

TCEQ DOCKET NO. 2024-1582-MWD

**APPLICATION BY
CLEAR UTILITIES, LLC
FOR NEW TPDES PERMIT NO.
WQ0016273001**

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**BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY**

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission/TCEQ) files this Response to Requests for a Contested Case Hearing (CCH /Hearing requests) filed on the application by Clear Utilities, LLC (Applicant) for new Texas Pollutant Discharge Elimination System Permit (TPDES) number WQ0016273001, otherwise known as the “proposed permit,” which authorizes the construction of the proposed Risinger Ridge Wastewater Treatment Facility (proposed facility) and its discharges of effluent, also called treated wastewater (WW), in the Interim I, II (“IP-1” “-2”), and Final phases of the proposed permit, at daily average flow limits of 0.125, 0.1875, and 0.25 Million Gallons per Day, respectively (proposed discharge).

I. ATTACHMENTS FOR COMMISSION CONSIDERATION

Attachment A - ED's GIS Map and its Appendix

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III. INTRODUCTION

The TCEQ’s Office of the Chief Clerk (OCC) received timely CCH requests filed by Jerry Burch, Elsie Cain, Katreena Connell, Matthew Craig, Cayden Lynn Critchfield, Marc Conway, Carla Lynn Crow, Roy Edgar, Dennis Forester, Mercedes Garcia, Onalee Gerdis, Amy Haufler, Jodhua Hester, Shaunda Hooker, Lawrence Hunt, Regina Jurik, Todd Little, Gorge Martinez, Krista Medici Martin, Sean Paul Matteson, Brenda Mavridis, Jeremy Oliver, Jack Risinger, John-Hamilton Williams, Cathy York, Darren Wynn, Bettye & Kenneth Burns, Carla & Gregory Crow, Kimberly & Mark Curry, Brenda & John Griffin, Nick and Rhonda Hamm, Kelly & Richard Kern, Rayn & Joseph King, Geneva & David Risinger, Nancy & Steve Salmon, Glenda & John Williams, and the County of Ellis, represented by its County Judge, the Honorable Todd Little and its attorneys of record.

The requests filed on this application fall into four categories. Category numbers (Nos.) 1, 2, & 3 can be characterized as requests that are deficient on their face for distinct reasons according to the TCEQ’s CCH Rules, found at Title 30 of the Texas Administrative Code (30 TAC), section (§) 55.201(c) or (d). Category No. 4 includes CCH requests that are characterized as valid on their face, as according to the provisions of the TCEQ’s CCH rules previously referenced above.

IV. FACILITY/DISCHARGE ROUTE/TECHNICAL REVIEW DESCRIPTIONS

A. Proposed Facility

If this permit is issued, the proposed facility will serve the Risinger Ridge development and will be located approximately 0.95 miles southwest of the intersection of Risinger Road and Interstate Highway 45, in Ellis County, Texas 75125.

The proposed facility will be constructed across the three phases of the proposed permit, and when constructed will be an activated sludge process plant operated in the complete mix mode with single staged nitrification.

Treatment units across all three phases consist of a bar screen, a chlorine contact chamber, and two final clarifiers. The remaining treatment units include aeration basins and aerobic sludge digesters, with the number of each treatment unit corresponding to the number of the phase (IP1-2). In the Final Phase, the remaining treatment units consist of four aeration basins and aerobic sludge digesters.

Sludge generated at the proposed facility is hauled by a registered transporter to City of Fort Worth Village Creek-WWTF (WQ0010494013), to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. Sludge is also authorized to be disposed of at a TCEQ-authorized land application site, co-disposal landfill, WWTF, or a facility that further processes sludge.

B. Route for the Proposed Discharge

The proposed route of the discharge is first to a pond, then an unnamed tributary (UT1), then to a second-order unnamed tributary (UT2), which is essentially a tributary formed from multiple first order tributaries and is used here only to distinguish between the two unnamed tributaries. The proposed discharge then continues to Brushy and Red Oak Creeks, and then to the Upper Trinity River in Segment No. 0805 of the Trinity River Basin.

C. Technical Review of the Application

The TCEQ has primary authority over water quality in Texas and federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies, otherwise known as Waters in the State (WITS). Likewise, the Texas Water Code (TWC) § 26.027, authorizes the TCEQ to issue permits for discharges into WITS, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the Texas Surface Water Quality Standards (30 TAC Chapter 307), the TCEQ's Implementation Procedures for the Texas Surface Water Quality Standards-June 2010) (TCEQ IPs) the TWC and other TCEQ rules.

The Technical Review process for surface water quality is conducted by staff in the ED's Water Quality Division, (WQD staff) on the Standards Implementation Team (Standards Team), and WQD staff in the Water Quality Assessment Section (Modeling Team). As with all determinations, reviews, or analyses related to the technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

To maintain a level of water quality (WQ) sufficient to protect the existing WQ uses of WITS in a route for a proposed discharge requires WQD staff on the Standards and

Modeling Teams to review the data from the application and employ it, according to the TSWQS and the TCEQ IPs, when performing multiple WQ-specific analyses. This ensures compliance with the TSWQS because WQD staff follow the prescribed methodology in the TCEQ IPs when drafting limits and conditions for TPDES permits, which is a regulatory guidance document written specifically for permits to comply with the TSWQS.

