

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 14, 2022

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

RE: Application by Continental Home of Texas and KY-Tex Properties for TCEQ
Permit No. WQ0015940001; TCEQ DOCKET NO. 2021-1621-MWD

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Harrison.Malley@tceq.texas.gov if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Harrison Cole Malley".

Cole Malley, Staff Attorney - Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2021-1621-MWD

APPLICATION BY	§	BEFORE THE
CONTINENTAL HOMES OF TEXAS LP	§	
and KY-TEX PROPERTIES LLC	§	TEXAS COMMISSION ON
FOR TPDES PERMIT NO.	§	
WQ0015940001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Continental Homes of Texas LP and Ky-Tex Properties, LLC (Applicants) for a TPDES Permit No. WQ0015940001. The Office of the Chief Clerk received one contested case hearing request from Melissa Aldrich.

Attached for Commission consideration are the following:

Attachment A—Executive Director's Map

II. FACILITY DESCRIPTION

The Applicant applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 495,000 gallons per day (gpd).

The facility will be located approximately 3,907 feet northwest of the intersection of Getzenander Road and the railroad tracks, and approximately 670 feet northwest from the intersection of Satterwhite Road and Williamson Road, in Hays County, Texas 78610. The proposed Ky-Tex Wastewater Treatment Plant (WWTP) will serve Ky-Tex Residential single-family homes.

The Ky-Tex WWTP will be an activated sludge process plant operated in the conventional mode with extended nitrification. Treatment units in the Interim I phase will include a fine screen rotary drum, an aeration tank, a secondary clarifier, a sludge holding tank, a chlorine contact tank, and a cloth disc media filter. Treatment units in the Interim II phase will include a fine screen rotary drum, three aeration tanks, two secondary clarifiers, two sludge holding tanks, two chlorine contact tanks, and a cloth disc media filter. Treatment units in the Final phase will include a fine screen rotary drum, six aeration tanks, three secondary clarifiers, four sludge holding tanks, three chlorine contact tanks, and a cloth disc media filter. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at an Interim I volume not to exceed a daily average flow of 0.066 million gallons per day (MGD), an Interim II volume not to exceed a daily average flow of 0.251 MGD, and a Final volume not to exceed a daily average flow of 0.495 MGD. The effluent limitations in the Interim and Final phases of the draft permit, based on a 30-day average, are 7

mg/l five-day carbonaceous biochemical oxygen demand CBOD₅, 15 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH₃-N), 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 6.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged to an unnamed tributary, thence to Soil Conservation Service (SCS) reservoir 12, thence to Brushy Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, high aquatic life use for SCS reservoir 12, and limited aquatic life use for Brushy Creek. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use.

III. PROCEDURAL BACKGROUND

TCEQ received the application for a new permit on October 13, 2020, and declared it administratively complete on March 3, 2021. The application was determined to be technically complete on May 21, 2021. The Applicants published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on March 17, 2021 in the Hays Free Press newspaper and in Spanish on March 25, 2021, in the El Mundo newspaper. The Applicants published the Notice of Application and Preliminary Decision (NAPD) in English on July 7, 2021 in the Hays Free Press newspaper and in Spanish on July 8, 2021, in the El Mundo newspaper. The comment period for this application closed on August 9, 2021.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

The ED's Response to Comments and Final Decision were mailed on September 28, 2022; the Hearing Request Period ended October 28, 2022.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.²

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (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;

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

- (4) list all relevant and material disputed issues of fact that were raised 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 comments that the requestor disputes and 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.⁴

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

To grant a contested case hearing, the Commission must determine that a requestor is an "affected" person by conducting the following analysis:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the 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.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record,

⁴ 30 TAC § 55.201(d).

- including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.”⁵ The Commission may not refer an issue to the State Office of Administrative Hearings (SOAH) for a contested case hearing unless the Commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁶

V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestor Complied With 30 TAC §§ 50.115(c), 55.201(c) and (d), and 55.203(d).

1. *The Executive Director recommends the Commission find that Melissa Aldrich is not an affected person.*

Melissa Aldrich:

Ms. Aldrich submitted a timely comment and hearing request in which she identified her property and articulated several concerns she had with the permit. According to her written comment, she owns property within one mile of the facility and discharge route. Ms. Aldrich is also listed on the adjacent property owners map that was submitted with the application. While her hearing request identified several issues Ms. Aldrich believed could negatively impact her property, she stated that these concerns were based on the possibility of flooding during heavy rain events.

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

Specifically, she does not believe the reservoir on the discharge route has the capacity to handle the effluent discharge during heavy rain events.

According to 30 TAC §§ 50.115(c)(1), the Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue involves a disputed question of fact or a mixed question of law and fact. In addition, the issue must be one that is within the TCEQ's jurisdiction to consider.

In the wastewater permitting process, the TCEQ does not have jurisdiction to address flooding or erosion issues in determining whether to issue a draft permit and Ms. Aldrich's comments relate to concerns about flooding. As a result, Ms. Aldrich has failed to articulate a justiciable interest that could be affected by the application. Therefore, the Executive Director recommends that the Commission find that Ms. Aldrich is not an affected person.

