

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

July 18, 2022

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

Re: Application from Dalasu 686 LP for new TPDES Permit No. WQ0016004001,
TCEQ Docket No. 2022-0811-MWD

Dear Ms. Gharis:

I have enclosed the Executive Director's Response to Hearing Request. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing list

TCEQ Docket No. 2022-0811-MWD

Application from Dalasu 686 LP for new Texas Pollutant Discharge Elimination System Permit No. WQ0016004001 §
§
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§ **Before the Texas Commission on Environmental Quality**

Executive Director’s Response to Hearing Request

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request on Dalasu 686 LP’s application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016004001. TCEQ received a hearing request from Thomas M. Hill.

Attached for Commission consideration is a satellite map of the facility area (attachment A).

I. Facility Description

Dalasu 686 applied to TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day (gpd) in the Interim I phase, 480,000 gpd in the Interim II phase, and 720,000 gpd in the Final phase. The Cleveland Municipal Utility District No. 2 Wastewater Treatment Facility will be located approximately 2.06 miles southeast of Fostoria Road and Texas Highway 105 E and approximately 1.42 miles northeast of Fostoria Road and Morgan Cemetery Road, in Liberty County, Texas 77328. The treated effluent will be discharged to an unnamed tributary, thence to Red Gully, thence to East Fork San Jacinto River in Segment No. 1003 of the San Jacinto River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary and Red Gully. The designated uses for Segment No. 1003 are primary contact recreation, public water supply, and high aquatic life use.

II. Background

TCEQ received the application on May 25, 2021 and declared it administratively complete on August 24, 2021. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit was published on September 2, 2021 in *The Vindicator*. ED staff completed the technical review of the application on October 7, 2021 and prepared a draft permit. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was published on November 25, 2021 in *The Vindicator*. The public comment period ended on December 28, 2021. The ED filed its Response to Public Comment on March 4, 2022. The hearing request and request for reconsideration period ended on April 7, 2022.

III. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment and for the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests for applications filed on or after September 1, 2015. Because the application in this case was filed on May 25, 2021, it is subject to the House Bill 801 and Senate Bill 709 requirements. The Commission implemented both bills by adopting procedural rules in title 30, chapters 39, 50, and 55 of the Texas Administrative Code (30 Tex. Admin. Code chs. 39, 50, and 55).

(A) Response to Hearing Requests

"The ED, the public interest counsel, and the applicant may submit written responses to [hearing] requests"¹

According to 30 Tex. Admin. Code § 55.209(e), responses to hearing requests must specifically address the following:

- (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 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
- (7) A maximum expected duration for the contested case hearing

(B) Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. As noted in 30 Tex. Admin. Code § 55.201(c), "A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . , may not be based on an issue that was 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, and, for applications filed on or after September 1, 2015, must be based only on the requestor's timely comments."

According to section 55.201(d), a hearing request must substantially comply with the following:

¹ 30 TEX. ADMIN. CODE § 55.209(d) (West 2022).

- (1) Give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the requestor is 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 comments for the group or association.
- (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 they 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 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 and the factual basis of the dispute and list any disputed issues of law.
- (5) Provide any other information specified in the public notice of application.

(C) Requirement that the Requestor Be an Affected Person

To grant a contested case hearing, the Commission must determine that a requestor is an affected person. The factors to consider in making this determination are found in 30 Tex. Admin. Code § 55.203 as follows:

- (1) 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.
- (2) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (3) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (a) Whether the interest claimed is one protected by the law under which the application will be considered
 - (b) Distance restrictions or other limitations imposed by law on the affected interest
 - (c) Whether a reasonable relationship exists between the interest claimed and the activity regulated
 - (d) Likely impact of the regulated activity on the person's health, safety, and use of their property

- (e) Likely impact of the regulated activity on the person's use of the impacted natural resource
- (f) Whether the requestor timely submitted comments that were not withdrawn
- (g) For governmental entities, their statutory authority over or interest in the issues relevant to the application
- (h) The merits of the underlying application and supporting documentation in the TCEQ's administrative record, including whether the application meets the permit issuance requirements; the ED's analysis and opinions; and any other expert reports, affidavits, opinions, or data submitted by the ED, applicant, or requestor

(D) Referral to the State Office of Administrative Hearings (SOAH)

The rule at 30 Tex. Admin. Code § 50.115(b) details how the Commission refers a matter to SOAH: "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." Section 50.115(c) further states, "The commission may not refer an issue to 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, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request was granted; and (3) is relevant and material to the decision on the application."

IV. Hearing Request Analysis

(A) Hearing request failed to meet the section 55.201 requirements

Thomas M. Hill filed a timely hearing request and provided the required contact information. While his property was identified on the adjacent landowner map submitted in Dalasu 686's application, Mr. Hill did not describe the relationship between his property and the proposed facility or discharge. He also did not discuss why he believes he will be adversely affected by the proposed facility or discharge in a manner not in common with members of the general public; his hearing request only described general concerns about the proposed discharge. By failing to provide more specific information, the requestor has not demonstrated how he has a personal justiciable interest affected by the application. Therefore, his hearing request did not comply with section 55.201(d)(2) and should be denied.

