

TCEQ DOCKET NO. 2023-0557- MWD

APPLICATION BY CITY OF ENNIS	§	BEFORE THE TEXAS
FOR TPDES	§	COMMISSION ON
PERMIT NO. WQ0010443002	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Request (Response) on the application by the City of Ennis for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010443002 and on the Executive Director's preliminary decision. The Office of the Chief Clerk received a hearing request from Ron J. Leighton.

Attached for Commission consideration is the Executive Director's satellite map.

I. Description of Facility

The City of Ennis applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of the existing permit to authorize adding Outfall 002 to the permit. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The existing wastewater treatment facility serves the City of Ennis, surrounding areas, and the City of Garret and the City of Alma.

The Oak Grove Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include two mechanical bar screens with washer compactor, one influent wet well, four primary clarifiers, four aeration basins, three secondary clarifiers, a sludge thickener, an aerobic sludge digester, sludge dewatering, sludge drying beds, two chlorine contact chambers, and one dechlorination chamber. The facility is currently operating in the Interim phase.

Sludge generated from the treatment facility is hauled by a registered transporter and disposed of at a TCEQ-permitted landfill, Ellis County Landfill, Permit No. 1745B, in Ellis County. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

The plant site is located at 401 West Plant Road, Ennis, in Ellis County, Texas 75119. The treated effluent is discharged to via Outfall 001 to Cummins Creek, thence

to Chambers Creek Above Richland-Chamber Reservoir in Segment 0814 of the Trinity River Basin; and via proposed Outfall 002 and pipe to an unnamed tributary, thence to Bardwell Reservoir in Segment No. 0815 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for Cummins Creek and minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 0815 are primary contact recreation, public water supply, and high aquatic life use.

The draft permit includes the following proposed effluent limitations and monitoring requirements. Flows are expressed in million gallons per day (MGD).

A. Interim Phase – Outfalls 001 and 002:

The annual average flow of effluent shall not exceed 3.1 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 5,764 gallons per minute (gpm). The combined annual average flow of effluent via Outfalls 001 and 002 shall not exceed 3.1 MGD.

Parameter	30-Day Average		7-Day Average	Daily Maximum
	mg/l	lbs/day	mg/l	mg/l
CBOD ₅	7	181*	12	22
TSS	15	388*	25	40
NH ₃ -N	2	52*	5	10
TDS**	Report	Report	N/A	Report
Chloride**	Report	Report	N/A	Report
DO (minimum)	6.0	N/A	N/A	N/A
<i>E. coli</i> , CFU or MPN per 100 ml	126	N/A	N/A	399

*The combined 30-day average lbs/day effluent limit for Outfalls 001 and 002.

**Applicable only to discharges made via Outfall 001.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week by grab sample. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and shall be monitored daily by grab sample. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual and shall monitor total chlorine residual daily by grab sample after the dechlorination process. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

B. Final Phase Effluent Limitations And Monitoring Requirements – Outfalls 001 And 002

The annual average flow of effluent shall not exceed 4.0 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 5,764 gpm. The combined annual average flow of effluent via Outfalls 001 and 002 shall not exceed 4.0 MGD.

Parameter	30-Day Average		7-Day Average	Daily Maximum
	mg/l	lbs/day	mg/l	mg/l
CBOD ₅	5	167*	10	20
TSS	12	400*	20	40
NH ₃ -N	2	67*	5	10
TDS**	Report	Report	N/A	Report
Chloride**	Report	Report	N/A	Report
DO (minimum)	6.0	N/A	N/A	N/A
<i>E. coli</i> , CFU or MPN/100 ml	126	N/A	N/A	399

*The combined 30-day average lbs/day limit for Outfalls 001 and 002.

**Applicable only to discharges made via Outfall 001.

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week by grab sample. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and shall be monitored daily by grab sample. The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual and shall monitor total chlorine residual daily by grab sample after the dechlorination process. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

The draft permit also includes pretreatment requirements based on TPDES regulations contained in 30 TAC Chapter 315 which references 40 CFR Part 403, General Pretreatment Regulations for Existing and New Sources of Pollution [rev. *Federal Register/ Vol. 70/ No. 198/ Friday, October 14, 2005/ Rules and Regulations, pages 60134-60798*]. The City of Ennis has a pretreatment program which was approved by the U.S. Environmental Protection Agency (EPA) on December 1, 1983, and modified on December 4, 1992, December 22, 2011, and on July 29, 2020,

(nonsubstantial Streamlining Rule). The draft permit also includes freshwater chronic and acute biomonitoring requirements.

II. Procedural Background

TCEQ received the application for a major amendment with renewal on July 29, 2021, and declared it administratively complete on November 24, 2021. The City of Ennis published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on December 5, 2021, in *The Ennis News* and in Spanish on December 14, 2021, in *La Prensa Comunidad*. The application was determined technically complete on June 23, 2022. The City of Ennis published the Notice of Application and Preliminary Decision (NAPD) in English on July 17, 2022, in *The Ennis News* and in Spanish on July 26, 2022, in *La Prensa Comunidad*. The comment period for this application closed on August 25, 2022. The Application and draft permit have been available at the City of Ennis Public Works Complex in Ennis, Texas. The Executive Director's Response to Comments was mailed on October 13, 2022; the hearing request/request for reconsideration period ended on November 14, 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 Chapter 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.

III. 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 a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of 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 Executive Director 's RTC;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 AC § 55.209(e)

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 requester prior to the filing of the Executive Director 's RTC. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) 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;

- 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 he or she 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 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
- 5) 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.

