

FREDERICK, PERALES, ALLMON & ROCKWELL, P.C.

ATTORNEYS AT LAW

1206 San Antonio Street

Austin, Texas 78701

(512) 469-6000 • (512) 482-9346 (facsimile)

Info@LF-LawFirm.com

Of Counsel:
Richard Lowerre

October 30, 2019

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Via TCEQ Online Comment Form

Re: Request for a Contested Case Hearing and Request for Reconsideration of the Application of DTB Investments, L.P. for a major amendment to TPDES Permit No. WQ0015092001.

Chief Clerk:

I am writing on behalf of Bulverde Neighborhoods for Clean Water ("BNCW"), Dr. Linzy Fitzsimons, Julie Goss, Richard Crow, Steven Harper and Nancy McKee, Joseph and Margie Brockman, and James and Ingrid Lingle (collectively, "Requestors"), to request a contested case hearing with regard to the application by DTB Investments, L.P. ("the Applicant") for a major amendment to its wastewater disposal Permit No. WQ0015092001 to authorize a change in the method of effluent disposal from land application to discharge and to increase the discharge from a daily average flow of 0.18 MGD to 0.30 MGD. These requests for a contested case hearing are cumulative of any prior requests for contested case hearing submitted by any of the Requestors.

For the following reasons, the Requestors also request reconsideration by the Executive Director and denial of the permit application. Requestors may be contacted through me at the address and telephone number identified above.

I. Each of the Requestors is an "Affected Person."

a. BNCW is an Affected Person.

Bulverde Neighborhoods for Clean Water or BNCW is a non-profit organization, incorporated in the State of Texas and working to protect public health, the environment, and the quality of life of residents in Bulverde and Comal County with a special emphasis on water quality

in the Cibolo Creek Watershed. As a part of its mission, BNCW has committed to represent its members in local, state, and federal decision-making processes related to the protection of natural resources. At the time of this filing, BNCW has 92 members. On February 7, 2019, BNCW timely submitted comments on the Application by DTB Investments, Inc., TPDES Permit No. WQ0015092001 (the "Application").

The following persons are members of BNCW and would otherwise have standing to request a hearing in their own right.

Dr. Linzy Fitzsimons. Dr. Fitzsimons owns approximately 8 acres of property at 1359 East Ammann Road, Bulverde, TX 78163, which is adjacent to site of the proposed facility, as indicated on the Applicant's April 2018 landowners map. Dr. Fitzsimons's property is less than 900 feet from the proposed treatment plant. Dr. Fitzsimons lives on the property full-time with her 5-year-old son, runs a business out of her home, and raises animals, hosts events, and spends time outdoors, all of which, including her income and earning potential, would be greatly affected by odors, noise, and light pollution from the operation of the facility. The only source of water on Dr. Fitzsimons' property is from a groundwater well, which is at risk of being polluted by authorized and unauthorized discharges of wastewater effluent that could enter the groundwater through cracks, fissures, and other openings in the rocky ground. Dr. Fitzsimons' property includes a swimming pool and a pond, and her property is prone to flooding after a normal rain event, putting her pond and pool at risk of contamination. Dr. Fitzsimons has observed the portion of her property closest to the plant regularly remain saturated or under water most of winter. Dr. Fitzsimons and her late husband, Barry, were included in the Applicant's neighbor list. Both Linzy and Barry timely submitted written comments on February 6, 2019 and oral comments on February 7, 2019.

Julie Goss. Julie Goss is the sole owner of two contiguous tracts, listed under her trust of JBBG Trust and totaling nearly 15.8 acres at 707 Persimmon Hill and 649 Persimmon Hill, Bulverde, TX 78163. Both tracts are directly adjacent to the site of the proposed facility, as indicated on the Applicant's landowner map in the Application. Ms. Goss lives on this property in her full-time residence. She spends a significant amount of time outdoors enjoying the natural beauty, swimming in her pool, and gardening in her vegetable garden. She also entertains her family outside for regular visits. Ms. Goss is worried that the smell and foul odors of the plant will prevent her from using and enjoying the outdoors as she currently does. Ms. Goss also has three horses on her property. She relies on the well on her property for drinking and all her domestic needs, to fill her pool, and to water her garden and her horses. Contamination of the groundwater could harm her livelihood and threaten the health of her, her horses, her family, and other guests. Ms. Goss's property has experienced heavy rains in recent years, which has caused runoff and erosion from the Applicant's property, indicating that due to the slopes and topography, runoff of wastewater from the Applicant's property will likely flow downhill toward her property. Julie timely submitted written comments on September 3, 2018 and oral comments on February 7, 2019.