Correspondingly, within the regulatory framework of the TSWQS, a subset of WQ uses known as Aquatic Life Uses (ALUs), have a specified criteria for Dissolved Oxygen (DO), which refers to the 24-hour minimum DO level required to support ALUs in WITS. DO criteria are critical for the overall health of WITS, and in conjunction with ALUs, are necessary to protect the aquatic life in WITS. So, to ensure protective limits in TPDES permits, DO modeling analyses are performed by the Modeling Team to evaluate the potential impacts from a proposed discharge on instream DO levels of WITS in the route of a proposed discharge. DO levels are affected by various factors, including potential direct DO impacts by oxygen-demanding constituents in a proposed discharge, such as 5-day Carbonaceous Biochemical Oxygen Demand (CBOD5) Ammonia Nitrogen (NH₃-N) and DO, which are the specific limits established by the Modeling Team's DO modeling analyses for TPDES applications.

1. Texas Surface Water Quality Standards Review

An Antidegradation Review of the proposed discharge is the first analysis of the Technical Review conducted on the application, and it's performed by the Standards Team after it reviews and verifies the classifications, designations, and descriptions of the WITS in the route of the proposed discharge (pond, UT1, UT2, Brushy and Red Oak Creeks, and the Upper Trinity River in Segment No. 0805 (Segment No. 0805)). More specifically, the TSWQS and the TCEQ IPs require the Standards Team, for all new-proposed discharges, to perform a Tier I review to assess the effects on WITS in the area of impact from the proposed discharge for a certain distance from the outfall based on the volume of the discharge, otherwise known as the "impact zone."

For this application, the impact zone was 2.0 miles based on a proposed discharge of up to 0.90 MGD. However, the standard practice of the Standards Team is to assess the first 3.0 miles of WITS to ensure a discharge is thoroughly vetted. In this case, 3.0 miles included the pond, UT1, UT2, and Brushy and Red Oak Creeks.

The Standards Team assigned ALUs according to the TSWQS and additional information received during the permitting process, thus, the flow characterization of the pond and initial portion of UT1 (0.14 miles downstream of pond) is intermittent with perennial pools. UT1 then becomes UT2, which is characterized as intermittent greater than 0.14 miles downstream of the pond and returns to intermittent with perennial pools at Brushy Creek. Red Oak Creek's flow characterization is perennial.

The Standards Team then reviewed the information from the application consistent with the provisions of the TSWQS (30 TAC §§ 307.4 (h) & (l)) that specifically address ALUs, DO, and the assessment of unclassified waters for ALUs, as the proposed discharge is first to the pond and UT1, unclassified waterbodies. Additional data received during the technical review enabled the Standards Team to determine and designate ALUs and assign the DO criteria specified by the TSWQS and the TCEQ's IPs for the pond, UT1, UT2, Brushy and Red Oak Creeks, and Segment No. 0805.

The ALUs for Segment No. 0805, as designated in Appendix A of the TSWQS are primary contact recreation and a "high" ALU, with a corresponding DO criterion of 5.0

mg/L, which is also true for Red Oak Creek. The TSWQS (§ 307.4 (h)) assign the pond and UT1 a 3.0 mg/L DO criteria with a corresponding “limited” ALU designation, as they characterized as intermittent with perennial pools. UT2, characterized as an intermittent stream, is assigned a DO criterion of 2.0 mg/L by the TSWQS (§ 307.4(l)) and has a “minimal” ALU designation. Brushy Creek also has a “limited” ALU designation and is assigned criteria of 3.0 mg/L DO.

The results of the Tier I Review of the proposed discharge and its impact zone indicated that there is no expectation of impairment of existing WQ uses because the proposed discharge has limits designed to maintain numerical and narrative criteria to protect the existing WQ uses of the WITS receiving the proposed discharge.

Because the ALU designation for Red Oak Creek is “high,” WITS were identified within the impact zone and Tier II Review was required, which preliminarily determined that no significant degradation of water quality is expected in Red Oak Creek and Upper Trinity River, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected.

2. Dissolved Oxygen Modeling

The second analysis of the ED’s Tech Review involved the Modeling Team performing DO modeling (analyses) using a mathematical model, an “uncalibrated QUAL-TX model.” Conventional limits such as those for DO, CBOD₅, and NH₃-N are based on stream standards and WLAs for WQ-limited streams established in the TSWQS and State of Texas Water Quality Management Plan (WQMP). However, coefficients and kinetics used in the modeling come from a combination of site specific, standardized default, and estimated values.

