

DOCKET NO. 2023-0324-MWD

APPLICATION BY
GREEN RAINDROPS
FOR NEW TPDES PERMIT
NO. WQ0016089001

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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 Green Raindrops, Inc. (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016089001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Ricky L. Collins.

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

II. Description of Facility

Green Raindrops, Inc. applied for a new Permit No. WQ0016089001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 9,900 gallons per day. The proposed wastewater treatment facility will serve Magnolia RV Resort.

The Magnolia RV Resort Wastewater Treatment Facility will be an activated sludge process plant operated in the conventional mode. Treatment units will include an aeration basin, a final clarifier, a chlorine contact chamber, and a sludge holding tank. The effluent limitations in 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. 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).

III. Procedural Background

TCEQ received the application on January 10, 2022, and declared it administratively complete on March 16, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Brazoria County Bulletin* on July 5, 2022. The application was determined technically complete on May 4, 2022. The Notice of Application and Preliminary Decision (NAPD) was published in the *Brazoria County Bulletin* on September 13, 2022. The comment period closed on October 13, 2022.

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 Chapters 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.

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 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;

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 the Request

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 Request Complied with Section 55.201(c) and (d).

Ricky L. Collins submitted a timely hearing request that raised issues presented during the public comment period that have not been withdrawn. He provided his name, address, email address, and requested a public hearing. He identified himself as a person with what he believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided a list of

disputed issues of fact raised during the public comment period. Therefore, the Executive Director concludes that the hearing request of Ricky L. Collins substantially complies with the section 55.201(c) and (d) requirements.

Ricky L. Collins

According to the information provided by Ricky L. Collins, his property is less than 100 feet from the proposed facility. His property is also listed on the affected landowners list. He raises concerns about the lake near his house which is used by fish, wildlife, and for recreational swimming, contamination resulting from inclement weather, and proximity to the City of Pearland WWTP and American Canal. Mr. Collins' concern regarding contamination of his pond resulting from accidents or spills at the facility is an issue that is protected by the law under which the application will be considered and is referable. Based on the location of his property and the issues he raises, Mr. Collins has demonstrated that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is, therefore, an affected person.

The Executive Director recommends the Commission find that Ricky L. Collins is an affected person.

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

The Executive Director analyzed the issues raised in the hearing request she has recommended granting in accordance with the regulatory criteria and provides the following recommendations regarding whether the issues can be referred to SOAH if the Commission grants the hearing requests. All issues were raised during the public comment period, and none of the issues were withdrawn. All identified issues are considered disputed unless otherwise noted.

1. Whether the draft permit includes adequate provisions to protect against contamination resulting from accidents or spills at the facility. (RTC Response Nos. 2 and 4)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect from accidental spills and leaks, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

2. Whether the draft permit is protective of aquatic and animal life. (RTC Response No. 3)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect aquatic and animal life, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

3. The location of the proposed facility. (RTC Response No. 2)

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ does not have jurisdiction over facility location. The Executive Director does NOT recommend referring this issue to SOAH.

VI. 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.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Ricky L. Collins as an affected person and grant his hearing request;

Refer the following issues to SOAH:

Issue 1. Whether the draft permit includes adequate provisions to protect against contamination resulting from accidents or spills at the facility.

Issue 2. Whether the draft permit is protective of aquatic and animal life.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on March 20, 2023, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0016089001 by Green Raindrops, Inc. 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.