V. Conclusion

Because Thomas M. Hill has not met the hearing request requirements, the ED recommends denying his hearing request.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Toby Baker, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division

By:  _____

Stefanie Skogen
Staff Attorney
Environmental Law Division
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Attachment A

Dalasu 686 LP

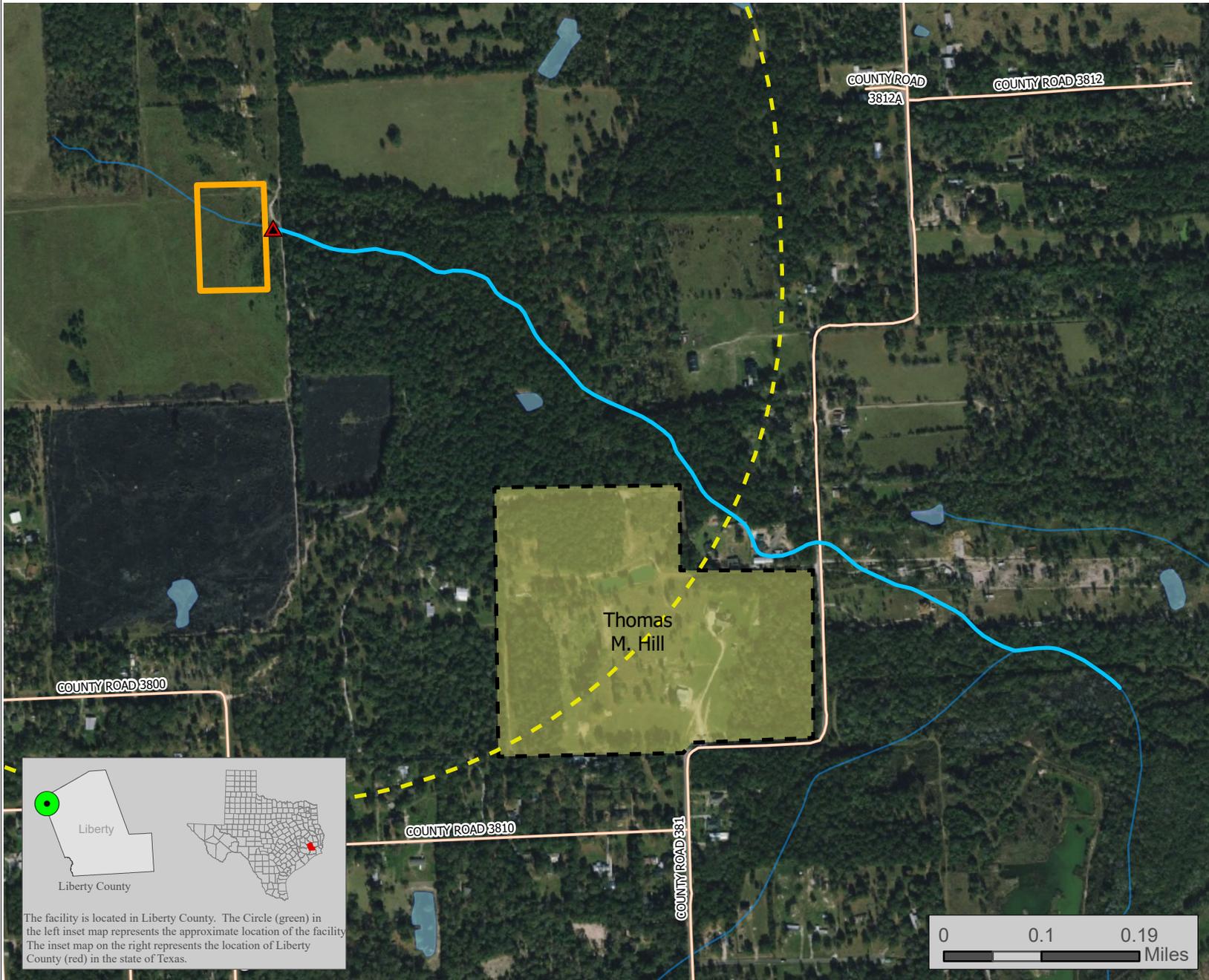
TPDES Permit No. WQ0016004001

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: 5/20/2022
CRF 0070280
Cartographer: cschrade



- Outfall
- 1 mi Discharge Route
- Facility Boundary
- Requestor
- 0.5 mi Radius

Thomas M. Hill is 0.33 mi from the outfall.



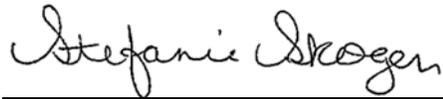
The facility is located in Liberty County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Liberty County (red) in the state of Texas.

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 both the applicant and 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.

Certificate of Service

I certify that on July 18, 2022, a copy of the foregoing document was sent by electronic or first class mail to the persons on the attached mailing list.

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen, Staff Attorney
Environmental Law Division

MAILING LIST
DALASU 686 LP
DOCKET NO. 2022-0811-MWD; PERMIT NO. WQ0016004001

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REQUESTER(S):

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INTERESTED PERSON(S):

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