By adhering to the provisions of the TSWQS, WQMP, and the TCEQ IPs, the Modeling Team developed protective limits for DO, which are predicted to be necessary to maintain DO levels above the DO criteria indicated by the Standards Team for the pond and UT2 (3.0 mg/L 2.0 mg/L, respectively), of 10.0 mg/L CBOD₅, 3.0 mg/L NH₃-N, with a concentration of 5.0 mg/L DO in IP1. Limits in IP2 include 10.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, with a concentration of 4.0 mg/L DO. In the Final phase, the limits are 10.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, with a concentration of 5.0 mg/L DO.

3. Disinfection and Other limits

With prior ED approval, an equivalent method of disinfection may be substituted for the methods described below. During all phases of the proposed permit, the effluent must be disinfected using Chlorine (Cl), monitored 5-times per week by grab sample, contain a peak-flow Cl-residual of at least 1.0 mg/l, and must not exceed a total Cl-residual of 4.0 mg/after a detention time of at least 20 minutes.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, eff. 3/1/2018), and the EPA-approved portions of the TSWQS (eff. 3/6/2014). The proposed permit also includes 30-day average limits of 5.0 mg/L TSS and 126 CFU/Most Probable Number per 100 ml of E.coli and requires that the effluent’s pH must always be in the range of 6.0-9.0 standard units. Similarly, and consistent with the TSWQS’s general criteria to protect aesthetic parameters of water quality, the proposed discharge must be free of floating solids, visible oil, or visible foam in other than trace amounts. The proposed permit’s TSS limits are of a typical value for domestic WW discharge permits with

tertiary treatment, as the proposed permit has, and are set in conjunction with other permitted effluent limits and any applicable watershed rule requirements. Tertiary treatment is the next WW-treatment process after secondary treatment; it removes stubborn contaminants that secondary treatment is unable to, and further cleans effluent using stronger, more advanced treatment systems.

Segment No. 0805 is currently listed on the State's inventory of impaired and threatened waters, the 2022 CWA § 303(d) list. The listings are for Dioxin and PCBs in edible tissue from confluence of the Cedar Creek Reservoir discharge canal upstream to confluence of Elm Fork Trinity River [Assessment Units (AUs) 0805_01 thru 0805_04] and from confluence of Tenmile Creek upstream to confluence of Fivemile Creek (AU 0805_06). This is a public domestic wastewater treatment facility. The facility does not receive industrial wastewater contributions, therefore the effluent from this facility should not contribute to the dioxin, PCBs in edible tissue impairment of this segment.

The TMDL Project No. 5: Nine Total Maximum Daily Loads for Legacy Pollutants in Streams and a Reservoir in Dallas and Tarrant Counties, For Segments 0805, 0841, and 0841A has been approved for Segment No. 0805. The report Nine TMDLs for Legacy Pollutants in Streams and a Reservoir in Dallas and Tarrant Counties was adopted by the TCEQ on December 20, 2000, and approved by the EPA on June 27, 2001. The approved TMDL does not include an allocation for point sources for certain legacy pollutants. Legacy pollutant is a collective term used to describe substances whose use has been banned or severely restricted by the EPA. Because of their slow rate of decomposition, these substances frequently remain at elevated levels in the environment for many years after their widespread use has ended. No additional loading of legacy pollutants is allowed or expected due to the EPA restrictions. Gradual declines in environmental legacy pollutant concentrations occur because of natural attenuation processes. No authorized point source discharges of these pollutants are allowed by law. Therefore, no load reductions for these legacy pollutants are required in the proposed permit currently.

The TMDL Project No. 66: Two Total Maximum Daily Loads for Indicator Bacteria in the Upper Trinity River, Dallas, Texas have been approved for this segment. In May 2011, the TCEQ adopted Two Total Maximum Daily Loads for Indicator Bacteria in the Upper Trinity River, Segment 0805. The EPA approved the TMDL on August 3, 2011. This document describes TMDLs for two assessment units within Segment 0805 (0805_03, 0805_04) in Dallas County where concentrations of bacteria exceed the criteria used to evaluate the attainment of the designated contact recreation use. The loads allocated in the TMDL are only applicable to those sources located in the target assessment units. This facility is not located in the area covered by the Waste Load Allocation requirements of the TMDL. The proposed permit is not subject to the requirements of the TMDL; however, effluent limits and monitoring requirements for bacteria are included based on other requirements.

The proposed discharge is also not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the USFWS' biological opinion on the State of Texas authorization of the TPDES program (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to

the biological opinion. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

Through the ED's Tech Review, WQD Staff provide appropriate limits to maintain and protect the existing instream WQ uses. For that reason, and provided the Applicant operates and maintains the proposed facility according to the TCEQ rules and the requirements in the proposed permit, the ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of human health, the environment, and WQ.

