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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 10, 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 3405 INVESTMENTS
LLC FOR NEW TCEQ PERMIT NO. WQ0016521001
TCEQ DOCKET NO. 2025-1322-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1322-MWD

APPLICATION BY 3405	§	BEFORE THE
INVESTMENTS LLC FOR TCEQ	§	TEXAS COMMISSION ON
PERMIT NO. WQ0016521001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUESTS FOR HEARING**

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 or Commission) files this Response to the hearing requests received in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is the application of 3405 Investments LLC for new Texas Land Application Permit No. WQ0016521001. The TCEQ Chief Clerk's office received four timely hearing requests. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of Joe Brown, Ryan Eder, and Jonathan Held. As such, OPIC respectfully recommends that the Commission refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-5 contained in §III.B.

B. Description of Application and Facility

On April 8, 2024, 3405 Investments LLC (Applicant) applied to TCEQ for new TCEQ Permit No. WQ0016521001 to authorize the disposal of treated domestic wastewater from a proposed wastewater treatment facility (Facility). The Facility and disposal site would be located approximately 1,100 feet east of

the intersection of Farm-to-Market Road 3405 and Ronald Reagan Boulevard, in Williamson County.

The Application, if granted, would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day to be land applied by subsurface area drip dispersal system on a minimum area of 13.77 acres at an application rate of 0.1 gallons per square foot per day. The Facility would be an activated sludge process plant using the complete mix mode. Treatment units in the Interim phase will include a primary screen, an aeration basin, a final clarifier, a digester, and a chlorine contact chamber. Treatment units in the Final phase will include a primary screen, two aeration basins, two final clarifiers, two digesters, and a chlorine contact chamber. The Facility has not been constructed yet.

C. Procedural Background

TCEQ received this Application for a new permit on April 8, 2024, and declared it administratively complete on May 8, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Williamson County Sun* on May 22, 2024. The ED determined that the application was technically complete, and the Notice of Application and Preliminary Decision was published in the *Williamson County Sun* on February 26, 2025. The public comment period ended on March 28, 2025. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments (RTC) on May 30, 2025. The deadline for filing requests for a contested case hearing or a request for reconsideration was June 30, 2025.

II. Applicable Law

This Application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.¹ Under Title 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 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

¹ Tex. S.B. 709, 84th Leg., R.S. (2015).

- (5) provide any other information specified in the public notice of application.²

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.³

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:

² 30 TAC § 55.201(d).

³ 30 TAC § 55.203(c).

- (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.⁴

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.

III. Analysis of Requests for a Contested Case Hearing

Joe Brown

On May 26, 2025, Joe Brown submitted a timely hearing request. Mr. Brown also previously submitted timely comments during the public comment period. In both request and timely comment, Mr. Brown states concern regarding contamination of nearby surface water and odors. He also questions the

⁴ 30 TAC § 55.203(d).

monitoring process and its frequency. According to the map provided by the ED's staff, this requestor is located approximately 0.13 miles from the Facility.

To be granted a contested case hearing, Mr. Brown must show that he possesses a personal justiciable interest in this matter related to a legal right, duty, privilege, power, or economic interest affected by the application.⁵ Furthermore, the interest must be distinguished from interests common to the general public.⁶

A relevant factor when evaluating if a person is affected is whether a reasonable relationship exists between the interest claimed and the activity regulated.⁷ Here, Mr. Brown's interest in protecting water quality and his concern about odors are protected by the law under which this application will be considered.⁸ Furthermore, as his property is near the Facility and its land application site, a reasonable relationship exists between his claimed interests and the Facility's regulated activity.⁹ Moreover, his location increases the likelihood that the Facility's operations could impact use of his property.¹⁰ Therefore, considering his stated concerns and location relative to the Facility, OPIC concludes that Joe Brown possesses a personal justiciable interest in this matter that is not common to the general public and has successfully demonstrated that he qualifies as an affected person.¹¹

⁵ See 30 TAC § 55.203(a).

⁶ *Id.*

⁷ See 30 TAC § 55.203(c)(3).

⁸ See 30 TAC § 55.203(c)(1).

⁹ See 30 TAC § 55.203(c)(3).

¹⁰ See 30 TAC § 55.203(c)(4).

¹¹ See 30 TAC § 55.203(a).

Ryan Eder

On May 15, 2024, Ryan Eder submitted a timely hearing request prior to the expiration of the public comment period. In his request, Mr. Eder states concern regarding contamination of nearby surface water, impacts to human health and animal life, and odors. According to the map provided by the ED's staff, this requestor is located approximately 0.20 miles from the Facility.

