

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



David Timberger,
Acting Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 17, 2026

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 306 PROPERTIES, LP
FOR TCEQ PERMIT NO. WQ0016471001
TCEQ DOCKET NO. 2026-0042-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Revised Response to Request for Hearing and Request for Reconsideration 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. 2026-0042-MWD

APPLICATION BY 306	§	BEFORE THE
PROPERTIES, LP FOR TCEQ	§	TEXAS COMMISSION ON
PERMIT NO. WQ0016471001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S REVISED RESPONSE TO
REQUEST FOR HEARING AND REQUEST 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 or Commission) files this Revised Response to Request for Hearing and Request for Reconsideration in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is the application of 306 Properties, LP (Applicant) for new Texas Land Application Permit (TLAP), TCEQ Permit No. WQ0016471001. The TCEQ Chief Clerk's office received one timely hearing request and one timely request for reconsideration. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing request of Robert Oldham Jr. and Katrina Oldham, and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-3 contained in §III.B. Additionally, OPIC respectfully recommends that the Commission deny the pending request for reconsideration.

B. Description of Application and Facility

On January 23, 2024, 306 Properties, LP applied to TCEQ for new Permit No. WQ0016471001 (Application) to authorize the disposal of wastewater by irrigation for beneficial use from the proposed Chapel Creek wastewater treatment facility (Facility) that would be located approximately 1.3 miles northwest of the intersection of Lackey Ranch Road and Farm-to-Market Road 306, Comal County 78132. The Facility is proposed to serve the Chapel Creek subdivision.

The Application, if granted, would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 78 acres of non-public access land. The draft permit does not authorize a discharge to surface water.

If constructed, the Facility is proposed to be an activated sludge process plant using the extended aeration mode. Treatment units in the Interim I phase will include bar screens, an aeration basin, a final clarifier, an aerobic digester, tertiary filters, and a chlorine contact chamber. Treatment units in the Interim II phase will include bar screens, two aeration basins, two final clarifiers, two aerobic digesters, tertiary filters, and two chlorine contact chambers. Treatment units in the Final phase will include bar screens, three aeration basins, three final clarifiers, three aerobic digesters, tertiary filters, and three chlorine contact chambers. The Facility has not been constructed.

C. Procedural Background

TCEQ received this Application for a new permit on January 23, 2024, and declared it administratively complete on March 13, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Austin American-Statesman* on March 21, 2024. The ED determined the Application was technically complete and the Notice of Application and Preliminary Decision (NAPD) was published in the *Austin American-Statesman* on April 4, 2025. The public comment period ended on May 5, 2025. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments (RTC) on October 14, 2025. The deadline for filing requests for a contested case hearing or a request for reconsideration was November 13, 2025.

II. Applicable Law

A. Request for Contested Case Hearing

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

- (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.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;

² 30 TAC § 55.201(d).

- (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:

- (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.

³ 30 TAC § 55.203(c).

⁴ 30 TAC § 55.203(d).

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. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, 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 the Contested Case Hearing Request

A. Whether the Requestors are Affected Persons

On November 13, 2025, Robert Oldham, Jr. and Katrina Oldham jointly submitted a timely hearing request. They also jointly submitted timely public comments which first raised the same issues they have discussed in their hearing request. Mr. and Mrs. Oldham state concerns regarding proper management of the land application of effluent, human health, the environment, and the creation of unpleasant and harmful odors. They also are concerned that the Facility will impact their quality of life, degrade the local air quality, increase water use demands, and reduce property values. According to the map provided by the ED's staff, the Oldhams' property is located approximately 0.15 miles from the proposed Facility's disposal site.

To be granted a contested case hearing, Mr. and Mrs. Oldham must show that they each possess 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 in evaluating if a person is affected is whether a reasonable relationship exists between the interest claimed and the activity regulated.⁷ Here, the Oldhams' interests in land application of the effluent, human health, the environment, and odor issues are protected by the law under which this application will be considered.⁸ Furthermore, as their property is near the proposed Facility's disposal site, a reasonable relationship exists between the interests they claim and the Applicant's regulated activity.⁹ Moreover, their location increases the likelihood that the proposed Facility's operations could impact use of their property.¹⁰ Therefore, considering their stated concerns and location relative to the proposed Facility's disposal site, OPIC concludes that Robert Oldham, Jr. and Katrina Oldham have each demonstrated that they possess a personal justiciable interest in this matter that is not common to the general public and qualify as affected persons.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).