- a) 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.
- b) 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.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - 1) whether the interest claimed is one protected by the law under which the application will be considered;

- 2) distance restrictions or other limitations imposed by law on the affected interest;
 - 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - 5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - 6) whether the requestor timely submitted comments on the application which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- d) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
- 1) 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;
 - 2) the analysis and opinions of the executive director; and
 - 3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203

D. Referral to the State Office of Administrative Hearings (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.” 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:

- 1) involves a disputed question of fact or a mixed question of law and fact;

- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

IV. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §§ 55.201 (c) and (d)

The Executive Director received timely hearing a request in writing from Ron J. Leighton. Mr. Leighton provided his name and address, however he did not identify his personal justiciable interest affected by the application.

The Executive Director concludes that Ron J. Leighton's hearing requests complies with 30 TAC § 55.201(c), however his hearing request does not comply with 30 TAC § 55.201(d)

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

Mr. Leighton did not raise any issues. Mr. Leighton only requested a "public hearing." Therefore, the ED does not recommend the referral of any issues for this application.

V. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends the duration of the hearing be 120 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VI. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission deny the hearing request.
2. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 2, 2023, the original of the “Executive Director’s Response to Hearing Requests” for TPDES Permit No. WQ0010443002 for the City of Ennis, 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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City of Ennis
TCEQ Docket No. 2023-0557-MWD; Permit No. WQ0010443002

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REQUESTER(S)/INTERESTED PERSON(S)

Please see next page

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Attachment A

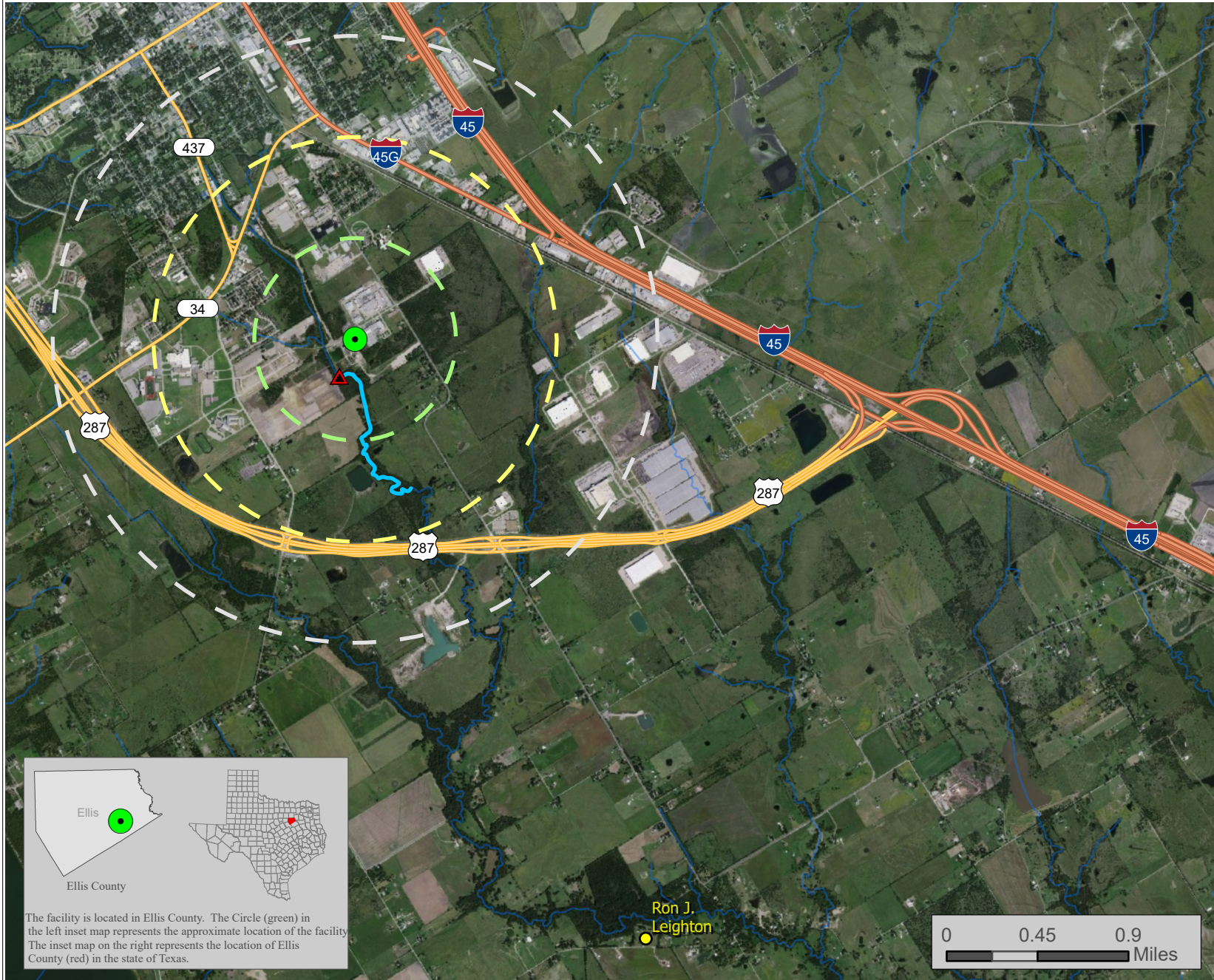
City of Ennis - WQ0010443002

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

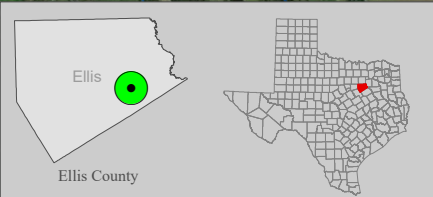


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
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Date: 1/13/2023
CRF 0082859
Cartographer: cschrade



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



The facility is located in Ellis 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 Ellis 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.