

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 14, 2023

TO: All interested persons.

RE: Venetian 141 Swisher, LLC  
TPDES Permit No. WQ0016165001

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov). A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Melissa Public Library, 3411 Barker Avenue, Melissa, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

### **How to Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

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P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • [tceq.texas.gov](http://tceq.texas.gov)

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printed on recycled paper

- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
  - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
  - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

### **How to Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html) or by mail to the following address:

Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis  
Chief Clerk

LG/erg

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**  
**for**  
**Venetian 141 Swisher, LLC**  
**TPDES Permit No. WQ0016165001**

The Executive Director has made the Response to Public Comment (RTC) for the application by Venetian 141 Swisher, LLC for TPDES Permit No. WQ0016165001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016165001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov).

**Additional Information**

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Melissa Public Library, 3411 Barker Avenue, Melissa, Texas.

MAILING LIST  
for  
Venetian 141 Swisher, LLC  
TPDES Permit No. WQ0016165001

FOR THE APPLICANT:

Zach Ipour, Owner  
Venetian 141 Swisher, LLC  
2101 Cedar Springs Road, Suite 700  
Dallas, Texas 75201

Jonathan Nguyen, Permit Specialist  
Quiddity Engineering  
3100 Alvin Devane Boulevard, Suite 150  
Austin, Texas 78741

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

Kathy Humphreys, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Deba Dutta, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL  
via electronic mail:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK  
via electronic mail:

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

CARPER , JILANE  
COLLIN COUNTY SOIL & WATER CONSERVATION  
DISTRICT 535  
STE 100  
1404 N MCDONALD ST  
MCKINNEY TX 75071-1845

HUFF , JOHN SCOTT  
15 DENNIS DR  
CLIFTON PARK NY 12065-6040

KALISEK , LAUREN J  
LLOYD GOSSELINK ROCHELLE & TOWNSEND PC  
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12130 BLOOMING WILLOW DR  
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WESTON TX 75097-0220

WILKERSON , YVETTE  
LLOYD GOSSELINK  
STE 1900  
816 CONGRESS AVE  
AUSTIN TX 78701-2442

**TCEQ PERMIT NO. WQ0016165001**

**APPLICATION BY  
VENETIAN 141 SWISHER, LLC  
FOR NEW TPDES PERMIT NO.  
WQ0016165001**

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**BEFORE THE  
TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Venetian 141 Swisher, LLC's application and Executive Director's preliminary decision for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016165001. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant, and material, or significant comments. The Office of Chief Clerk timely received comments from: John Scott Huff, Katherine Sookma, Janet Sweet, Jilane Carper on behalf of Collin County Soil & Water Conservation District No. 535 (SWCD), and Lauren J. Kalisek on behalf of North Texas Municipal Water District (NTMWD). This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Participation and Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov/>.

**I. BACKGROUND**

**(A) Description of Facility**

Venetian 141 Swisher, LLC, 5, (Venetian) applied to the TCEQ for new TPDES Permit No. WQ0016165001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The proposed

wastewater treatment facility will serve a residential development located approximately 0.52 miles southwest of the intersection of FM Road 455 and North Main Street in zip code 75097.

The plant site will be located approximately 0.5 miles southwest of the intersection of West Farm-to-Market Road 455 and North Farm-to-Market Road 543, in Collin County, Texas 77097. The Weston 125A Wastewater Treatment Facility will be an activated sludge process plant operated in the single stage nitrification conventional aeration mode. Treatment units will include a bar screen, an on-site lift station, two aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand, 15 mg/l total suspended solids, 3 mg/l ammonia-nitrogen, 126 colony-forming units or most probable number of *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.

The treated effluent will be discharged to an unnamed tributary of Honey Creek, thence to Soil Conservation Service (SCS) Site 8f Reservoir, thence to an unnamed tributary of Honey Creek, thence to Honey Creek, thence to East Fork Trinity River above Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary of Honey Creek (above SCS reservoir) and SCS Site 8f Reservoir, minimal aquatic life use for the unnamed tributary of Honey Creek (below SCS reservoir), and intermediate aquatic life use for Honey Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life use.

The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's Implementation Procedures for the Texas Surface Water Quality Standards, (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Honey Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

#### **(B) Procedural Background**

The permit application for a new permit was received on May 9, 2022, and declared administratively complete on August 25, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Dallas Morning News* on August 28, 2022. Executive Director staff completed the technical review of the application on November 23, 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 *Dallas Morning News* on January 6, 2023. The public comment period ended on February 6, 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.

### (C) Access to Rules, Statutes, and Records

- Secretary of State website for all Texas administrative rules: <http://www.sos.state.tx.us/texreg/index.shtml>
- TCEQ rules in title 30 of the Texas Administrative Code: <http://www.sos.state.tx.us/tac/index.shtml> (select “View the current *Texas Administrative Code*,” then “Title 30 Environmental Quality”)
- Texas statutes: <https://statutes.capitol.texas.gov/>
- TCEQ website: <http://www.tceq.texas.gov> (for downloadable rules in portable document format, select “Rules and Rulemaking,” then “Download TCEQ Rules”)
- Federal rules in title 40 of the Code of Federal Regulations: <http://www.ecfr.gov>
- Federal environmental laws: <https://www.epa.gov/laws-regulations>

TCEQ records for this application are available at the TCEQ’s Office of the Chief Clerk until the TCEQ takes final action on the application. Some documents located at the Office of the Chief Clerk may also be located in the Commissioners’ Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). The application, draft permit, and Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision are also available for viewing and copying at Melissa Public Library, 3411 Barker Avenue, Melissa, Texas. If you would like to file a complaint about the facility concerning its compliance with provisions of its permit or TCEQ rules, you may call the TCEQ Environmental Complaints Hot Line at 1-888-777-3186 or the TCEQ Region 4 Office directly at 817-588-5800. Citizen complaints may also be filed by sending an email to [complaint@tceq.texas.gov](mailto:complaint@tceq.texas.gov) or online at the TCEQ web site (select “Reporting,” then “Make an Environmental Complaint”). If the facility is found to be out of compliance, it may be subject to an enforcement action.

