

DOCKET NO. 2022-1701-MWD

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

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Two Creeks Crossing Resort, LLC (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016056001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Connie Griffin.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

Two Creeks Crossing Resort, LLC, P.O. Box 1345, Montgomery, Texas 77356, has applied to the TCEQ for new TPDES Permit No. WQ0016056001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The proposed wastewater treatment facility will serve the Two Creek Crossings RV Resort Park.

The plant site will be located at 1581 Triple Creek Loop, in Polk County, Texas 77351. The Two Creeks Crossing Resort Wastewater Treatment Facility will be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim phase will include a onsite lift station, bar screen, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. Treatment units in the Final phase will include an onsite lift station, bar screen, three aeration basins, two final clarifiers, three sludge digesters, and two chlorine contact chambers.

The effluent limitations in the Interim phase of the draft permit, based on a 30 day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The effluent limitations in the Final phase of the draft permit, based on a 30 day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 3 mg/l NH₃-N, 126 CFU or MPN of *E. coli*, and 4.0 mg/l minimum DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total 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 directly to the Rocky Creek arm of Lake

Livingston in Segment No. 0803 of the Trinity River Basin. The designated uses for Segment No. 0803 are primary contact recreation, public water supply, and high aquatic life use.

III. Procedural Background

The permit application for a new permit was received on October 15, 2021, and declared administratively complete on December 10, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Polk County Enterprise* on December 16, 2021. ED staff completed the technical review of the application on February 9, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English in the *Polk County Enterprise* on March 27, 2022. The public comment period ended on August 22, 2022.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

IV. The Evaluation Process for Hearing Requests

House Bill 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. Senate Bill 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 Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were 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;
- whether the issues are relevant and material to the decision on the application;
- and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

In order 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 Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, 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;

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;

request a contested case hearing; and

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 Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. 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. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, 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;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

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." 30 TAC § 50.115(b). 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;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director 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 Hearing Requests Complied with Section 55.201(c) and (d).**

Connie Griffin submitted a timely hearing request and provided the correct contact information. She identified herself as a person with what she believed to be personal justiciable interests affected by the application. However, Connie Griffin did not raise the issues that are the basis of her hearing request in a timely comment as required by 30 TAC §55.201(d). Therefore, the hearing request of Connie Griffin did not comply with the rules applicable to submitting a hearing request and should be denied.

The Executive Director recommends the Commission find that Connie Griffin is not an affected person.

B. **Whether Issues Raised Are Referable to SOAH for a Contested Case.**

The ED does not recommend referring any issues to SOAH.

VI. Analysis of Request for Reconsideration

The Chief Clerk received a timely Request for Reconsideration (RFR) from Timothy L. Mansell. As required by 30 Texas Administrative Code § 55.201(e), Timothy L. Mansell gave his request in writing, and provided his name, address, and daytime telephone number. Mr. Mansell specifically requested reconsideration of the ED's decision on the Two Creeks Crossing Resort, LLC's application.

The issues brought up by Timothy L. Mansell included impact of the WWTP on Rocky Creek (RTC Response Nos. 1 and 13), well water contamination (RTC Response No. 3), destruction of vegetation (RTC Response No. 10), property devaluation (RTC Response No. 23), odor (RTC Response No. 20), harm to wildlife (RTC Response No. 9), impact on recreational activities such as water sports and fishing (RTC Response No. 1), human health (RTC Response Nos. 2 and 7), destruction of the environment (RTC Response No. 10), and impact on the tranquility of the neighborhood (RTC Response No. 26). These issues, to the extent they are within the Commission's jurisdiction to consider on a TPDES application, were considered during the ED's review of the application and have been addressed in the RTC. The RFR did not provide any new information that would lead the ED to change his recommendation on the application, therefore, the ED recommends denial of the RFR.

VII. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Connie Griffin is not an affected person and deny her hearing request.