VI. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission find that Melissa Aldrich is not an affected person and deny her hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker,
Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



Harrison Cole Malley
Staff Attorney
Environmental Law Division
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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on January 14, 2022, the "Executive Director's Response to Hearing Request" for TCEQ Permit WQ0015940001 for Continental Homes of Texas LP and Ky-Tex Properties, LLC was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley

MAILING LIST
CONTINENTAL HOMES OF TEXAS LP AND KY-TEX PROPERTIES LLC
DOCKET NO. 2021-1621-MWD; PERMIT NO. WQ0015940001

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FOR THE CHIEF CLERK:
<https://www14.tceq.texas.gov/epic/eFiling/>

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REQUESTER(S)/INTERESTED PERSONS
See attached list

REQUESTER(S):

Melissa Aldrich
ADBF LLC
3739 Drummond Street
Houston, TX 77025

INTERESTED PERSON(S):

Anne Reid
10 Sandpiper Lane
Merrimack, NH 03054

Ted J. Schneider
BGE
4001 Prairie Ln
Trlr 4
Austin, TX 78728

Attachment A

CONTINENTAL HOMES OF TEXAS LP and KY-TEX PROPERTIES LLC

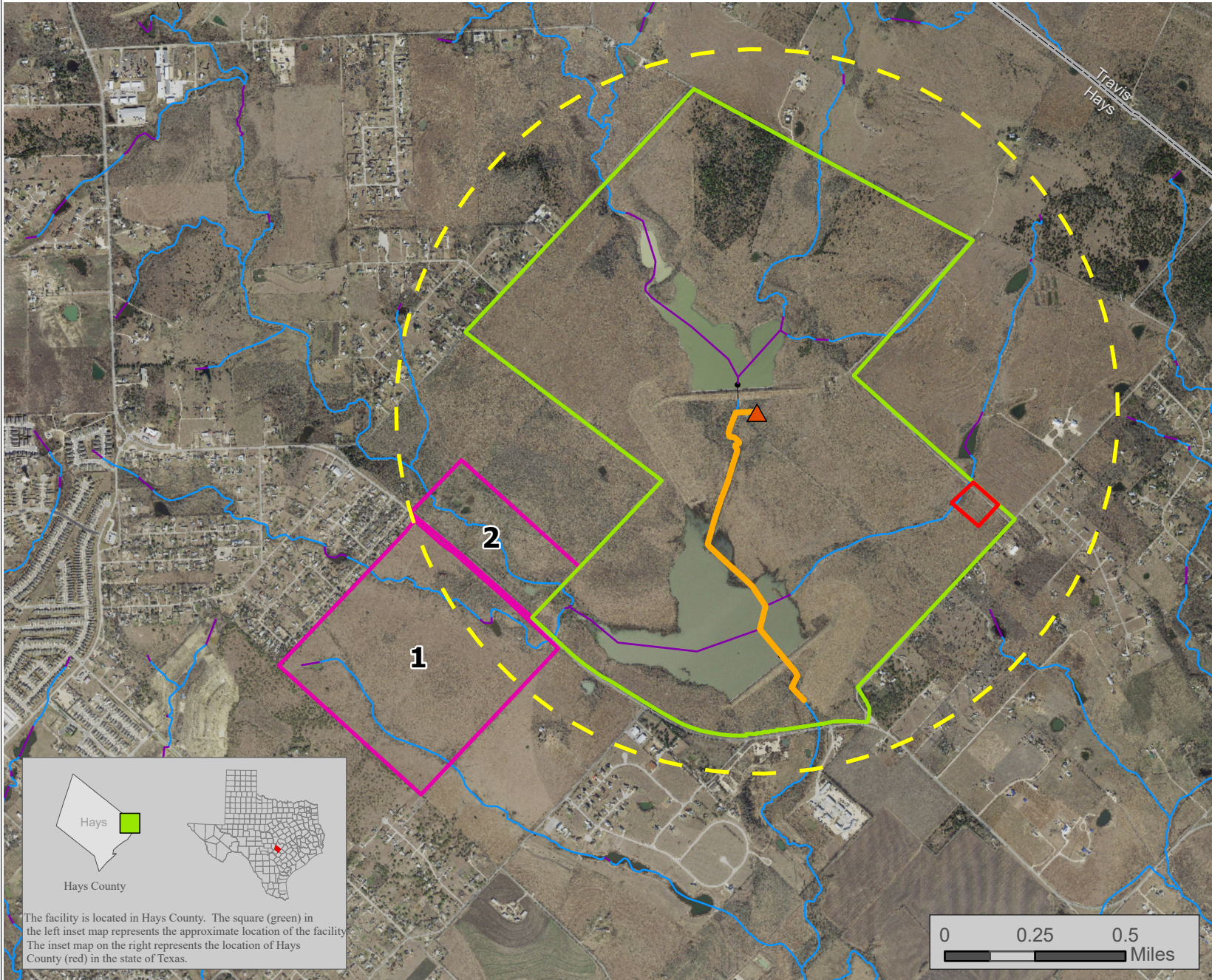
TPDES PERMIT NO. WQ0015940001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 12/21/2021
CRF 0060910
Cartographer: CHoddePi



- Outfall
- Discharge Route
- 1 Mile Radius
- Melissa Aldrich
- Facility Boundary
- WWTP Site

**Distance from Requestor
Properties to Outfall:**

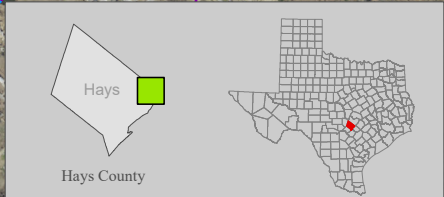
1. 0.84 miles
2. 0.65 miles

**Distance from Requestor
Properties to WWTP:**

1. 1.04 miles
2. 1.16 miles

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Hays County. The square (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Hays County (red) in the state of Texas.