The issues of water contamination, effects on human health and animal life, and odor raised by Mr. Eder are protected by the law under which this application will be considered.¹² Additionally, because his property is near the regulated activity, a reasonable relationship exists between his concerns and the regulated activity.¹³ Finally, his location increases the likelihood that the Facility's operations could impact his use of property.¹⁴

Therefore, OPIC concludes that Mr. Eder is likely to be affected in a way not common to members of the general public and, as such, possesses a personal justiciable interest in this matter. Therefore, OPIC finds that Ryan Eder has demonstrated that he qualifies as an affected person.

Jonathan Held

On August 22, 2024, Jonathan Held submitted a timely hearing request prior to the expiration of the public comment period. In his request, Mr. Held states concerns, including those regarding water pollution and odors. According

¹² See 30 TAC § 55.203(c)(1).

¹³ See 30 TAC § 55.203(c)(3).

¹⁴ See 30 TAC § 55.203(c)(4).

to the map provided by the ED's staff, this requestor is located approximately 0.25 miles from the Facility.

The issues of water pollution and odor raised by Mr. Held are protected by the law under which this application will be considered.¹⁵ Additionally, because his property is near the regulated activity, a reasonable relationship exists between his concerns and the regulated activity.¹⁶ Finally, his location increases the likelihood that the Facility's operations could impact his use of property.¹⁷

Therefore, OPIC concludes that Mr. Held is likely to be affected in a way not common to members of the general public and, as such, possesses a personal justiciable interest in this matter. Therefore, OPIC finds that Jonathan Held has demonstrated that he qualifies as an affected person.

Minga Ybarra

On May 22, 2024, Minga Ybarra filed a timely submittal prior to the expiration of the public comment period. It does not appear that Minga Ybarra actually requested a contested case hearing, as the submittal simply asks, "How many people are needed to request a hearing on the matter?" Additionally, Minga Ybarra included a letter on behalf of the Beltorre Property Owner's Association (BPOA) that states its support for the hearing request of Joe Brown. The submittal also included a copy of the ED's Response to Public Comments. However, none of the submitted documents explicitly request a contested case hearing.

¹⁵ See 30 TAC § 55.203(c)(1).

¹⁶ See 30 TAC § 55.203(c)(3).

¹⁷ See 30 TAC § 55.203(c)(4).

According to the map provided by the ED's staff, this requestor is located approximately 0.28 miles from the Facility.

By rule, a hearing request must substantially comply with the requirement that it requests a contested case hearing.¹⁸ Here, Minga Ybarra did not request a contested case hearing. Minga Ybarra may clarify whether they intended to request a hearing in a timely filed reply to this Response.¹⁹ However, based on the information currently available, OPIC must conclude that Minga Ybarra has not substantially complied with the form requirement that a request actually contain a request for a contested case hearing. As such, OPIC is unable to find that Minga Ybarra qualifies as an affected person.²⁰

B. Which Issues Raised in the Hearing Requests Are Disputed

The affected persons' hearing requests raise the following disputed issues:

1. Whether the Facility and draft permit are protective of water quality by preventing wastewater effluent from discharging into surface water.

Raised by: Joe Brown, Ryan Eder, Jonathan Held

2. Whether the Facility and draft permit are protective of human health and animal life.

Raised by: Ryan Eder

3. Whether the Facility and draft permit adequately address nuisance odor.

Raised by: Joe Brown, Ryan Eder, Jonathan Held

¹⁸ 30 TAC § 55.201(d)(3).

¹⁹ See 30 TAC § 55.209(g) (allowing requestor(s) to submit written replies to a response to the requests no later than nine days before the Commission meeting at which the Commission will evaluate the request(s) for contested case hearing).

²⁰ OPIC notes that under 30 TAC § 55.211(g) a person whose request for contested case hearing is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

4. Whether the draft permit contains adequate monitoring requirements for the Facility.

Raised by: Joe Brown

5. Whether the draft permit adequately addresses disposal of the treated effluent.

Raised by: Jonathan Held

6. Whether the Applicant possesses the requisite experience to operate the Facility.

Raised by: Jonathan Held

7. Whether the Facility will cause air quality problems, including those surrounding increased greenhouse gas emissions.

Raised by: Jonathan Held

8. Whether the Facility will increase vehicular traffic and noise in the area, cause a loss of open space, and create unsightly infrastructure.