Richard Crow. Richard Crow owns approximately 5.29 acres of property at 1552 Brand Road, Bulverde, TX 78163, which is adjacent to the site of the proposed facility, as indicated on the Applicant's landowners map in the Application. This property is Mr. Crow's full-time residence. Mr. Crow's only source of water comes from a well on his property. Richard has a young child at home that is more susceptible to health issues related to contamination in his home's water supply

from his well. Mr. Crow is concerned that wastewater effluent discharged pursuant to the permit will contaminate the groundwater and will lead to stagnant pools of algae along the discharge route that will cause odors that will impact his use of his property. Richard Crow was included in the Applicant's neighbor list as Richard Crow III. Richard submitted timely written comments on August 24, 2018, and oral comments on February 7, 2019.

Steven Harper & Nancy McKee. Steven Harper and Nancy McKee own two properties that total about 20.5 acres at 681 Brand Road, Bulverde, TX 78163, which are adjacent to the site of the facility, as indicated on the Applicant's landowners map. The property is the site of their full-time residence. Mr. Harper and Ms. McKee spend much of the day outdoors spending time with their grandchildren, raising exotic wildlife, raising horses, and growing coastal hay. They also have four water wells on their property, which are the only source of water for themselves, the animals, and the plants. The drainage from Shepherds Ranch meets Indian Creek on their property. Additionally, they have a high game fence, exterior and interior, surrounding their property. Steven Harper and Nancy McKee were included in the Applicant's neighbor list at site numbers 36 and 36A. Mr. Harper timely submitted oral comments on February 7, 2019 on behalf of his family.

Joseph & Margie Brockman. The Brockmans own approximately 5 acres of property at 280 Little Round Top, Bulverde, TX 78163, which is directly adjacent to the site of the proposed facility, as indicated on the Applicant's landowners map. This property is the Brockmans' full-time residence. They are frequently outdoors for hours at a time as they host family, entertain guests, and grow fruit and vegetables for personal use. They also have a water well on their property that is their only source of water, and which they use for drinking, cooking, bathing, and gardening. The Brockmans' property is at a lower elevation than where the location of the discharge point and they have an intermittently flowing spring located on their property, which flows at times immediately following heavy rains. The Brockmans are concerned that the discharge route will become saturated with pollution that will contaminate the groundwater and when it emerges on their property, the effluent will contaminate their spring and their property. The Brockmans pets roam their property and drink from the spring, as do deer that are harvested for meat. The Brockmans worry their pets and wildlife could be harmed from contaminated spring water. Joseph & Margie Brockman were included in the Applicant's neighbor list. The Brockmans timely submitted written and oral comments on February 7, 2019.

James & Ingrid Lingle. The Lingles own about 2.57 acres of property at 651 Brand Road, Bulverde, TX 78163, directly adjacent to the site of the proposed facility, as is indicated on the Applicant's landowners map. The Lingles use their property as their primary residence. They spend time outdoors and host family such as their twin grandsons who suffer from life-threatening allergies and who would be highly sensitive to strong smells. Their only source of water comes from a well on their property, which they use for drinking, cooking, bathing, washing dishes, laundry, and watering plants as well as pets. If this well becomes polluted, the Lingles do not have the financial resources to have water trucked in or to drill a deeper well. The Lingles also have a bat cave underneath their property which could be destroyed due to polluted run-off. James and Ingrid Lingle were included in the Applicant's neighbor list. The Lingles timely submitted written comments on August 25, 2019 and February 7, 2019.

William "Bill" & Peggy Huber. The Hubers own more than 9 acres of property at 271 Little Round Top, Bulverde, TX 78163, which is directly adjacent to the site of the proposed facility, as is indicated on the Applicant's landowners map. They have lived at this property for over 25 years. The Hubers spend much of their time outdoors and host their three children and six grandchildren almost every weekend. Foul odors from the plant or from the stagnant water and algae in the discharge route would harm their ability to enjoy the outdoors and have their family visit. The Hubers have their own water well, which they use for drinking, bathing, and irrigation. This well is their only source of water and they are worried that discharges of treated or partially treated effluent could contaminate the groundwater and threaten their well water. William & Peggy Huber were included on the Applicant's neighbor list.

Lee & Patricia Marshall. The Marshalls own about 9.2 acres of property at 1200 Brand Road, Bulverde, TX 78163, which is directly adjacent to the site of the proposed facility, as is indicated on the Applicant's landowners map. This property is the Marshalls' full-time residence. The Marshalls' only source of water comes from a well on their property, and they are worried the discharge of effluent will harm the groundwater quality and thus, their well water. The Marshalls are also concerned about odors from the plant and the discharge route. Lee & Patricia Marshall were included on the Applicant's neighbor list in the Application.

