

DOCKET NO. 2022-1701-MWD

**APPLICATION OF TWO
CREEKS CROSSING RESORT,
LLC FOR NEW TPDES PERMIT
NO. WQ0016056001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

APPLICANT’S RESPONSE TO HEARING REQUEST

Two Creeks Crossing Resort, LLC (the “Applicant”) files this Response to Hearing Request pursuant to 30 Tex. Admin. Code § 55.209 on the application by Two Creeks Crossing Resort, LLC for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016056001 (the “Application”). As discussed below, the Applicant asserts that the hearing request and request for rehearing should be denied.

I. Review Standard

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. 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. 30 TAC § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;
- distance restrictions or other limitations imposed by law on the affected interest;
- whether a reasonable relationship exists between the interest claimed and the activity regulated;
- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- likely impact of the regulated activity on use of the impacted natural resource by the person; and
- whether the requester timely submitted comments on the application which

were not withdrawn.

30 TAC § 55.203(c).

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided. 30 Tex. Admin. Code 55.201(d). The request must also substantially comply with the following:

- give the name, address, daytime telephone number, and where possible, fax number of the person who files the request;
- identify the person's 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 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 facility or activity in a manner not common to members of the general public;
- request a contested case hearing; and
- 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.

II. Evaluation of Hearing Request

On November 14, 2022, the Commission received a hearing request from Connie Griffin. That request was not timely. Pursuant to 30 Tex. Admin. Code § 55.201(d) any hearing request must be based on the requester's timely comments and must "list all relevant and material disputed issues of fact that were raised by the requestor during the comment period and that are the basis of the hearing request." 30 Tex. Admin. Code § 55.201(d)(4)(B).

The only input Ms. Griffin provided on the application prior to her hearing request was at the public meeting. That input consisted of a generalized, one-sentence statement that she was concerned about the facility but welcomed it to the neighborhood. Ms. Griffin's general statement did not raise any "relevant and material disputed issues of fact" during the comment period to rely on in submitting her hearing request. Accordingly, Ms. Griffin's hearing request was not timely presented and is therefore not a valid hearing request.

III. Evaluation of Request for Rehearing

The Commission received one request for rehearing, from Timothy L. Mansell, raising numerous concerns as set out in Mr. Mansell's request. Each of the concerns raised by Mr. Mansell were raised in comments on the application and were properly evaluated by the Commission as set forth and discussed in the Commission's Response to Comments. Mr. Mansell's request for rehearing did not identify any new issues that would support a reconsideration of the recommendation.

IV. Other Considerations

The Applicant asserts this matter should not be referred to SOAH for hearing because there is no hearing requestor that is an affected person. The Applicant provides the following responses addressing 30 Tex. Admin. Code § 55.209 to the extent the Commission decides to refer this case to SOAH.

- *which issues raised in the hearing request are disputed;*

The hearing request set forth in the letter of Ms. Griffin was not timely presented and is therefore not a valid hearing request. The Applicant does not believe there are any valid issues in dispute.

- *whether the dispute involves questions of fact or of law;*

The Applicant does not believe there are any disputed issues.

- *whether the issues were raised during the public comment period;*

The Applicant does not believe there are any disputed issues that were properly raised during the public comment period.

- *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 Executive Director's Response to Comment;*

The Applicant does not believe there are any disputed issues that were properly raised during the public comment period.

- *whether the issues are relevant and material to the decision on the application; and*

The Applicant does not believe there are any disputed issues that were properly raised during the public comment period.

- *a maximum expected duration for the contested case hearing.*

If the Commission decides to refer this case to SOAH, then the applicant recommends that the maximum duration of the hearing be 150 days.

V. Conclusion

The Applicant asserts that the hearing request set forth in the letter of Ms. Griffin was not timely presented and is therefore not a valid hearing request. The Applicant further asserts that the request for rehearing has no basis and should be denied. The Applicant therefore requests that the hearing request and the request for rehearing be denied and that a final permit be issued.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature above, I certify that on the 13th day of January, 2023 the foregoing document was serviced via first class mail and/or email to the parties of record in the docket.