B. Which Issues Raised in the Hearing Request Are Disputed

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

1. Whether the application and draft permit contain provisions sufficient to prevent the contamination of surface water and groundwater.
2. Whether the Facility and draft permit are adequately protective of human health and the environment.
3. Whether the draft permit contains sufficient provisions to prevent the creation of nuisance odor conditions.
4. Whether the application and draft permit demonstrate that the Facility will not negatively impact air quality.
5. Whether operation of the Facility will negatively impact the requestors' property values.
6. Whether the application and draft permit demonstrate that the Facility will not negatively impact requestors' quality of life.
7. Whether the Facility and its associated development will increase area water use demands.

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.¹² The issues listed above are issues of fact.

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

Issue nos. 1-7 raised in the hearing requests were raised in the comment period by the requestors.¹³

¹² 30 TAC § 55.211(c)(2)(A).

¹³ See 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

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.¹⁴

Surface Water, Ground Water, Human Health, and the Environment

The affected persons in this matter are concerned that contamination from the land application of treated effluent will adversely affect water quality and negatively impact human health and the environment. Applicable rules related to the protection of public health, safety, and the environment are found in 30 TAC, Chapter 309. For instance, § 309.3(g)(1) requires that treated effluent be disinfected prior to storage or land application. Moreover, Section 309.10(b) states, "The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater

¹⁴ *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

treatment facilities...on selection of a site that minimizes possible contamination of ground and surface waters...”¹⁵

Additionally, the Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in 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.”¹⁶ According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Furthermore, “[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.”¹⁷

Finally, the draft permit contains numerous requirements designed to prevent groundwater contamination, including certain irrigation practices and site-specific calculation of its application rate. 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.

¹⁵ See also 30 TAC § 309.12.

¹⁶ 30 TAC § 307.1.

¹⁷ 30 TAC § 307.4(d).

Nuisance Odor

The affected persons in this matter are concerned that the proposed Facility could potentially 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.”¹⁸ Therefore, Issue no. 3 is relevant and material to the Commission’s decision regarding this Application and is appropriate for referral to SOAH.

Air Quality

The affected persons in this matter are concerned that the Facility may negatively impact air quality, which may affect the use and enjoyment of their property. 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.¹⁹ Therefore, Issue no. 4 is not relevant and material to the Commission’s decision regarding this application and is not appropriate for referral to SOAH.

Property Values, Quality of Life, and Water Demands

The affected persons in this matter are concerned that the proposed Facility will decrease nearby property values, increase water demands, and negatively impact their quality of life. The Texas Legislature, which establishes

¹⁸ 30 TAC § 309.10.

¹⁹ See 30 TAC § 106.532.

the jurisdiction of TCEQ, has not given the Commission the authority to consider these types of issues when deciding whether to grant or deny a land application permit. Therefore, Issue nos. 5-7 are not relevant and material to the Commission's decision regarding this application and are 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. Analysis of Request for Reconsideration

Robert Oldham, Jr. and Katrina Oldham timely submitted a request for reconsideration based on the same concerns raised in their hearing request. Specifically, the Oldhams have concerns regarding proper management of the land application of effluent, human health, the environment, and the creation of

unpleasant and harmful odors. They also are concerned that the proposed Facility will impact their quality of life, degrade the local air quality, increase water use demands, and reduce property values.

As discussed above, a number of these concerns are relevant and material to the decision on this Application. OPIC is recommending that a contested case hearing be granted, and that some of the issues raised by the Oldhams be referred to SOAH for a hearing. However, OPIC cannot recommend reconsideration without the benefit of an evidentiary record, and must therefore recommend denial of the request for reconsideration.

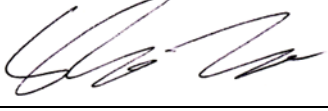
V. Conclusion

For the reasons discussed above, OPIC finds that Robert Oldham, Jr. and Katrina Oldham 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. 1-3 contained in §III.B. OPIC further recommends denial of the pending request for reconsideration.