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TCEQ Docket No. 2023-0324-MWD; TPDES Permit No. WQ0016089001

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Attachment A

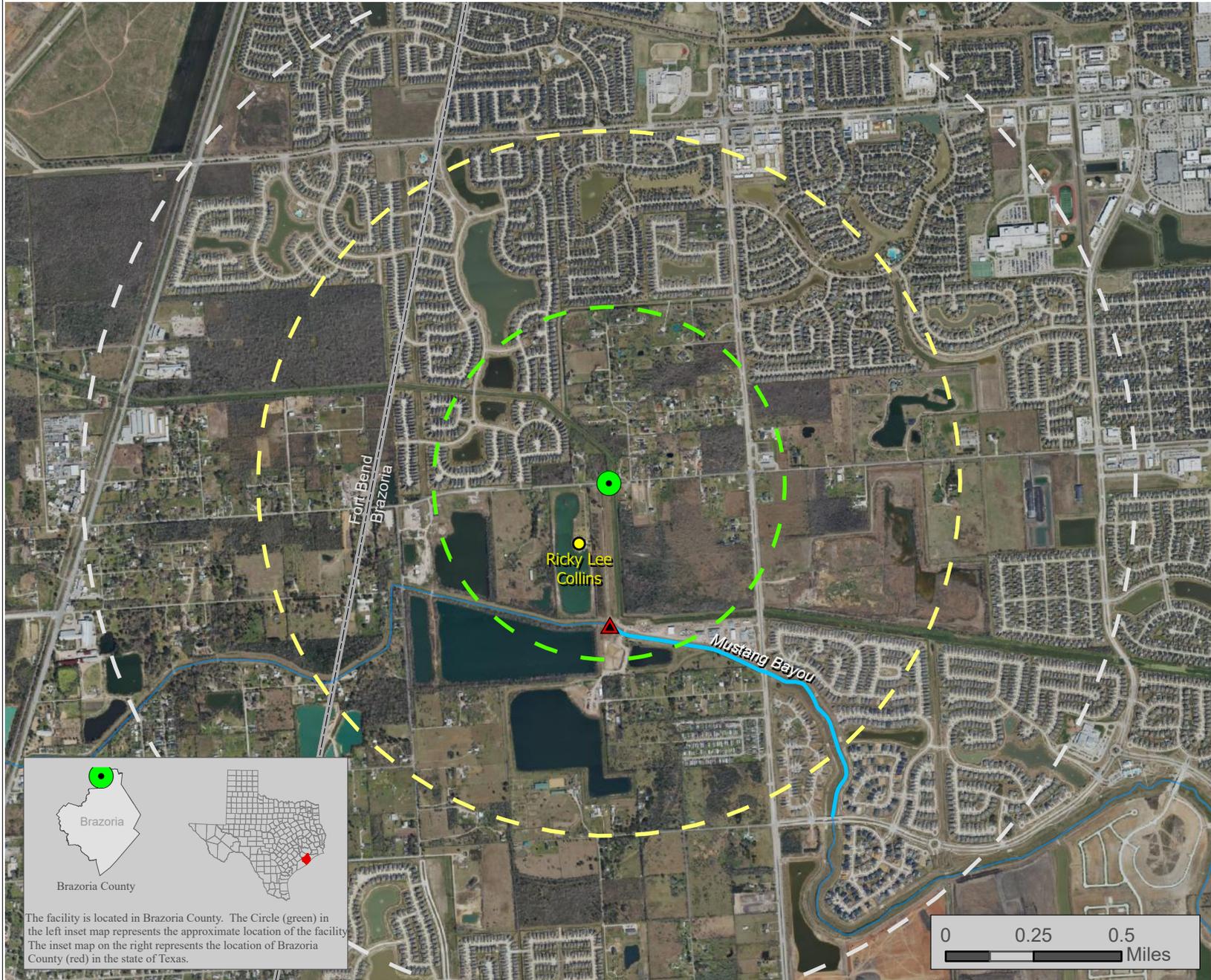
Green Raindrops, Inc. (WQ0016089001)

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



Protecting Texas by
Reducing and
Preventing Pollution

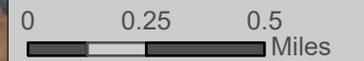
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/13/2023
CRF 0082755
Cartographer: cschrade



- Requestor
- Facility
- 0.5 mi Radius
- 1.0 mi Radius
- 1.5 mi Radius
- Outfall
- 1 mi Discharge Route



The facility is located in Brazoria 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 Brazoria 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.