V. PROCEDURAL HISTORY OF THE APPLICATION

The TCEQ received the application on December 12, 2022, and declared it administratively complete on February 23, 2023. The Applicant published the applicable public notices of for this application in English in *The Ellis County Press*, and in Spanish in *AL DIA*. The Applicant published the *Notice of Receipt & Intent to Obtain a Water Quality Permit* (NORI) in English on March 9, 2023, and in Spanish on March 22, 2023. On June 7, 2023, the ED completed the Tech Review of the application and prepared the proposed permit, which if approved, establishes the conditions under which the proposed facility must operate. The Applicant next published the *Notice of Application & Preliminary Decision* (NAPD) in English on July 27, 2023, and in Spanish on July 19, 2023. The Applicant published the *Notice of Public Meeting* on January 11, 2024. The public comment period ended on February 15, 2024, at the close of the public meeting held by the TCEQ. The time for filing a CCH request or a Request for Reconsideration (RFR) ended on September 11, 2024. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. period for filing a Request for Reconsideration or a Request

VI. ACCESS TO APPLICABLE & RELEVANT RULES, LAWS AND RECORDS

- Texas' administrative rules: Secretary of State Website: www.sos.state.tx.us
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ's website: www.tceq.texas.gov; TCEQ's rules downloadable in Adobe PDF format on the TCEQ website: navigate to "Rules, Data, Forms, Publications" (lower right side) → "Rules and Rulemaking" → "Current TCEQ Rules" → "Download TCEQ Rules"
- TCEQ's rules on the Secretary of State Website: www.sos.texas.gov/tac/index.shtml (select "TAC Viewer" (right side) → "Title 30 Environmental Quality")
- Federal: Title 40 of the Code of Federal Regulations: www.eCFR.gov/current/title-40
- Federal environmental laws: <https://www.epa.gov/laws-regulations>
- **Environmental or citizen complaints may be filed online at:** <https://www.tceq.texas.gov/compliance/complaints/index.html> (select "use our online form") or by sending an email to: complaint@TCEQ.Texas.gov

Since publication of the NORI, the application has been available for viewing and copying at the Ferris Public Library, located at 301 East 10th Street, Ferris, Texas 75125. The final permit application, proposed permit, statement of basis/technical summary,

and the ED's preliminary decision were available for viewing and copying at the same location since publication of the NAPD.

Commission records for the proposed facility are available for viewing and copying at TCEQ's main office in Austin, Texas at 12100 Park 35 Circle, Building F, 1st Floor in the OCC (for the current application until final action is taken). Some documents located at the OCC may also be found in the TCEQ Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid.

If individuals wish to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, the TCEQ's regional OCE should be contacted. Specifically, Region 4 at (817) 588-5800 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described at the eighth bullet under "Access to Rules, Laws, and Records," above. If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

VII. APPLICABLE LAW FOR EVALUATION OF 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 (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the commission's consideration of Requests. This application was declared administratively complete on March 23, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709

A. Legal Authority to Respond to Hearing Requests

The ED may submit written responses to Requests. Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. whether issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or 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 by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
6. whether the issues are relevant or material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.

B. Hearing Request Requirements

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . ., based only on the requester's timely comments, and not based on an issue that was 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 ED's Response to Comment.

A hearing request must substantially comply with the following:

- (1) give the name, address, 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 is responsible for receiving all official communications and documents for the group;
- (2) identify the person's 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 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 facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;
 - (B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

C. Requirement that Requestor be an Affected Person

To grant a contested case hearing, the Commission must determine, pursuant to 30 TAC § 55.203, that a requestor is 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 public does not qualify as a personal justiciable interest.
- (b) 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; and
 - (6) whether the requester 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 this determination, 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 ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

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 State Office of Administrative Hearing (SOAH) for a hearing.” “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; and
- (3) is relevant and material to the decision on the application.”

VIII. EVALUATION OF THE HEARING REQUESTS

For this application the period for the public to file comments on the application ended on February 15, 2024, and the period for filing a CCH request or a Request for Reconsideration (RFR) ended on September 11, 2024. The ED's analyses determined whether the CCH requests conformed with TCEQ rules, if the requestors qualified as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

The public comment period ended on February 15, 2024, at the close of the public meeting held by the TCEQ. The time for filing a CCH request or a Request for Reconsideration (RFR) ended on September 11, 2024.

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

CATEGORY 1: Katreena Connell, Elsie Cain, Kimberly Curry, Cayden Critchfield, Onalee Gerdis, Shaunda Hooker, Lawrence Hunt, Krista Martin, Sean Paul Matteson, Jeremy Oliver, Rhonda Hamm, Jodhua Hester, Shaunda Hooker, Joseph King, Todd Little, and Lynda & Von Hulkan all filed timely CCH requests that only provided the requisite contact information and requested a hearing.

The Category 1 CCH requests lacked written explanations plainly describing the requesters' locations and distances relative to the facility, and why these requestors believe they will be affected by the application in a way not common to the public.

Additionally, these CCH requests either raised unspecified opposition to the application, did not raise any issues, or raised issues that were immaterial, insignificant, and that the requestor did not to raise during the comment period, which ended on February 15, 2024.

The ED recommends finding that the Hearing requests from Category 1 did not substantially comply with 30 TAC §§ 55.201(c) and (d).

