

TCEQ DOCKET NO. 2025-1322-MWD

APPLICATION BY 3405 INVESTMENTS, LLC FOR TEXAS LAND APPLICATION PERMIT NO. WQ0016521001	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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3405 INVESTMENTS, LLC’S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant 3405 Investments, LLC (3405 or Applicant) and files this Response to Hearing Requests relating to the issuance of proposed Texas Land Application Permit (TLAP) Permit No. WQ0016521001, and would respectfully show the following:

I. SUMMARY OF RESPONSE

The Texas Commission on Environmental Quality (TCEQ or Commission) received filings from four individuals – Minga Ybarra, Joe Brown, Jonathan Seth Held and Ryan Eder. As described below, only one of these filings constitutes a timely hearing request that raises a relevant and material issue by an affected person with a justiciable interest. Therefore, should the Commission refer this case to the State Office of Administrative Hearings (SOAH) for hearing, it should limit the issues to the single issue set forth below and direct that the proceeding not exceed 180 days consistent with section 2003.047(e-2)(1) of the Texas Government Code.

II. BACKGROUND

Applicant seeks a no-discharge permit that would authorize the disposal of treated domestic wastewater from a wastewater treatment plant (WWTP) by land application (TLAP). The proposed WWTP will serve a mixed use site including approximately 240 apartment units in Williamson County, Texas. The TLAP would authorize the disposal of 60,000 gallons per day of treated effluent on 13.77 acres by subsurface drip irrigation in accordance with an application rate of 0.1 gallons per square foot per day. The Draft Permit proposes effluent limitations in all phases

of 20 mg/L carbonaceous biochemical oxygen demand five-day (CBOD₅) and 20mg/L total suspended solids (TSS).¹

III. AUTHORITY

For a hearing request to be granted, an “affected person” with a personal justiciable interest must demonstrate a non-speculative injury resulting from the granting of the permit. Section 55.203 provides the standing criteria for the individuals in this case, as follows:

- (a) 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.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (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 requester 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.
- (d) In determining 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 February 10, 2025 ED’s Technical Summary and Preliminary Decision at 2.

- (1) 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;
- (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. . . .

IV. RESPONSE TO INDIVIDUALS

1. **Minga Ybarra**, 144 Marbella Way, Georgetown, Texas 78633. While Dr. Ybarra purports to represent the Beltorre Property Owner's Association (POA),² neither Dr. Ybarra nor the POA has actually requested a contested case hearing. Rather, Dr. Ybarra explicitly states that, "we stand in full support of our neighbor at 220 Marbella Way, Georgetown, TX 78633 Joe Brown's request for a contested case hearing."³ Dr. Ybarra does not state that Mr. Brown is a member of the POA who would have standing in his own right to participate in this docket nor that the POA is seeking standing as a group or association in accordance with 30 TAC 55.205(a), relying on Mr. Brown's status. Accordingly, Dr. Ybarra's filing should be considered a public comment only, but not hearing request.

2. **Joe Brown**, 220 Marbella Way, Georgetown, Texas 78633. Mr. Brown's property is adjacent to the Applicant's property boundary, approximately 200 feet from the WWTP. He raises issues including 1) noise, 2) odors, 3) solid waste removal, 4) property values, 5) relocation of the WWTP and 6) creek contamination due to flooding. With the exception of odors, the other issues of noise, solid waste, property values, and the forced relocation of the WWTP (by TCEQ) are all issues outside the jurisdiction of TCEQ in a TLAP proceeding. Additionally, contamination of the creek (that requestor fails to identify by name) due to flooding is also outside the Commission's jurisdiction. However, even if Mr. Brown's concern with creek contamination was not due to flooding, the pending application is for a no-discharge or TLAP permit and there will be no discharge into or adjacent to water in the State. Thus, with the exception of odors, Mr. Brown has not demonstrated a legal right, duty, privilege, power, or economic interest that would be affected by the application or that his interest is not common to members of the general public.

² Dr. Ybarra provided no evidence of authorization by the POA to be their representative or spokesperson.

³ Ybarra filing of June 27, 2025.