Respectfully submitted,

[Signature on Next Page]

David Timberger
Acting Public Interest Counsel

By: 

Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144

CERTIFICATE OF SERVICE

I hereby certify that February 17, 2026, the Office of Public Interest Counsel's Revised Response to Request for Hearing and Request for Reconsideration 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

MAILING LIST
306 PROPERTIES, LP
TCEQ DOCKET NO. 2026-0042-MWD

FOR THE APPLICANT
via electronic mail:

Clint Jones, Manager
306 Properties, LP
900 River Hills Road
Austin, Texas 78733
clint@regallanddevelopment.com

Daniel Ryan, P.E., Vice President
LJA Engineering, Inc.
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
dryan@lja.com

Lauren Crone, P.E.
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
lcrone@lja.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Rakowitz, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
ryan.rakowitz@tceq.texas.gov

John Hearn, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-5239 Fax: 512/239-4430
john.hearn@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

Katrina Dyste & Robert Oldham, Jr.
454 Westshire Lane
New Braunfels, Texas 78132

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



David Timberger,
Acting Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 17, 2026

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 306 PROPERTIES, LP
FOR TCEQ PERMIT NO. WQ0016471001
TCEQ DOCKET NO. 2026-0042-MWD**

Dear Ms. Gharis:

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

Sincerely,

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Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2026-0042-MWD

APPLICATION BY 306 § BEFORE THE
PROPERTIES, LP FOR TCEQ § TEXAS COMMISSION ON
PERMIT NO. WQ0016471001 § ENVIRONMENTAL QUALITY


**OFFICE OF PUBLIC INTEREST COUNSEL'S
MOTION FOR LEAVE TO FILE REVISED RESPONSE TO REQUEST FOR
HEARING AND REQUEST FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

COMES NOW, the Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ or Commission) and files this Motion for Leave to File Revised Response to Request for Hearing and Request for Reconsideration. OPIC's original response was filed in the above-captioned matter on February 13, 2026, however, it inadvertently omitted analysis of the pending request for reconsideration. OPIC seeks leave to file its revised response, which contains the request for reconsideration analysis along with other minor, non-substantive edits.

Respectfully submitted,

David Timberger
Acting Public Interest Counsel

By: 

Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
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CERTIFICATE OF SERVICE

I hereby certify that February 17, 2026, the Office of Public Interest Counsel's Motion for Leave to File Revised Response to Request for Hearing and Request for Reconsideration 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.



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TCEQ DOCKET NO. 2026-0042-MWD

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Building II, Suite 100
Austin, Texas 78735
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FOR THE CHIEF CLERK

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APPLICATION BY 306 § BEFORE THE
PROPERTIES, LP FOR TCEQ § TEXAS COMMISSION ON
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OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUEST FOR HEARING

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A. Summary of Position

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B. Description of Application and Facility

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northwest of the intersection of Lackey Ranch Road and Farm-to-Market Road 306, Comal County 78132. The Facility is proposed to serve the Chapel Creek subdivision.

The Application, if granted, would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 78 acres of non-public access land. The draft permit does not authorize a discharge to surface water.

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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

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

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.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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. 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

² 30 TAC § 55.201(d).

(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:

- (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.

³ 30 TAC § 55.203(c).

⁴ 30 TAC § 55.203(d).

III. Analysis of a Contested Case Hearing Request

A. Whether the Requestors are Affected Persons

On November 13, 2025, Robert Oldham, Jr. and Katrina Oldham jointly submitted a timely hearing request. They also jointly submitted timely public comments which first raised the same issues they have discussed in their hearing request. Mr. and Mrs. Oldham state concerns regarding proper management of the land application of effluent, human health, the environment, and the creation of unpleasant and harmful odors. They also are concerned that the Facility will impact their quality of life, degrade the local air quality, increase water use demands, and reduce property values. According to the map provided by the ED's staff, the Oldhams' property is located approximately 0.15 miles from the proposed Facility's disposal site.

To be granted a contested case hearing, Mr. and Mrs. Oldham must show that they each possess 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 in evaluating if a person is affected is whether a reasonable relationship exists between the interest claimed and the activity regulated.⁷ Here, the Oldhams' interests in land application of the effluent, human health, the environment, and odor issues are protected by the law under

⁵ See 30 TAC § 55.203(a).

⁶ *Id.*

⁷ See 30 TAC § 55.203(c)(3).

which this application will be considered.⁸ Furthermore, as their property is near the proposed Facility's disposal site, a reasonable relationship exists between the interests they claim and the Applicant's regulated activity.⁹ Moreover, their location increases the likelihood that the proposed Facility's operations could impact use of their property.¹⁰ Therefore, considering their stated concerns and location relative to the proposed Facility's disposal site, OPIC concludes that Robert Oldham, Jr. and Katrina Oldham have each demonstrated that they possess a personal justiciable interest in this matter that is not common to the general public and qualify as affected persons.¹¹

B. Which Issues Raised in the Hearing Request Are Disputed

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

1. Whether the application and draft permit contain provisions sufficient to prevent the contamination of surface water and groundwater.
2. Whether the Facility and draft permit are adequately protective of human health and the environment.
3. Whether the draft permit contains sufficient provisions to prevent the creation of nuisance odor conditions.
4. Whether the application and draft permit demonstrate that the Facility will not negatively impact air quality.
5. Whether operation of the Facility will lower the requestors' property values.
6. Whether the application and draft permit demonstrate that the Facility will not negatively impact requestors' quality of life.