CATEGORY 2: Jerry Burch, Marc Conway, Gregory Crow, Dennis Forester, Nick Hamm, Amy Haufler, Regina Jurik, Rayn King, John Marshall, Gorge Martinez, and David & Jack Risinger all filed timely requests that provided the requisite contact information, some location information, and requested a hearing. For the CCH request from David Miller, Mr. Miller only provided a Post Office Box for his address, which prevents the ED from identifying Mr. Miller on the attached ED's GIS Map.

The Category 2 CCH requests lacked written explanations plainly describing the requesters' locations and distances relative to the facility, and why these requestors believe they will be affected by the application in a way not common to the public.

Additionally, these CCH requests raised issues that were either immaterial, insignificant, or outside the scope of the TCEQ's jurisdiction, including issues related to population increases, population densities, lot sizes, expansion of local school districts, crime, noise, road maintenance, road closures, damage to area roadways, flooding of area roadways, and possible flooding as a result of the proposed discharge.

The ED recommends finding that the Hearing Requests from Category 2 did not substantially comply with 30 TAC §§ 55.201(c) and (d).

CATEGORY 3: Matthew Craig, Mark Curry, Brenda Mavridis, John Hamilton Williams, Cathy York, Todd Little (as an individual), and Kelly & Richard Kern filed timely requests that provided the requisite contact information, requested a hearing, and raised possibly material and significant issues in their CCH requests.

However, the Category 3 CCH requests lacked written explanations plainly describing the requestors' locations and distances relative to the facility, why the requesters believe they will be affected by the application in a way not common to the public, and most importantly are not, according to the attached ED's GIS map, located in sufficient proximity to the proposed facility or discharge route for the issues raised in the CCH request to and identify a personal justiciable in the application.

The ED recommends finding that the Hearing Requests from Category 3 did not substantially comply with 30 TAC §§ 55.201(c) and (d).

CATEGORY 4: The County of Ellis, Roy Edgar, Onalee Gerdis, Michael Jones, Thomas Pearl, Geneva Risinger, Bettye & Kenneth Burns, Carla & Greg Crow, and Nancy & Steve Salmon all filed timely CCH requests that provided the requisite contact information, requested a hearing, included a written explanations plainly describing their locations and distances relative to the proposed facility, and why they believe they will be affected by the application in a way not common to the public.

The Category 4 CCH requests complied with 30 TAC §§ 55.201(c), and (d) because the CCH requests, through raising relevant, material, and significant issues related to the proposed permit that formed the basis of the CCH requests in timely comments not withdrawn before the RTC was filed, established or identified a personal justiciable interests affected by the application.

The ED recommends finding that the Hearing Requests from Category 4 substantially complied with 30 TAC §§ 55.201(c) and (d).

B. Whether the Requesters are Affected Persons under 30 TAC § 55.203.

CATEGORY 1-3: The CCH request from categories 1-3 failed to identify personable justiciable interests affected by the application, and therefore, are ineligible for Affected Persons status.

The ED recommends that the Commission find that the individuals in categories 1-3 are not Affected Persons under 30 TAC § 55.203.

CATEGORY 4: Roy Edgar, Onalee Gerdis, Michael Jones, Thomas Pearl, Geneva Risinger, and Bettye & Kenneth Burns, Carla & Greg Crow, and Nancy & Steve Salmon (the Salmons) all filed a CCH request that complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why they believe they will be affected by the application in a way not common to the public. The CCH requests all stated they live in substantial proximity (1.10, 0.36, 0.44, 1.10, 0.95, 0.26, 0.36, 1.05 miles away, respectively) to the proposed facility and raised concerns about foul odors from the proposed facility. In the case of the CCH request from Salomons, in addition to issues related to foul odors, the Salomons raised concerns about adverse impacts to human health from the proposed facility and discharge, which are relevant issues to a decision on this application.

The ED recommends finding that the Commission find that the individuals in Category 4 are Affected Persons under 30 TAC § 55.203.

CATEGORY 4: Ellis County filed a CCH request that stated that the proposed facility and proposed discharge is located within the County's jurisdiction. The GIS map prepared by the ED confirms that the proposed facility and discharge will be located within the County's boundaries and jurisdiction, which increases the likelihood that Ellis County will be affected in a way not common to the public.

Local governmental entities, such as Ellis County, that have authority under state law over issues contemplated by an application, may be considered affected persons under the TCEQ's CCH rules, found at 30 TAC § 55.203.

According to Chapter 121 of the Texas Health and Safety Code, Texas counties may cooperate with municipal authorities to promote public health, and Chapter 26 allows counties to protect water quality within its jurisdiction.

The CCH request filed by Ellis County stated that it has authority over the County's health and safety that may be affected by the proposed facility and discharge within the County, that the application fails to properly address. As an example, the County points to the potential contamination of surface water within the region impacting the County's ability to effectively provide emergency services and may impact health and safety of the County by lowering water quality. Moreover, the County states that as a local government under Texas Water Code § 26.171, the County has specific statutory authority to inspect the public water in its jurisdiction to assess whether the quality of the water meets water quality standards, and to determine whether wastewater dischargers are discharging in compliance with the requirements of a TCEQ-issued permit. Surface water quality being protected within the County's jurisdiction according to state law, is an issue related to the County's interest in promoting and protecting the general health and safety of individuals residing in its jurisdiction.