3. **Jonathan Seth Held**, 205 Marbella Way, Georgetown, Texas 78633. Mr. Held is not an adjacent landowner. His property is located to the east of the WWTP and land application area and separated from the site by three (3) other separately-owned tracts located between the site and his property, as depicted on the attached **Exhibit A Landowner Map**.⁴ Moreover, Mr. Held filed a request for public meeting and contested case hearing on August 22, 2024 and did not make any filing thereafter (after the Executive Director’s Response to Comments (RTC)) proving his justiciable interest in the pending permit docket. Additionally, Mr. Held has raised issues that are largely outside the jurisdiction of the Commission or irrelevant in TLAP proceedings including – increased greenhouse gas emissions, decreased property values, air quality concerns, increased traffic and noise, the submittal of an “Environmental Impact Analysis,” and quality of life. Notably, Mr. Held does *not* mention odors in his hearing request, which must be interpreted as distinguishable from “air quality” concerns. Further, his concern that the small creek in the area is insufficient to “handle the projected daily volume” is belied by the fact that the pending application is for a no-discharge permit, not a discharge permit and his property is separated from the site by several homes and a road. Thus, Mr. Held has not demonstrated a justiciable interest – that he has a legal right, duty, privilege, power, or economic interest that would be affected by the application or that he has an interest that is not common to members of the general public. Specifically, the remaining concerns noted, relating to Applicant’s competency and water pollution generally, are concerns common to members of the general public and not to him uniquely.

4. **Ryan Eder**, 232 Marbella Way, Georgetown, Texas 78633. Mr. Eder’s property is depicted on the Exhibit A Landowner Map within approximately 335 feet of the proposed WWTP. However, although Mr. Eder filed a hearing request on May 15, 2024, like Mr. Held, he did not subsequently make any filing demonstrating his justiciable interest in this pending permit docket. The Commission has adopted no rule or policy relating to landowner proximity in TLAP cases for purposes of standing. Also, Mr. Eder repeats concerns about discharges and the use of the creek that are irrelevant in the TLAP context where there will be no discharge from the plant into the creek or anywhere else. Similarly, property values and noise are not within the Commission’s

⁴ Exhibit A was taken directly from the TLAP Application filed on April 8, 2024 and modified to show only the four individual commenters/requestors discussed herein.

jurisdiction. Mr. Held has not demonstrated a justiciable interest – that he has a legal right, duty, privilege, power, or economic interest that would be affected by the application or that he has interest that is not common to members of the general public.

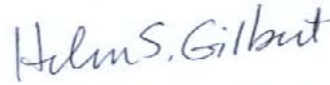
V. RELEVANT AND MATERIAL ISSUES

In the event the Commission grants the hearing request of Mr. Brown, the Commission may only refer that relevant and material issue to SOAH that was raised during the comment period⁵ as follows: whether the draft permit adequately addresses nuisance odor, in accordance with 30 TAC § 309.13(e).

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully prays that if the Commission grants Joe Brown's hearing request, that the case be referred only on the single issue identified in Section V above for no longer than 180 days.

Respectfully submitted,



By: _____

Helen S. Gilbert
State Bar No. 00786263
BARTON BENSON JONES, PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 565-4995
hgilbert@bartonbensonjones.com

**ATTORNEY FOR 3405 INVESTMENTS,
LLC**

⁵ 30 TAC 55.201(c).

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 10th day of October 2025:

Mr. Caleb Shook, Staff Attorney
Office of Legal Services
TCEQ-MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Caleb.Shook@tceq.texas.gov

Mr. Garrett Arthur, Public Interest Counsel
Office of the Public Interest Council
TCEQ-MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Garrett.Arthur@tceq.texas.gov

Dr. Minga Ybarra
144 Marbella Way
Georgetown, Texas 78633
Minga.Ybarra@gmail.com

Mr. Joe Brown
220 Marbella Way
Georgetown, Texas 78633
Joe.Brown1214@gmail.com

Mr. Jonathan Seth Held
205 Marbella Way
Georgetown, Texas 78633
Jsheld@hotmail.com

Mr. Ryan Eder
232 Marbella Way
Georgetown, Texas 78633
Reder09@gmail.com

Ms. Laurie Gharis, Chief Clerk
Office of Chief Clerk
TCEQ-MC 105
Austin, Texas 78711-3087
Chiefclk@tceq.texas.gov

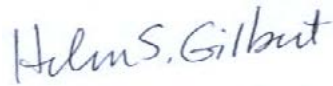
By: 
Helen S. Gilbert

EXHIBIT A

