

DOCKET NO. 2023-0530-MWD

APPLICATION BY
BUCK CREEK WWTP, LLC
FOR NEW TPDES PERMIT
NO. WQ0016189001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 Buck Creek WWTP, LLC (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016189001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Dale Connor, Shelby Garner, Jody Garner, Dale Rogers, Evelyn Heller, and Kimberly Lane.

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

II. Description of Facility

Buck Creek WWTP, LLC, 502 Bristol Drive, Allen, Texas 75013, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016189001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 999,000 gallons per day. The proposed wastewater treatment facility will serve the proposed Buck Creek subdivision in Grayson County, Texas.

The Buck Creek Wastewater Treatment Facility will be a Membrane Bioreactor (MBR) activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase will include a lift station, an equalization basin, two fine screens, an anoxic basin, an aeration basin, a membrane basin, a belt filter press, and two ultraviolet light (UV) disinfection systems. Treatment units in the Interim II phase will include a lift station, two equalization basins, two fine screens, two anoxic basins, two aeration basins, two membrane basins, a belt filter press, and four UV disinfection systems. Treatment units in the Final phase will include a lift station, three equalization basins, four fine screens, three anoxic basins, three aeration basins, three membrane basins, two belt filter presses, and eight UV disinfection systems.

The effluent limitations in the Interim I phase of the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand (CBOD5), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH3-N), 1.0 mg/l total phosphorus, 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*), and 4.0 mg/l minimum dissolved oxygen (DO). The permittee shall utilize an UV system for disinfection purposes and shall not exceed a daily average *E. coli* 126 CFU or MPN per 100 ml.

The effluent limitations in the Interim II and Final phases of the draft permit, based on a 30-day average, are 5 mg/l CBOD5, 5 mg/l TSS, 2 mg/l NH3-N, 1.0 mg/l total phosphorus, 126 CFU or MPN of *E. coli*, and 5.0 mg/l minimum DO. The permittee

shall utilize an UV system for disinfection purposes, and shall not exceed a daily average E. coli 126 CFU or MPN per 100 ml.

The treated effluent will be discharged to an unnamed tributary, thence to Buck Creek, thence to Ray Roberts Lake in Segment No. 0840 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and high aquatic life use for Buck Creek. The designated uses for Segment No. 0840 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 July 11, 2022, and declared administratively complete on August 2, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Herald Democrat* on August 7, 2022. ED staff completed the technical review of the application on September 28, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) and public meeting was published in English in the *Herald Democrat* on November 25, 2022. A public meeting was held on January 5, 2023. The public comment period ended on January 5, 2023.

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 requests to determine whether they comply with Commission rules, if the requestors qualify 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).**

Dale Connor, Jody Garner, and Shelby Garner submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their name, address, email address, and requested a public hearing. They identified themselves as persons with what they 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 requests of Dale Connor, Jody Garner, and Shelby Garner substantially comply with the section 55.201(c) and (d) requirements.

Dale Rogers, Evelyn Heller, and Kimberly Lane submitted timely hearing requests and provided the correct contact information. However, Mr. Rogers, Ms. Heller, and Ms. Lane did not demonstrate, based on their location, how they would be adversely affected by the facility in a manner not common to members of the general public as required by 30 TAC 30 TAC §55.201(d).

Dale E. Connor

According to the information provided by Dale Connor, he lives approximately 1 mile from the facility. Additionally, Mr. Connor is listed on the downstream landowner map. He raised concerns regarding notice issues, location, vectors, harm to wildlife, contamination of the aquifer and drinking water, contamination of the lake, odor, and quality of life. Mr. Connor's concerns about water contamination, vectors, notice, harm to wildlife, and odor are protected by the law under which the application will be considered and, thus, are referable. Therefore, Mr. Connor 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 an affected person.

The Executive Director recommends the Commission find that Dale E. Connor is an affected person.

Shelby Garner and Jody Garner

According to the information provided by Shelby and Jody Garner, they live 0.66 miles from the proposed facility. Shelby and Jody Garner are not listed on the downstream landowner map. They raised concerns about human health, property values, harm to wildlife, destruction to terrain, contamination of water, and odor. Shelby and Jody Garner's concerns about human health, water quality, harm to wildlife,

and odor are protected by the law under which the application will be considered and, thus, are referable. Therefore, Shelby and Jody Garner have 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 are affected persons.

The Executive Director recommends the Commission find that Shelby Garner and Jody Garner are affected persons.