Deny Timothy L. Mansell's request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services



Aubrey Pawelka, Staff Attorney
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-0622
REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on January 12, 2023, the "Executive Director's Response to Hearing Request" for new TPDES Permit No. WQ0016056001 by Two Creeks Crossing Resort, 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.



Aubrey Pawelka, Staff Attorney
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-0622

Two Creeks Crossing Resort, LLC WQ0016056001

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

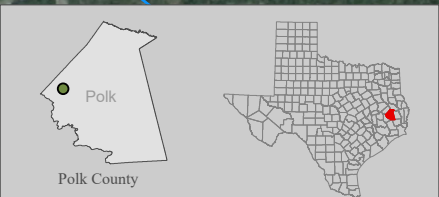
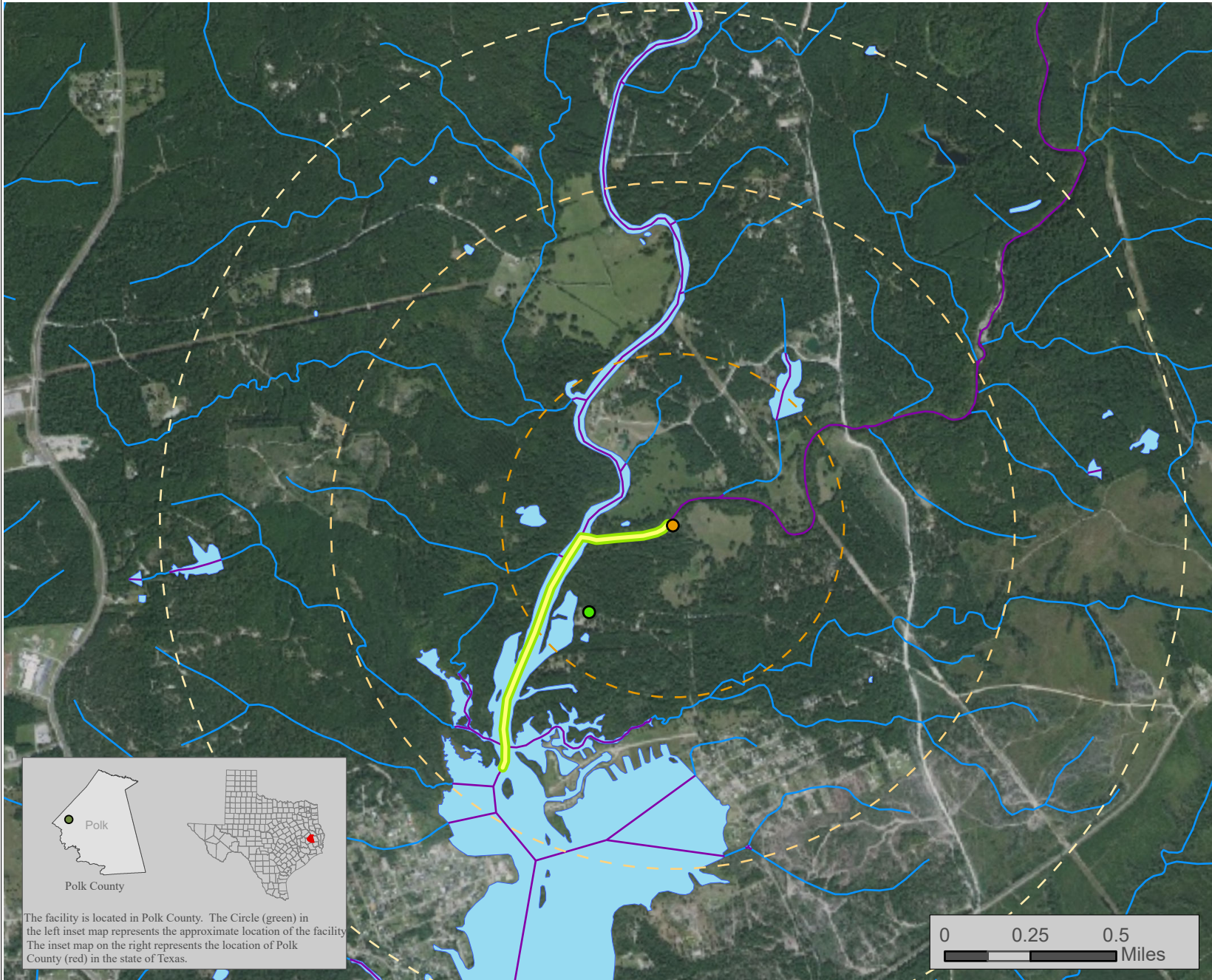