As previously mentioned, the purpose of BNCW is to protect public health, the environment, and the quality of life of residents in Bulverde and Comal County with a special emphasis on water quality in the Cibolo Creek Watershed. As a part of its mission, BNCW has committed to represent its members in decision-making processes related to the protection of natural resources. In doing so, the interests BNCW seeks to protect by contesting the proposed Application are germane to its purpose. The 300,000 gallons of wastewater effluent per day this Application proposes to discharge will alter the quality of surface and groundwater in the Cibolo Creek Watershed, and the operation of the wastewater treatment facility will lead to odors and will impair the ability of neighbors to use and enjoy their properties. BNCW's interest in protecting natural resources its members use and rely upon is related to the activity proposed to be permitted. Therefore, BNCW is an affected Person.

b. Several members of POB are also Affected Persons.

The properties and circumstances of the following individuals are described above, and for the same reasons as those indicated above, are affected persons because they have a personal justiciable interest, which, given their proximity to the proposed treatment facility and discharge route, the potential for the proposed activity to impact surface and groundwater, emit odors, and otherwise impact the use of their property, are not common to members of the general public. For the forgoing reasons, the following individuals are affected persons and each requests a contested case hearing on an individual basis.

1. Dr. Linzy Fitzsimons
2. Julie Goss
3. Richard Crow
4. Steven Harper & Nancy McKee
5. Joseph & Margie Brockman
6. James & Ingrid Lingle

II. The Executive Director Did Not Sufficiently Address Issues Raised by Requestors.

All Requestors listed here provided timely comments on several issues. The Executive Director's responses are not satisfactory and all issues raised in Requestors' comments remain in dispute. Without waiving any issues raised with more particularity in their comments, Requestors provide the following list of relevant material disputed issues raised during the public comment period with reference to the comment and response numbers.

a. Notice was deficient.

As noted in comments, notice of the Application was deficient. Specifically, it was not verified that the discharge point is located on the Applicant's property and that all property owners within one mile downstream of the discharge location received notice. Among others, this relates to the ED's Response addressing **Comment 83**.

b. The Applicant did not meet deadlines imposed by the TCEQ and cannot demonstrate sufficient compliance history.

As noted in comments, the Applicant cannot demonstrate a compliance history, and in its short history, it has failed to meet TCEQ deadlines. The TCEQ should impose more frequent monitoring requirements and require a Class A operator. Among others, this relates to the ED's Response addressing **Comments 56, 60, and 80**.

c. The characterization of the discharge route is improper.

As noted in comments, the proposed discharge route was improperly characterized, because Applicant has not demonstrated a "water of the state" into which it can lawfully discharge. Among other issues raised, Requestors disagree with the RTC that the stormwater collection system is separate from the discharge route or that the discharge route does not include any rights of ways, since the proposed discharge route intersects with Ammann Road with no existing separation or defined bed and banks that are separate from the stormwater collection system. Among others, this relates to the ED's Response addressing **Comments 9, 21, 35, 66, 75, and 82**. (BNCW should have been listed as a commenter on Comment 75.)

d. The Applicant's property boundary is inadequately defined.

As noted in comments, the description of the Applicant's property and boundary is improper, because the Applicant does not own all of the property included with the tract in the Application and it has not been verified that the discharge point in the Application is on the Applicant's property or that the Applicant has permission of the adjacent landowner to locate the discharge point on his property. This specific comment was not addressed in the ED's RTC, and therefore, remains in dispute. Somewhat related to property boundary issues are ED's Response addressing **Comments 10 and 12**.

e. The facility will impact local drinking water.

As noted in comments, the facility will impact drinking water wells in the vicinity of the facility and the discharge route. Among other issues raised, Requestors dispute the ED's RTC with regard to these concerns, because the RTC does not address claims that the Applicant failed to identify all springs within one mile of the treatment facility, nor does the ED's response that the discharge route lies to the west of the location of the spring, provide enough information to determine that domestic wells will not be impacted. Among others, this relates to the ED's Response addressing **Comments 19, 36, 38, 39, and 43.** (BNCW should have been listed as a commenter under Comments 38 and 39.)

f. The facility does not meet siting requirements.

As noted in comments, the facility does not meet siting requirements. Among other issues raised, Requestors dispute the ED's RTC with regard to these concerns, because the RTC does not address the Applicant's failure to identify at least one known spring within one-mile of the proposed facility or the concern that the Applicant failed to identify other known springs in its Application. Among others, this relates to the ED's Response addressing **Comments 36 and 61.**

g. The issuance of the permit will adversely impact surface water quality.