## II. COMMENTS AND RESPONSES

### COMMENT 1:

Janet Sweet, Katherine Sookma, John Scott Huff, and Jilane Carper (on behalf of the Collin County Soil & Water Conservation District #535 (SWCD)), stated that they oppose the draft permit.

**RESPONSE 1:**

The Executive Director acknowledges the comment.

**Comment 2:**

Janet Sweet, Katherine Sookma, and John Scott Huff expressed concern over flooding caused by the additional flow from the wastewater facility that will cause additional flooding. Janet Sweet, Katherine Sookma, and John Scott Huff also expressed concern over the potential negative impact to their properties and access to their properties.

**RESPONSE 2:**

The TCEQ does not have jurisdiction to regulate flooding, negative impact to property or access to property in the context of a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. However, to the extent that an issue related to flooding also involves water quality, Venetian is required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit at all times, including during flooding conditions. For flooding concerns, please contact the local floodplain administrator for this area. For Collin County Floodplain Management, call 972-548-3727. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at 512-239-4691.

The TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. If Venetian is reported to be in violation of any applicable state or federal rules, the TCEQ Region 4 office is required to conduct a comprehensive compliance investigation. If the facility is found to be out of compliance with the terms or conditions of the permit, Venetian may be subject to

enforcement. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report these to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Region 4 Office in Fort Worth at 817-588-5800.

Citizen complaints may also be filed on-line at

<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>.

**COMMENT 3:**

SWCD commented that it was not formally notified of the Venetian permit application.

**RESPONSE 3:**

There were two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). The TCEQ's notice rules require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located ... if the facility is located or proposed to be located in a municipality, the applicant must publish notice in any newspaper of general circulation in the municipality. After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. For this application the NORI was published in English in the *Dallas Morning News* on August 28, 2022. The NAPD was published in English in *the Dallas Morning News* on January 6, 2023.

Additionally, both notices must be mailed to the landowners named on the

application map and persons on the mailing list maintained by the Office of the Chief Clerk. The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. The landowner map provided by Venetian does not indicate SWCD #535 as being an adjacent landowner. All persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that permit action.

**Comment 3:**

NTMWD commented that it is able to serve the area proposed in the application via Sister Grove Regional Wastewater Reclamation Facility (City of Anna).

**Response 3:**

Texas Water Code § 26.081 enumerates the state's regionalization policy. Section 26.081 states that the policy should "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In furtherance of that policy TWC § 26.0282 authorizes the TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems.

Domestic Technical Report 1.1 of the application requires information concerning regionalization of wastewater treatment plants. Applicants requesting a new permit or certain major amendments are required to review a three-mile area

surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can utilize. Applicants are required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility does have the capacity and is willing to accept the proposed wastewater, the applicant must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion. Finally, applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding regionalization with their system.

According to the information provided in the Venetian's application, there is one existing wastewater treatment facility or collection system, City of Weston, within a three-mile radius of the location of the proposed Venetian wastewater treatment facility site location. The applicant submitted responses from the City of Weston declining to accept the wastewater from Venetian. TCEQ staff verified that the City of Anna WWTP is not located within a three-mile radius of the location of the proposed Venetian wastewater treatment facility site location by reviewing the TCEQ wastewater outfalls map.

**Comment 4:**

SWCD stated that the additional discharge planned for in this permit will potentially cause extensive damage to its low-hazard floodwater retarding structure (structure) by either causing the auxiliary spillway to function more often or by overtopping the dam. SWCD noted that it does not have the funds to repair the structure due to damage from the discharge, or upgrade the structure.

**Response 4:**

The TCEQ does not have jurisdiction to address issues such as damage to the structure due to discharge from the wastewater treatment facility. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters.

**Comment 5:**

SWCD commented that an alternative discharge route should be considered that would not discharge to any channel directly upstream of any flood control dam in the county.

**Response 5:**

The Executive Director evaluated the discharge route proposed by Venetian and determined that the permit will be protective of the receiving water. The TCEQ does not have authority to prohibit an applicant for a TPDES permit from using a discharge route that is upstream of a flood control dam.

**Comment 6:**

SWCD asked to be notified of any future applications that could impact dams that they are responsible for.

**Response 6:**

The TCEQ does not have a mailing list specifically for applications for dams, however you can request to be added to the permanent mailing list for a specific county or counties by sending a request to the Office of the Chief Clerk at: [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov), or by mail to TCEQ - Office of the Chief Clerk, MC-105 ATTN: Laurie Gharis, PO Box 13087, Austin, Texas 78711-3087. In your request(s), please include your name, mailing address, email, phone number, and the counties you wish to receive notices about. For additional information regarding participating in the

permitting process, please see:

<https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/public-participation-9-1-2015#mailing>

**Comment 7:**

SWCD asked to be informed of the status of the Venetian application and to be notified if a public meeting or contested case hearing are scheduled.

**Response 7:**

Because SWCD submitted comments, it has been added to the mailing list for the Venetian application. If SWCD wishes to request a Contested Case Hearing, it must make the request by the date provided in the cover letter to this Response to Comments.

**III. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

The Executive Director did not make any changes to the draft permit in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

Kelly Keel,  
Interim Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division



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Kathy J. Humphreys, Staff Attorney  
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