Raised by: Jonathan Held

9. Whether an environmental impact analysis has been conducted.

Raised by: Jonathan Held

10. Whether the Facility will adversely affect nearby property values.

Raised by: Joe Brown, Ryan Eder

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.²¹ The issues listed above are issues of fact.

²¹ 30 TAC § 55.211(c)(2)(A).

D. Whether the Issues Were Raised During the Public Comment Period

Issue nos. 1-10 raised in the hearing requests were raised in the comment period by the requestors.²²

E. Whether the Hearing Requests are Based on Issues Raised Solely in a Withdrawn Public Comment

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

F. Whether the Issues are Relevant and Material to the Decision on the Application

The affected persons in this matter have raised 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). 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. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.²³

Water Quality, Human Health, and Animal Life

The requestors in this matter are concerned with adverse effects to water quality and its impacts on human health and animal life. The Commission is responsible for the protection of water quality under Chapter 26 of the Texas Water Code and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit "maintain the

²² See 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

²³ *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

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.”²⁴ Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.”²⁵

Therefore, Issue nos. 1 and 2 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Nuisance Odor

The requestors in this matter are concerned that the Facility will cause odor issues. Odor is specifically addressed by 30 TAC § 309.13(e), which requires that nuisance odor be abated and controlled. Additionally, one of the purposes of Chapter 309 is “to minimize the possibility of exposing the public to nuisance conditions.”²⁶ Therefore, Issue no. 3 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Monitoring Requirements

The requestors in this matter are concerned about the adequacy of the Facility’s monitoring requirements. The Applicant is required to analyze the treated effluent prior to disposal and to provide monthly reports of the results to TCEQ. All samples must be collected and analyzed according to Commission rules.²⁷ As such, whether the draft permit provides for the necessary monitoring

²⁴ 30 TAC § 307.1.

²⁵ 30 TAC § 307.4(d).

²⁶ 30 TAC § 309.10.

²⁷ See 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System.

is relevant and material to the Commission's decision regarding this application. Therefore, Issue no. 4 is appropriate for referral to SOAH.

Effluent Disposal

The requestors in this matter question the frequency and verification of effluent sludge disposal. TCEQ rules contained in 30 TAC Chapter 312 address sludge use, disposal, and transportation. While there are no requirements concerning the frequency of sludge disposal, the draft permit does require that sludge be transported by a registered transporter, and the Applicant must maintain records of the completed trips.²⁸ The Facility must also provide at least three days of temporary storage for times when the Facility is out of service due to an emergency or for scheduled maintenance. Therefore, Issue no. 5 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Applicant's Experience

The requestors in this matter are concerned that the Applicant lacks the experience necessary to operate the Facility. While the Facility is required to be operated by an operator holding a Class C license or higher, there are no requirements related to the Applicant's operational experience itself. Therefore, Issue no. 6 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

²⁸ See 30 TAC § 312.145(a).

Air Quality

The requestors in this matter are concerned that the Facility may negatively impact air quality. TCEQ has found that wastewater treatment plants will not make a significant contribution of air contaminants to the atmosphere, and that human health and the environment will be protected. As such, wastewater treatment plants have been permitted by rule.²⁹ Therefore, Issue no. 7 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

Vehicular Traffic, Noise, Loss of Open Space, and Infrastructure Aesthetics

The requestors in this matter are concerned that the Facility will increase vehicular traffic in the area, create excessive noise, decrease open spaces in the area, and may be unsightly. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider these concerns when deciding whether to issue a land application permit. Therefore, Issue no. 8 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

Environmental Impact Analysis

The requestors in this matter are concerned that an environmental impact analysis has not been performed. While it is unclear exactly what type of analysis requestors seek to be conducted, TCEQ staff completed a technical review of the permit application which includes agronomic, geologic, and engineering reviews. Separate and apart from these reviews, a stand-alone environmental impact

²⁹ See 30 TAC § 106.532.

analysis is not required for this type of application. Therefore, Issue no. 9 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

Property Values

The requestors in this matter are concerned that the Facility will lower nearby property values. The Texas Legislature has not given the Commission the authority to consider concerns regarding property values when deciding whether to issue a land application permit. Therefore, Issue no. 10 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

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. Conclusion

For the reasons discussed above, OPIC finds that Joe Brown, Ryan Eder, and Jonathan Held have demonstrated that they qualify as affected persons. Therefore, OPIC respectfully recommends that the Commission grant their hearing requests and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-5 contained in §III.B.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that October 10, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne

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TCEQ DOCKET NO. 2025-1322-MWD

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