

Brooke T. Paup, *Chairwoman*
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

January 17, 2025

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 CIELO GARDENS, L.P.
FOR WATER QUALITY PERMIT NO. WQ0016374001
TCEQ DOCKET NO. 2024-1982-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script, reading "Eli Martinez".

Eli Martinez, Senior Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2024-1982-MWD

**IN THE MATTER OF THE
APPLICATION BY CIELO GARDENS,
L.P. FOR WATER QUALITY PERMIT
NO. WQ0016374001**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO HEARING
REQUEST**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Request in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Summary of Position

Based on the information submitted in the request and a review of the information available in the Chief Clerk’s file on this application, OPIC recommends the Commission grant the hearing request of Roy and Jane Bessent. The Requestors are affected persons based on their proximity to the proposed Facility and outfall point. OPIC further recommends the Commission refer the issue listed in Section III.B. for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

B. Description of Facility

Cielo Gardens, L.P. (Cielo Gardens or Applicant) submitted an application to the TCEQ for new TPDES Permit No. WQ0016374001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The Applicant proposes to operate the Cielo Gardens Water Reclamation Facility WWTP (WWTP) to serve the Cielo Garden residential development and surrounding tracts.

The WWTP would be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase would include bar screens, an aeration basin, a final clarifier, a sludge digester, an effluent filter, and a chlorine contact chamber. Treatment units in the Interim II phase would include bar screens, two aeration basins, a final clarifier, two sludge digesters, an effluent filter, and two chlorine contact basins. Treatment units in the Interim III phase would include bar screens, three aeration basins, two final clarifiers, three sludge digesters, two effluent filters, three chlorine contact chambers, and a dechlorination basin. Treatment units in the Final phase would include bar screens, four aeration basins, two final clarifiers, four sludge digesters, two effluent filters, four chlorine contact chambers, and a dechlorination basin. The Facility has not been constructed.

If the permit is issued, the treated effluent would be discharged to Willis Creek, then to Granger Lake in Segment No. 1247 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for Willis Creek and high aquatic life use for Willis Creek. The designated uses for Segment No.

1247 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

The permit application was received on August 2, 2023, and declared administratively complete on September 13, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on September 19, 2023, in English in the *Austin American Statesman* and on September 21, 2023, in Spanish in *El Mundo*. The Notice of Application and Preliminary Decision was published on July 19, 2024, in English in the *Austin American Statesman* and on July 18, 2024, in Spanish in *El Mundo*. The public comment period ended on August 19, 2024, and the Executive Director's Response to Comments (RTC) was mailed on October 16, 2024. The hearing request period ended November 15, 2024.

A timely hearing request was filed on October 2, 2023, by Roy and Jane Bessent.

II. Applicable Law

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 Title 30, 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 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;
- (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 purposes 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 shall 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(d).

III. Analysis of Hearing Request

A. Whether the requestors are affected persons

Requestors raise concerns related to surface water quality and potential impacts to flora and fauna. The request further indicates that Willis Creek “runs through the back portion of our property and is approximately 0.5 miles downstream from the proposed facility.” The ED has created a map in these proceedings demonstrating that the Requestors’ property lies approximately 0.79 miles from the proposed Facility and outfall. Further, the Affected Landowner’s map submitted by the Applicant identifies the Requestors’ property as Property #4 and confirms that the discharge route runs through the northeast corner of the Requestors’ property. Given the proximity of the property to Applicant’s Facility, outfall, and discharge route, OPIC therefore finds that a reasonable relationship exists between the interests claimed and the activity regulated. Further, their concerns are interests protected by the law under which this application will be considered, and their location increases the likelihood of impacts to health, safety, and use of property. For these reasons, OPIC finds that Requestors are affected persons in accordance with 30 TAC § 55.203 and recommends their hearing request be granted.

B. Which issues raised in the hearing request are disputed

The issues raised in the hearing request are whether surface water quality would be protected and whether flora and fauna would be negatively impacted by the WWTP's effluent. There is no agreement between Requestors and the ED on these issues.

OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

1. Whether the proposed facility operated according to the terms of the draft permit will negatively impact the environment and terrestrial life.
2. Whether the proposed facility operated according to the terms of the draft permit will negatively impact water quality.

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

The issues raised by Requestors are issues of fact. 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. 30 TAC § 55.211(c)(2)(A).

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

The issues were raised by Requestors 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. Therefore, the hearing request is not based on any withdrawn public comments.

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

The hearing request raises issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material...it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs"). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards ("Standards") in 30 TAC Chapter 307 require that the proposed permit "maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state." 30 TAC § 307.1. Therefore, the concerns raised relating to negative impacts on water quality and flora and fauna are both relevant and material considerations in the Commission's decision on this Application.

G. Maximum expected duration for the contested case hearing

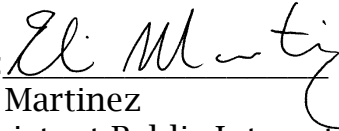
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 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 recommends that the duration of hearing on this Application be stated in the Commission's order as 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. Conclusion

OPIC recommends that the Commission grant the hearing request of Roy and Jane Bessent and refer the matter to SOAH for an evidentiary hearing on the issues in Section III.B. for a hearing duration of 180 days.

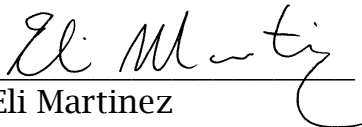
Respectfully submitted,

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Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the original of the Office of Public Interest Counsel's Response to Hearing Request was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Eli Martinez

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REQUESTER(S):

Mr. Roy S & Mrs. Jane T. Bessent
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From: melissa.schmidt@tceq.texas.gov
To: [EFiling](#)
Subject: Filing on Permit Number/Docket Number 2024-1982-MWD
Date: Friday, January 17, 2025 12:33:13 PM
Attachments: [Cielo Gardens RTH \(Final\).pdf](#)

FILING CONFIRMATION NUMBER 361451842025017

REGULATED ENTY NAME CIELO GARDENS WATER RECLAMATION FACILITY

RN NUMBER: RN111786497

PERMIT NUMBER: WQ0016374001

DOCKET NUMBER: 2024-1982-MWD

COUNTY: WILLIAMSON

PRINCIPAL NAME: CIELO GARDENS LP, CN606170173

FROM

FILED BY:

FILED FOR NAME: Eli Martinez

E-MAIL: melissa.schmidt@tceq.texas.gov

PHONE: 512-239-3974

DOCUMENT NAME: Cielo Gardens RTH (Final).pdf

Based on 30 TAC Section 1.10(h), the TCEQ General Counsel has waived the filing requirements of Section 1.10(c) to allow the filing of documents using this online system. The General Counsel also has waived the requirements of Section 1.10(e) so that the time of filing your documents is the time this online system receives your filings. Filings are considered timely if received by close of business (usually 5:00 p.m. CST) on the deadline date unless otherwise ordered. If your document is for Commission consideration at an open meeting, General Counsel has also waived the requirement of Section 1.10(d) to file paper copies with the Office of the Chief Clerk.