Evelyn S. Heller

According to the information provided by Evelyn Heller, she lives 0.78 miles from the proposed facility. Ms. Heller is not listed on the affected landowner list. She raised concerns about contamination of Lake Ray Roberts, property values, facility location, and notice. Based on her location, Ms. Heller's concern about lake contamination is an interest common to the general public. The other concerns raised in her request are outside of the scope of what the Commission may consider as part of the review of this application. Therefore, the ED recommends denial of her hearing request.

The Executive Director recommends the Commission find that Evelyn S. Heller is not an affected person.

Kimberly Lane

According to the information provided by Kimberly Lane, her property is located approximately 0.48 miles from the proposed facility. Ms. Lane is not listed on the downstream landowner map. She raised concerns about aquifer contamination, lake contamination, and harm to wildlife. Ms. Lane's concerns about aquifer and lake contamination are common to the general public. Additionally, due to her lack of proximity to the discharge route, Ms. Lane's request does not establish how she qualifies as an affected person with respect to the other issues she raised. Therefore, the ED recommends denial of her hearing request.

The Executive Director recommends the Commission find Kimberly Lane is not an affected person.

Dale Rogers

Mr. Rogers did not demonstrate how he is affected based on his location as the address he listed in his hearing request is approximately 13.07 miles from the proposed facility site. He neither raised any issues as the basis of his hearing request, nor demonstrated that he is affected in a manner not common to the general public. Thus, the ED recommends denial of his hearing request.

The Executive Director recommends the Commission find that Dale Rogers is not an affected person.

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

The following issues were raised during the public comment period.

- 1. Whether the draft permit is adequately protective of water quality and the receiving waters including the protection of wildlife in accordance with**

applicable regulations including the Texas Surface Water Quality Standards. (RTC Response Nos. 3-5, 9).

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 water quality, 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 adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 10).

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 is not drafted to reduce nuisance odor, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

3. Whether the draft permit is protective of human health and residents in the immediate vicinity of the proposed facility and the immediate discharge route. (RTC Response No. 6).

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 is not drafted to be protective of human health, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

4. Whether the draft permit is protective of animal life. (RTC Response No. 9).

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 is not drafted to be protective of animal life, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

5. Whether the draft permit complies with TCEQ's rules regarding vectors. (RTC Response No. 16).

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 would result in issues regarding control of vectors, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

6. Whether the Applicant complied with TCEQ's notice requirements. (RTC Response No. 18).

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 Applicant did not comply with the notice requirements, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

7. Whether there is a better location for the facility. (RTC Response No. 14).

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ's jurisdiction is limited to protecting water quality and controlling the discharge of pollutants. The Executive Director does NOT recommend referring this issue to SOAH.

8. Whether the draft permit will impact quality of life. (RTC Response No. 17).

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ's jurisdiction is limited to protecting water quality and controlling the discharge of pollutants. The Executive Director does NOT recommend referring this issue to SOAH.

9. Whether the draft permit will impact property values. (RTC Response No. 15).

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 property values. The Executive Director does NOT recommend referring this issue to SOAH.

10. Whether the draft permit will contribute to destruction of terrain. (RTC Response Nos. 12, 17).

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 to consider this issue. 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 Dale Connor, Shelby Garner, and Jody Garner as affected persons and grant their hearing requests.

Find Dale Rogers, Evelyn Heller, and Kimberly Lane not affected persons and deny their hearing requests.

Respectfully submitted,

Texas Commission on Environmental Quality

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Interim Executive Director

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on May 8, 2023, the “Executive Director’s Response to Hearing Requests” for new Texas Pollutant Discharge Elimination System (TPDES) No. WQ0016189001 by Buck Creek WWTP, 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.



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TCEQ Docket No. 2023-0530-MWD; Permit No. WQ0016189001

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REQUESTER(S)/INTERESTED PERSON(S):

See attached list.

REQUESTER(S)

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Jody K Garner
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Tioga, TX 76271-3301

Dr. Shelby L & Jody Garner
387 Scoggins Rd
Tioga, TX 76271-3301

Evelyn S Heller
271 Scoggins Rd
Tioga, TX 76271-3300

Kimberly Lane
520 Baker Rd
Pilot Point, TX 76258-3134

Dale Lee Rodgers
405 Stableford St
Celina, TX 75009-0467

PUBLIC OFFICIALS - INTERESTED
PERSON(S)

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State Representative, Texas House of
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The Honorable Reggie Smith
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PO Box 2910
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INTERESTED PERSON(S)

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Pilot Point, TX 76258-9448

James & Mary Nell Rodgers
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Whitesboro, TX 76273-7591

