

Act Now Comal
 Alamo, Austin, and Lone Star chapters of
 the Sierra Club
 Bexar Audubon Society
 Bexar and Travis-Austin Green Parties
 Bexar Grotto
 Boerne Together
 Bulverde Neighborhood Alliance
 Bulverde Neighborhoods for Clean Water
 Cibolo Center for Conservation
 Citizens for the Protection of Cibolo
 Creek
 Comal Conservation
 Comfort Neighbors
 Congregation of Divine Providence
 Environment Texas
 First Universalist Unitarian Church of SA
 Fitzhugh Neighbors
 Friends of Canyon Lake
 Friends of Castroville Regional Park
 Friends of Dry Comal Creek
 Friends of Government Canyon
 Fuerza Unida
 Green Society of UTSA
 Guadalupe Riverkeepers
 Guadalupe River Road Alliance
 Guardians of Lick Creek
 Hays Residents for Land & Water
 Protection
 Headwaters at Incarnate Word
 Helotes Heritage Association
 Hill Country Alliance
 Kerr County Water Alliance
 Kendall County Well Owners Association
 Las Moras Springs Association
 Leon Springs Business Association
 Llano River Watershed Alliance
 Native Plant Society of Texas -- NB
 Native Plant Society of Texas -- SA
 Northwest Interstate Coalition of
 Neighborhoods
 Pedernales River Alliance -- Gillespie Co.
 Preserve Castroville
 Preserve Lake Dunlop Association
 Preserve Our Hill Country Environment
 River Aid San Antonio
 San Antonio Audubon Society
 San Antonio Conservation Society
 San Marcos Greenbelt Alliance
 San Marcos River Foundation
 Save Barton Creek Association
 Save Our Springs Alliance
 Scenic Loop/Boerne Stage Alliance
 Securing a Future Environment (SAFE)
 SEED Coalition
 Signal Hill Area Alliance
 Solar San Antonio
 Texans for Environmental Awareness
 Texas Cave Management Association
 Trinity Edwards Spring Protection Assoc.
 Water Aid -- Texas State University
 Watershed Association
 Wildlife Rescue & Rehabilitation

April 23, 2025

The Honorable Jeff Leach, Chair
 The Honorable Ann Johnson, Vice-Chair
 The Honorable Members Dutton, Jr., Dyson, Flores, González, Hayes, LaHood,
 Landgraf, Moody, and Schofield
 House Committee on Judiciary & Civil Jurisprudence

**Re: House Bill 3964, An Act Relating to Common Law Public Nuisance
 Claims**

The [Greater Edwards Aquifer Alliance](https://aquiferalliance.org) (GEAA) appreciates the opportunity to submit these comments on behalf of the sixty-one member groups of GEAA allied to advocate for the preservation of our ground and surface water resources in twenty-one counties within Central and South Texas.

The Greater Edwards Aquifer Alliance is highly concerned about the impacts of this bill and firmly opposes it. Texas code, state law, and case law have consistently held that public nuisance claims are cognizable if they seek relief arising from actions or conditions authorized by a permit approved by the state or a state agency. This recognition has provided recourse to Texans who might suffer injury or adverse effects on human health or welfare, animal life, vegetation, or property from permitted actions.

This bill would amend Title 4 of the Civil Practices and Remedies Code, *Liability in Tort*, by adding Chapter 100C, which would place limitations on common law public nuisance claims. Removing this long-recognized common law remedy will be detrimental to Texan residents, wildlife, environment, and critical water resources.

GEAA often submits public comments on wastewater discharge permits (Texas Pollutant Discharge Elimination System or TPDES permits) issued by the Texas Commission on Environmental Quality (TCEQ) or is party to contested case hearings on these permits in an effort to ensure that the permits are sufficiently protective of the water quality of critical groundwater supplies, such as the Edwards Aquifer.