Because Ellis County's CCH request raised relevant issues to the application, explained briefly and specifically, in plain language, the County's jurisdictional limits relative to the proposed facility and how and why the County believe it might be adversely affected by the proposed facility in a manner not common to the public, the County established it has interests related to legal, duties, powers, or economic interests affected by the application.

These established interests in the Applicant's proposed discharge within the County's jurisdiction is therefore unique to Ellis County and is not common to the public, generally. This highlights that a reasonable relationship exists between the interests claimed and the activity regulated. As a result, Ellis County has satisfied the requirements for affected person status for governmental entities under 30 TAC § 55.203(c)(7). and the ED should recommend granting their hearing requests.

The ED recommends finding that the Commission find that Ellis County is an Affected Person under 30 TAC § 55.203(c)(7).

IX. ISSUES RAISED IN REFERABLE HEARING REQUESTS:

The following issues were raised in the Hearing requests from Category 4.

1. Whether the draft permit is protective of human health and the environment.

(RTC Response No. 2) This is an issue of fact. If it can be shown that this issue is factually accurate or relevant, that information would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

2. Whether the draft permit and proposed discharge will negatively impact WQ and impair the existing uses of the receiving streams.

(RTC Response No. 2) This is an issue of fact. If it can be shown that this issue is factually accurate or relevant, that information would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

3. Whether the draft permit's nuisance odor controls comply with TCEQ rules.

(RTC Response No. 4) This is an issue of fact. If it can be shown that this issue is factually accurate or relevant, that information would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

X. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED 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.

XI. REQUESTS FOR RECONSIDERATION

Gorge Martinez and Geneva Risinger both filed timely Requests for Reconsideration (RFR). However, both RFRs failed to raise any new information for the ED or the Commission to consider. Therefore, the ED recommends denying both RFRs.

XII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Roy Edgar, Onalee Gerdis, Michael Jones, Thomas Pearl, Geneva Risinger, Bettye & Kenneth Burns, Carla & Greg Crow, Nancy & Steve Salmon, and Ellis County are affected persons and entities under 30 TAC § 55.203.
2. Grant the CCH requests of Roy Edgar, Onalee Gerdis, Michael Jones, Thomas Pearl, Geneva Risinger, Bettye & Kenneth Burns, Carla & Greg Crow, Nancy & Steve Salmon, and Ellis County, deny all other CCH requests and the Requests for Reconsideration (RFR) filed by Gorge Martinez and Geneva Risinger because both RFRs failed to raise any new information for the ED or the Commission to consider.
3. Should the Commission decide to refer this case to SOAH:
 - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - b. refer the identified issues above in section VIII.1.-3. to SOAH for a contested case hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, *Interim Director*
Office of Legal Services
Deputy Director
Environmental Law Division



Michael T. Parr II, Staff Attorney
Environmental Law Division
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

XIII. CERTIFICATE OF SERVICE

I certify that on October 11, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016273001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936

MAILING LIST
Clear Utilities, LLC
TCEQ Docket No./TCEQ Expediente N.º 2024-1582-MWD
TPDES Permit No./TPDES Permiso N.º WQ0016273001

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REQUESTER(S)/ SOLICITANTE(S)
See attached list/Ver lista adjunta.

REQUESTER(S)/ SOLICITANTE(S)