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).

7. Whether the Facility and its associated development will increase water use demands.

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.¹² The issues listed above are issues of fact.

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

Issue nos. 1-7 raised in the hearing requests were raised in the comment period by the requestors.¹³

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.¹⁴

¹² 30 TAC § 55.211(c)(2)(A).

¹³ See 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

¹⁴ *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Surface Water, Ground Water, Human Health, and the Environment

The affected persons in this matter are concerned that contamination from the land application of treated effluent will adversely affect water quality and negatively impact human health and the environment. Applicable rules related to the protection of public health, safety, and the environment are found in 30 TAC, Chapter 309. For instance, § 309.3(g)(1) requires that treated effluent be disinfected prior to storage or land application. Moreover, Section 309.10(b) states, “The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities...on selection of a site that minimizes possible contamination of ground and surface waters...”¹⁵

Additionally, the Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in 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.”¹⁶ According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.”

¹⁵ See also 30 TAC § 309.12.

¹⁶ 30 TAC § 307.1.

Furthermore, “[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.”¹⁷

Finally, the draft permit contains numerous requirements designed to prevent groundwater contamination, including certain irrigation practices and site-specific calculation of its application rate. 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 affected persons in this matter are concerned that the proposed Facility could potentially 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.”¹⁸ Therefore, Issue no. 3 is relevant and material to the Commission’s decision regarding this Application and is appropriate for referral to SOAH.

Air Quality

The affected persons in this matter are concerned that the Facility may negatively impact air quality, which may affect the use and enjoyment of their property. TCEQ has found that wastewater treatment plants will not make a significant contribution of air contaminants to the atmosphere, and that human

¹⁷ 30 TAC § 307.4(d).

¹⁸ 30 TAC § 309.10.

health and the environment will be protected. As such, wastewater treatment plants have been permitted by rule.¹⁹ Therefore, Issue no. 4 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

Property Values, Quality of Life, and Water Demands

The affected persons in this matter are concerned that the proposed Facility will decrease nearby property values, increase water demands, and negatively impact their quality of life. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider these types of issues when deciding whether to grant or deny a land application permit. Therefore, Issue nos. 5-7 are not relevant and material to the Commission's decision regarding this application and are 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

¹⁹ See 30 TAC § 106.532.

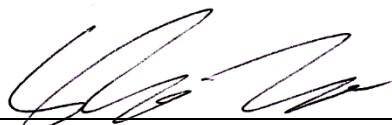
expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. Conclusion

For the reasons discussed above, OPIC finds that Robert Oldham, Jr. and Katrina Oldham 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. 1-3 contained in §III.B.

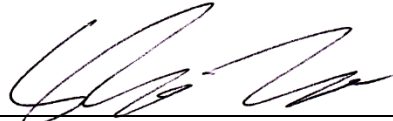
Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
Sheldon P. Wayne
Assistant Public Interest Counsel
State Bar No. 24098581
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144

CERTIFICATE OF SERVICE

I hereby certify that February 13, 2026, 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.

A handwritten signature in black ink, appearing to read 'Sheldon P. Wayne', is written over a horizontal line.

Sheldon P. Wayne

MAILING LIST
306 PROPERTIES, LP
TCEQ DOCKET NO. 2026-0042-MWD

FOR THE APPLICANT
via electronic mail:

Clint Jones, Manager
306 Properties, LP
900 River Hills Road
Austin, Texas 78733
clint@regallanddevelopment.com

Daniel Ryan, P.E., Vice President
LJA Engineering, Inc.
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
dryan@lja.com

Lauren Crone, P.E.
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
lcrone@lja.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Rakowitz, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
ryan.rakowitz@tceq.texas.gov

John Hearn, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-5239 Fax: 512/239-4430
john.hearn@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

Katrina Dyste & Robert Oldham, Jr.
454 Westshire Lane
New Braunfels, Texas 78132