As noted in comments, the issuance of the permit will adversely impact surface water quality. Among other concerns raised, Requestors dispute the ED's RTC with regard to these issues, because the cumulative impact of other pending permits was not considered. Among others, this relates to the ED's Response addressing **Comments 6, 26, 27, 29, 30, 32, 33, and 34.** (BNCW should have been listed as commenter under Comments 26, 27, 29, and 30.)

h. The issuance of the permit will adversely impact groundwater quality.

As noted in comments, the issuance of the permit will adversely impact groundwater quality. Among other concerns raised, Requestors dispute that the effluent limits in the draft permit will protect existing and potential uses of groundwater. Among others, this relates to the ED's Response addressing **Comments 36, 38, 39, 42, 43, and 61.**

i. The proposed facility is not protective of wildlife, including endangered species.

As noted in comments, the issuance of the permit will adversely impact wildlife, including endangered species. Among other concerns raised, Requestors dispute that the effluent limits in the draft permit will protect aquatic or aquatic dependent species, nor does the RTC indicate that the TCEQ actually consulted with U.S. Fish & Wildlife Service (USFWS) as is required by law. Among others, this relates to the ED's Response addressing **Comments 8.**

j. The proposed facility does not address flooding and run-off.

As noted in comments, the Application has not shown it will prevent run-off from the proposed discharge route or lead to diffuse surface flooding. Commenters noted that, according to

their personal observation, the topography, nature of the discharge route, rainfall events, and local site conditions will continue to lead to run-off and flooding, and that the effluent will be comingled with run-off and flood waters. The ED's RTC does not address these concerns. Furthermore, in response to Comment 50, the ED states that final phase permitted flow of 300,000 gallons per day is equivalent to 208 gallons per minute, but the draft permit authorizes peak flow of 417 gallons per minute. Among others, this relates to the ED's Response addressing **Comments 3, 4, 21, 50, 59, and 66.**

k. The Applicant has not demonstrated a need for the discharge nor compliance with the State's regionalization policy.

As noted in comments, the Applicant has not demonstrated a need for the proposed facilities or whether existing facilities or other proposed facilities could collect, treat, and dispose of the waste, such as the City of Bulverde's sewage system. Therefore, the Application is not consistent with the State regionalization policy, an issue that the ED's RTC does not address, nor does the ED's RTC address the failure of the Applicant to provide justification for the facility in light of the City of Bulverde's sewage system being available. Among others, this relates to the ED's Response addressing **Comments 2 and 25.**

l. The facility will cause excessive odors and other impacts to residents and neighbors.

As noted in comments, the wastewater treatment plant will be the source of a variety of foul and irritating odors and other nuisance conditions. The provisions of the permit are not sufficient to prevent the production of excessive odors. Requestors dispute the ED's RTC with regard to these concerns. Among others, this relates to the ED's Response addressing **Comments 5, 21, 29, 30, 31, 33, 34, 35, 45, 66, and 70.** (BNCW should have been listed as a commenter on Comments 29, 30, 31, 45, and 66.)

m. A new application should be required.

As noted in comments, the Applicant should be required to submit a new permit application. The ED's RTC acknowledged that the draft permit, if issued, will expired on March 1, 2020 because the applicant did not request a renewal with the application for a major amendment. March 1, 2020 is less than the 180 days generally required of an applicant to request a renewal. Coupled with the fact that the applicant has failed to disclose all relevant facts, such as the property under its control and ownership and the Bulverde development agreement, the existing permit should be revoked and the application should be denied. Among others, this relates to the ED's Response addressing **Comments 77, 78, 80, 86.** (BNCW should have been listed as a commenter on Comment 77.)

III. Conclusion.

Based on the above and its previous filings in this matter, Bulverde Neighborhoods for Clean Water requests a contested case hearing. BNCW's members would have standing to request a hearing in their own right, the interests BNCW seeks to protect are germane to the organization's

members. Based on the above, BNCW requests reconsideration by the Executive Director and denial of the permit application.

Based on the above and their previous filings in this matter, Dr. Linzy Fitzsimons, Julie Goss, Richard Crow, Steven Harper and Nancy McKee, Joseph and Margie Brockman, and James and Ingrid Lingle each request a contested case hearing, request reconsideration by the Executive Director, and request denial of the permit application.

Respectfully submitted,



Lauren Ice
Associate Attorney
FREDERICK, PERALES, ALLMON &
ROCKWELL, P.C.
1206 San Antonio Street
Austin, Texas 78701
Phone: (512) 469-6000
Fax: (512) 482-9346
lauren@lf-lawfirm.com

*Attorney for Bulverde Neighborhoods for
Clean Water, Dr. Linzy Fitzsimons, Julie Goss,
Richard Crow, Steven Harper and Nancy
McKee, Joseph and Margie Brockman, and
James and Ingrid Lingle*

Cc: mailing list