Burch, Jerry
451 Goliad Cir
Palmer Tx 75152-8101

Burns, Bettye And Kenneth
721 Risinger Rd
Ferris Tx 75125-1273

Cain, Elsie
408 Eason Rd
Ennis Tx 75119-0126

Connell, Katreena
1081 S Main St
Ferris Tx 75125-9287

Craig, Matthew
515 Bent Trl
Red Oak Tx 75154-5417

Critchfield, Cayden Lynn
761 Risinger Rd
Ferris Tx 75125-1273

Crow, Carla Lynn
761 Risinger Rd
Ferris Tx 75125-1273

Crow, Gregory Dale
761 Risinger Rd
Ferris Tx 75125-1273

Curry, Mark And Kimberly
1440 Hunsucker Rd
Palmer Tx 75152-8110

Edgar, Roy E
525 Pace Rd
Palmer Tx 75152-8086

Forester, Dennis M.
305 Matt Rd
Ferris Tx 75125-9383

Garcia, Mercedes
591 Ewing Rd
Ferris Tx 75125-9157

Gerdis, Onalee Nunnemaker
761 Risinger Rd
Ferris Tx 75125-1273

Giles, Charles
2279 Palmyra Rd
Ferris Tx 75125-4005

Griffin, Brenda & John
1281 Risinger Rd
Ferris Tx 75125-8332

Griffin, Nick & Rene
1308 Ozro Rd
Venus Tx 76084-4870

Ham, George
215 Slate Rock Rd
Ennis Tx 75119-0276

Hamm, Marie
940 Trumbull Rd
Ferris Tx 75125-8820

Hamm, Nick L.
940 Trumbull Rd
Ferris Tx 75125-8820

Hamm, Rhonda
940 Trumbull Rd
Ferris Tx 75125-8820

Haufler, Amy
1460 Trumbull Rd
Ferris Tx 75125-8406

Hester, Jodhua Dean
370 Parker Rd
Palmer Tx 75152-8134

Hooker, Shaunda
302 W Jefferson St
Palmer Tx 75152-9688

Hulgan, Lynda & Von
1800 Risinger Rd
Ferris Tx 75125-8338

Hunt, Lawrence A
638 Oak Vista Rd
Waxahachie Tx 75167-8012

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Jurik, Regina
7764 Fm 879
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Ennis Tx 75119

King, Joseph M & Rayn
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Palmer Tx 75152-9644

Little, Todd
The County Of Ellis
101 W Main St
Waxahachie Tx 75165-0405

Marshall, John
1705 Loop 561
Ferris Tx 75125-8486

Martin, Krista Medici
200 W Denton St
Palmer Tx 75152-9703

Martinez, Gorge
2090 Newton Rd
Ferris Tx 75125-1258

Matteson, Sean Paul
670 Willow Creek Rd
Palmer Tx 75152-9735

Mavridis, Brenda Kathleen
5 Sargent Pl
Waxahachie Tx 75165-6411

Miller, David
PO Box 130
Palmer TX 75152-0130

Oliver, Jeremy
633 Pace Rd
Palmer Tx 75152-8153

Pearl, Thomas L
1764 Palmyra Rd
Palmer Tx 75152-8060

Raburn, Kameron
City Of Ennis
107 N Sherman St
Ennis Tx 75119-3949

Risinger, David
2130 Risinger Rd
Ferris Tx 75125-8341

Risinger, David
1934 Risinger Rd
Ferris Tx 75125-1265

Risinger, Geneva
1934 Risinger Rd
Ferris Tx 75125-1265

Risinger, Jack
2130 Risinger Rd
Ferris Tx 75125-8341

Salmon, Nancy & Steve
2125 Loop 561
Ferris Tx 75125-8490

Williams, Glenda G
465 Goliad Cir
Palmer Tx 75152-8101

Williams, John
465 Goliad Cir
Palmer Tx 75152-8101

Williams, John Hamilton
301 Matt Rd
Ferris Tx 75125-9383

Williams, John Hamilton
PO Box 598
Palmer Tx 75152-0598

Wynn, Darren
100 Wynn Way
Palmer, TX 75152

York, Cathy
103 Meadowlark Dr
Palmer Tx 75152-8244

Attachment A

Clear Utilities LLC

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: 10/10/2024
CRF 0111958A
Cartographer: MAttoh