Pamela Smothermon
1475 Buck Creek Rd
Tioga, TX 76271-3131

Attachment A

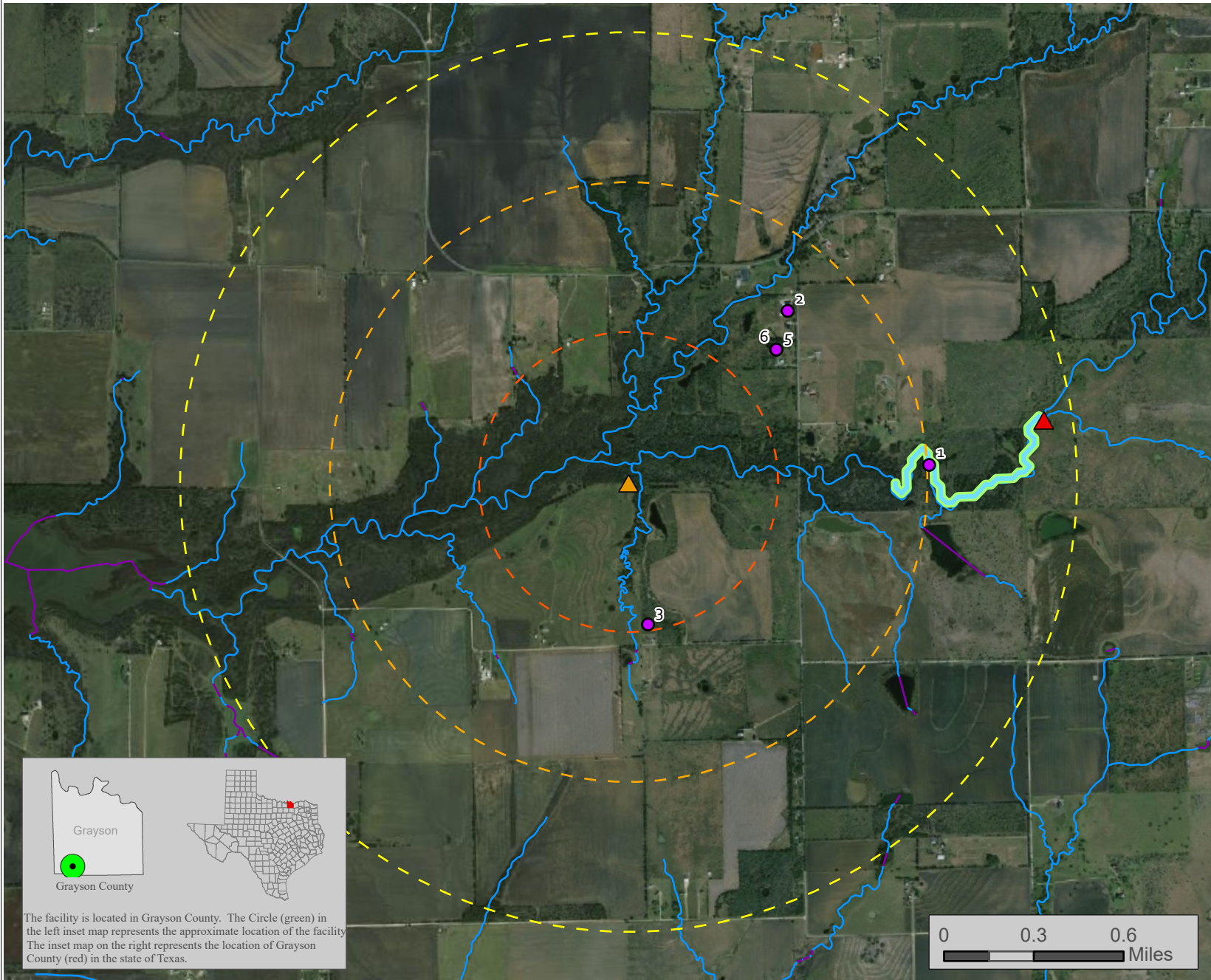
Buck Creek WWTP, LLC (WQ0016189001)

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: 5/1/2023
CRF 0086179
Cartographer: jbartlin



- Facility
- Requestors
- Outfall
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 1.0 Mile Discharge

Distance in Miles to Requestors

Name	Distance	Number
Dale Connor	1.01	1
Evelyn Heller	0.78	2
Kimberly Lane	0.48	3
Dale Rodgers	13.07	4
Shelby Garner	0.66	5
Jody Garner	0.66	6

*Dale Rodgers (4) not shown on map
due to distance from facility.*

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 Grayson 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 Grayson County (red) in the state of Texas.