In TCEQ's response to comments on these draft permits, the agency consistently responds to commenters' concerns by stating:

"...the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property."¹

¹ https://aquiferalliance.org/wp-content/uploads/2020/08/FINAL_SILESIA-PROPERTIES-LP_81020_RTC.pdf

“However, the permit does not limit the ability of an individual to seek legal remedies against [permittee] regarding any potential trespass, nuisance, or other causes of action in response to activities that result in injury to human health or property or that may interfere with the normal use and enjoyment of the property.”²

“The wastewater permit, however, does not allow the permit holder to create or maintain a nuisance that interferes with a landowner’s use and enjoyment of his or her property. The permit does not limit the ability of a landowner to seek relief from a court in response to activities that interfere with a landowner’s use and enjoyment of their property.”³

“Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.”⁴

In contested case hearings on proposed wastewater permits, the TCEQ’s own briefs have pointed out that:

“The [Texas] Supreme Court held that ‘[a]s a general rule, a permit granted by an agency does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit...the consequences of acting under the permit have not been immunized.’”⁵

“... [30 Texas Administrative Code 305.122(d)] clarifies that a permit is not a shield that a permittee can use to defend itself against such an action brought in court.”⁶

In *Berkley v. Railroad Commission of Texas* (2009),⁷ the Amarillo Court of Appeals held that “securing a permit does not immunize the recipient from the consequences of its actions if those actions affect the right of third parties.”

In *FPL Farming LTD v. Environmental Processing Systems, L.C.* (2011),⁸ the Texas Supreme Court determined that “as a general rule, a permit granted by an agency does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because a permit is a ‘negative pronouncement’ that ‘grants no affirmative rights to the permittee.’” The Court determined that an agency’s “determination of the propriety of the permit has no effect on the property of the permittee’s potentially tortious actions...a permit is not a get out of tort free card.” A permittee may have permission from the TCEQ to undertake

² https://aquiferalliance.org/wp-content/uploads/2020/08/FINAL_SILESIA-PROPERTIES-LP_81020_RTC.pdf

³ <https://aquiferalliance.org/wp-content/uploads/2014/01/Executive-Directors-Response-to-Public-Comment-2.pdf>

⁴ <https://aquiferalliance.org/wp-content/uploads/2014/01/Executive-Directors-Response-to-Public-Comment-2.pdf>

⁵ <https://aquiferalliance.org/wp-content/uploads/2014/01/TCEQ-Response-brief.pdf>

⁶ <https://aquiferalliance.org/wp-content/uploads/2014/01/TCEQ-Response-brief.pdf>

⁷ <https://caselaw.findlaw.com/court/tx-court-of-appeals/1007965.html>

⁸ <https://cases.justia.com/texas/supreme-court/09-1010-30.pdf?ts=1396150617>

an action, “but the consequences of acting under the permit have not been immunized.” The Texas Supreme Court concluded by stating:

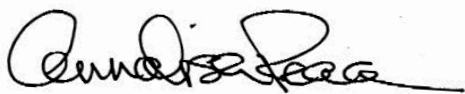
“... the portions of the Texas Administrative Code governing the TCEQ do not shield permit holders from civil tort liability that may result from actions governed by the permit. This is consistent with our common law rule that the mere fact that an administrative agency issues a permit to undertake an activity does not shield the permittee from third party tort liability stemming from consequences of the permitted activity.”⁹

Also of great concern is the provision in this bill that would make a public nuisance claim not cognizable if it seeks relief arising from “a product or a claim based on the manufacturing, distributing, selling, labeling, or marketing of a product, *regardless of whether the product is defective*” (emphasis added). This provision is unjustifiable and could place many Texans in harm’s way with little recourse.

Texans should have the opportunity to use long-standing common law remedies. Amending Title 4 of the Civil Practices and Remedies Code to add Chapter 100C would undo settled case law, state law, and agency practices. In doing so, the amendment would leave Texans with little, if any, recourse to any injurious or adverse effects that may arise from actions undertaken by authorized permittees. As such, we firmly oppose this bill.

We ask you, the members of this committee, to keep uppermost in your mind the negative impacts that this legislation could have on your constituents when considering HB 3964. Please, do not leave the citizens of Texas with no recourse to assert their right to seek damages from those who may cause harm or deprive them of the normal use and enjoyment of their property – assets that many rely on for their livelihood. HB 3964 would result in the erosion of practices currently in place to protect the public. We urge you – do not pass this unjust bill out of your committee.

Thank you for your consideration. Please consider GEAA as a resource that is at your disposal. We look forward to working with you on this issue.



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⁹ <https://cases.justia.com/texas/supreme-court/09-1010-30.pdf?ts=1396150617>