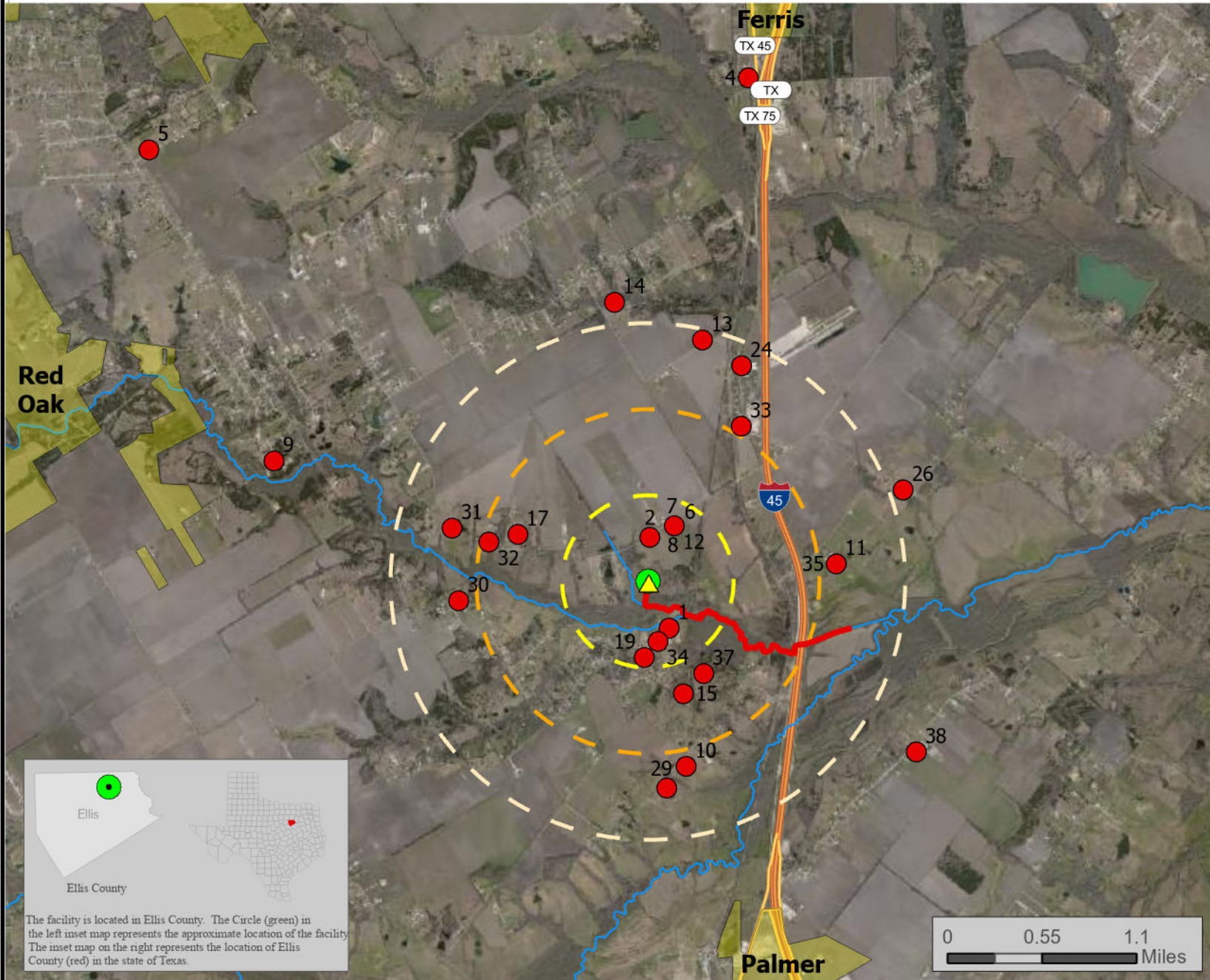


- Facility Point
- Discharge Point
- Requestors
- 0.5 Miles From Facility Point
- 1.0 Miles From Facility Point
- 1.5 Miles From Facility Point
- Cities
- 1.5 Miles Discharge Route

Requestors 3, 17, 19, 21, 22, 23, 24, 26, 28, 29, and 37 are not shown on the map due to their proximity from the Facility Point.

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 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.

Appendix A for Clear Utilities LLC, GIS Map

Name	Distance to Facility Point	Distance to Discharge Point
1 - Burch, Jerry	0.30 Miles	0.29 Miles
2 - Burns, Bettye & Kenneth	0.26 Miles	0.26 Miles
3 - Cain, Elsie	6.35 Miles	6.35 Miles
4 - Connell, Katreena	2.98 Miles	2.99 Miles
5 - Craig, Matthew	3.84 Miles	3.84 Miles
6 - Critchfield, Cayden Lynn	0.36 Miles	0.36 Miles
7 - Crow, Carla Lynn	0.36 Miles	0.36 Miles
8 - Crow, Gregory & Carla	0.36 Miles	0.36 Miles
9 - Curry, Mark & Kimberly	2.29 Miles	2.29 Miles
10 - Edgar, Roy	1.10 Miles	1.09 Miles
11 - Forester, Dennis	1.10 Miles	1.10 Miles

12 - Gerdis, Onalee	0.36 Miles	0.36 Miles
13 - Hamm, Rhonda & Nick	1.44 Miles	1.44 Miles
14 - Haufler, Amy	1.63 Miles	1.64 Miles
15 - Hester, Jodhua	0.68 Miles	0.68 Miles
16 - Hooker, Shaunda	3.04 Miles	3.04 Miles
17 - Hulgan, Lynda & Von	0.81 Miles	0.81 Miles
18 - Hunt, Lawrence	19.22 Miles	19.22 Miles
19 - Jones, Michael	0.44 Miles	0.44 Miles
20 - Jurik, Regina	5.65 Miles	5.64 Miles
21 - Kelly & Richard Kern	8.38 Miles	8.37 Miles
22 - Rayn & Joseph King	3.48 Miles	3.47 Miles
23 - Little, Todd	18.63 Miles	18.63 Miles
24 - Marshall, John	1.37 Miles	1.37 Miles
25 - Martin, Krista	2.92 Miles	2.91 Miles
26 - Martinez, Gorge	1.58 Miles	1.58 Miles

27 - Matteson, Sean	3.78 Miles	3.77 Miles
28 – Mavridis, Brenda	7.93 Miles	7.94 Miles
29 - Oliver, Jeremy	1.20 Miles	1.20 Miles
30 - Pearl, Thomas	1.11 Miles	1.11 Miles
31 - Risinger, David & Jack	1.18 Miles	1.19 Miles
32 - Geneva & David Risinger	0.95 Miles	0.96 Miles
33 - Nancy & Steve Salmon	1.05 Miles	1.05 Miles
34 - Glenda & John Williams	0.35 Miles	0.35 Miles
35 - Williams, John-Hamilton	1.10 Miles	1.10 Miles
36 - York, Cathy	3.30 Miles	3.29 Miles
37 - Wynn, Darren	0.63 Miles	0.62 Miles
38 – Conway, Marc	1.85 Miles	1.85 Miles