*Protecting Texas by
Reducing and
Preventing Pollution*

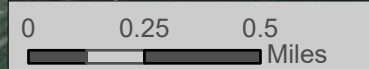
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 11/28/2022
CRF 0081065
Cartographer: jbartlin



- Facility
- Connie Griffin
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius
- 1 Mile Trace Downstream



The facility is located in Polk 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 Polk 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 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.

MAILING LIST
TWO CREEKS CROSSING RESORT, LLC
DOCKET NO. 2022-1701-MWD; PERMIT NO. WQ0016056001

FOR THE APPLICANT
via electronic mail:

John Payne, Member
Two Creeks Crossing Resort, LLC
P.O. Box 1345
Montgomery, Texas 77356
Tel: (936) 588-2071
crosspartnersdev@gmail.com

Ryan Byrd, Project Manager
Ward, Getz, & Associates
2500 Tanglewilde Street, Suite 120
Houston, Texas 77063
Tel: (713) 489-9568
rbyrd@wga-llp.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0622
aubrey.pawelka@tceq.texas.gov

Deba Dutta, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 3087
Austin, Texas 78711
Tel: (512) 239-4608
Fax: (512) 239-4430
deba.dutta@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
garrett.arthur@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION
via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311
www.tceq.texas.gov/goto/efilings

REQUESTER(S)/INTERESTED PERSON(S):

See attached list

REQUESTER(S)

Connie Griffin
280 Broken Arrow Marina
Livingston, TX 77351-6871

Timothy Lamar Mansell
20619 Atascocita Shores Dr
Humble, TX 77346-1625

INTERESTED PERSON(S)

Howard Christian
607 Park Knoll Ln
Katy, TX 77450-2505

Penny Evans
PO Box 34
Corrigan, TX 75939-0034

Patrick Griffin
280 Broken Arrow Marina
Livingston, TX 77351-6871

Elizabeth Miller Grindstaff
4429 Lucabella Ln
Leander, TX 78641-4252

Elizabeth Grindstaff
2000 Arcady Ln
Corsicana, TX 75110-2684

Dennis R Hamlin
116 High Dr
Pointblank, TX 77364-6834

Cathy Ivy
6811 Preston Grove Dr
Spring, TX 77389-1416

David Wayne Ivy
6811 Preston Grove Dr
Spring, TX 77389-1416

Eric Johansson
24609 Belvon Valley Ln
Porter, TX 77365-5744

Duke Jones
1879 Triple Creek Loop
Livingston, TX 77351-5135

Jessica Jones
1879 Triple Creek Loop
Livingston, TX 77351-5135

Thomas W Miller
7721 La Sobrina Dr
Dallas, TX 75248-3136

Edwin Seda
664 Twin Creeks Dr
Livingston, TX 77351-4590

Shella Seda
664 Twin Creeks Dr
Livingston, TX 77351-4590

Garry Tarpley
550 Twin Creeks Dr
Livingston, TX 77351-1960

Peter Tippit
498 Twin Creeks Dr
Livingston, TX 77351-2399

Ronnie Vincent
Polk County Commissioner Precinct 2
PO Box 1388
Onalaska, TX 77360-1388

John Rick Williams
110 Mayfield Dr
Montgomery, TX 77316-1656

Laura Williams
110 Mayfield Dr
Montgomery, TX 77316-1656

Marty Williams
5481 Us Highway 190 W
Livingston, TX 77351-1628