effluent quality for a TLAP permit is addressed under the Commission's rules at 30 TAC § 309.4. In addition, under 30 TAC § 309.12 (Site Selection to Protect Groundwater or Surface Water), the siting of a facility should minimize possible contamination of both surface water and groundwater. Also, the land application of effluents must maintain groundwater quality and groundwater resources. 30 TAC § 309.20(4). The rules under 30 TAC § 222.81(a) are mandatory minimum buffer zone requirements for subsurface

area drip dispersal system to protect public water wells, private water wells, and surface water in the state from any potential negative impact. Accordingly, Issue No. 1 is relevant and material to the Commission's decision regarding this application.

Flooding

The affected requestor raised concerns about increased flooding as a result of the construction of the proposed facility. TCEQ's jurisdiction is established by statute and does not include authority under the Texas Water Code or its regulations to address or consider flooding when making a decision on issuance of this permit. Therefore, Issue No. 2 is not relevant and material to the Commission's decision on this application.

G. Maximum expected duration for the contested case hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing

on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

Catherine Tabor submitted a request for reconsideration on behalf of Brian Kieley which articulated concerns about flooding, runoff, and environmental welfare.

Jami Strable submitted a request for reconsideration that articulated concerns about odor and property value.

While OPIC is recommending a hearing and referral of issues encompassing some of requestors' concerns expressed in the requests for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that the requests for reconsideration be granted. As no such record currently exists, OPIC cannot recommend the requests be granted at this time.

V. CONCLUSION

Having found that Brian Kieley qualifies as an affected person in this matter, OPIC respectfully recommends the Commission grant Catherine Tabor's hearing request on his behalf and refer Issue No. 1 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny all pending requests for reconsideration.

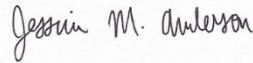
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jessica M. Anderson

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