

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
John Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 14, 2016

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Requests for West Travis County  
Public Utility Agency; Permit No. WQ0013594001; Docket No. 2016-0022-MWD

Dear Ms. Bohac:

Enclosed for filing are the original and seven copies of the "Executive Director's Response to Hearing Requests." If you have any questions or comments, please call me at (512) 239-0676.

Sincerely,

A handwritten signature in black ink, appearing to read "LH", with a stylized flourish at the end.

Linda Horng  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing List

**TCEQ DOCKET NO. 2016-0022-MWD**

**APPLICATION BY WEST TRAVIS  
COUNTY PUBLIC UTILITY  
AGENCY FOR TCEQ  
PERMIT NO. WQ0013594001**

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§

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to hearing requests on the application by West Travis County Public Utility Agency (West Travis PUA or PUA), for a renewal to TCEQ permit number WQ0013594001 and on the Executive Director's preliminary decision. The Office of the Chief Clerk (OCC) received timely hearing requests from:

Ty Wenglar

Johanna Nabben

Robert M. Ruiz

Patricia Sinnott

Mark Shade

Donna Ruiz

John M. Harrod

Brian Newell

Alan Kirshbom

Eileen Brzoska

Frederick W. Goff

M.E. Cook

Cynthia Smiley filed a timely hearing request on behalf of Lake Point Homeowners Association, Inc. (Lake Pointe HOA). On November 5, 2015, David J. Tuckfield filed a withdrawal of hearing request on behalf of Lake Pointe HOA.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ's Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Attached for Commission consideration is a satellite map of area.

**I. Background**

**A. Description of Facility**

West Travis PUA applied to the TCEQ for a renewal of Permit No. WQ0013594001 to authorize the disposal of treated domestic wastewater at a daily

average flow not to exceed 0.675 MGD at Outfall 001, and 0.325 MGD at Outfall 002 million gallons per day (MGD) via surface irrigation of 350 acres of public access land. The 350 acre irrigation site consists of the 200-acre Spillman Ranch site's golf course, medians and parks, and the 150-acre CCNG Development Company, L.P.'s golf course. The existing wastewater treatment facility serves an area that is generally the extraterritorial jurisdiction (ETJ) of the City of Bee Cave.

The Lake Pointe Wastewater Treatment Facility consists of an activated sludge process plant using the single stage nitrification mode. Treatment units will include two parallel trains consisting of a bar screen, two equalization basins, two aeration basins, two final clarifiers, two aerobic digesters, two chlorine contact chambers, and cloth disk filters at one site (Site A) and another train consisting of an equalization basin, bar screen, aeration basin, final clarifier, aerobic digester, chlorine contact chamber, and cloth disk filters at another site (Site B).

The wastewater treatment facility and disposal site are located at 3100 Napa Drive, Austin, in Travis County, Texas 78738 (Site A). The Effluent Pond No. 1 is located approximately 8,000 feet northwest of the intersection of Farm-to-Market Road 620 and State Highway 71 in Travis County, Texas 78738. The irrigation site (Spillman Ranch) is also located approximately 8,000 feet northwest of the intersection of Farm-to-Market Road 620 and State Highway 71 in Travis County, Texas 78738. The irrigation site (CCNG) is located approximately 2,500 feet south of the intersection of Farm-to-Market Road 620 and State Highway 71 in Travis County, Texas 78738. The Effluent Pond No. 2 and another treatment facility are located approximately 3,000 feet northwest of the intersection of Farm-to-Market Road 2244 and State Highway 71 in Travis County, Texas 78738 (Site B).

The wastewater treatment facilities and storage pond 2 are located in the drainage basin of Lake Austin in Segment No. 1403. The disposal sites and storage pond 1 are located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin. No discharge of pollutants into water in the state is authorized by this permit.

## **B. Procedural Background**

The renewal application was received on June 3, 2014, and declared administratively complete on July 14, 2014. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in English on July 25, 2014, in the *Austin American Statesman*, Travis County, Texas and on July 24, 2014 in Spanish in *El Mundo*, Travis County Texas. The Executive Director completed the technical review of the application on February 9, 2015, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in English on April 9, 2015, in the *Austin American Statesman*, Travis County, Texas and in Spanish in *El Mundo*, Travis County Texas. A public meeting was held in Bee Cave, Texas on August 13, 2015; the notice of the public meeting was published in the *Austin American Statesman* on July 10, 2015.

The comment period for this application ended on August 13, 2015. The original Response was filed on November 4, 2015. An amended Response was filed on November 5, 2015 to correct the end of the comment period. No changes were made to the comments and responses in the amended Response. This application is subject to the procedural requirements of House Bill 801, 76<sup>th</sup> Legislature, 1999.

## **II. The Evaluation Process for Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. This application is subject to the HB 801 requirements.

### **A. Responses to Requests**

“The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . . .” 30 TAC § 55.209(d).

According to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which 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 Response to Comment;
- (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.

### ***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. As noted in 30 TAC § 55.201(c):

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be 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 Executive Director's Response to Comment.

According to 30 TAC § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (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 or policy; and

(5) provide any other information specified in the public notice of application.

### ***C. Requirement that Requestor be an "Affected Person"***

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." The factors to consider in making this determination are found in 30 TAC § 55.203 and are as follows:

(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) 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) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

#### ***D. Referral to the State Office of Administrative Hearings***

30 TAC § 50.115(b) details how the Commission refers a matter to the State Office of Administrative Hearings: “When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(c) further states:

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; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.

#### ***E. Permit Applications Where There is No Right to a Contested Case Hearing***

30 TAC § 55.201(i)(5) outlines when a renewal or amended permit application proposed to be issued under the Texas Water Code, Chapter 26, is not subject to a contested case hearing. A permit renewal or amendment is not subject to a contested case hearing when:

- (A) the applicant is not applying to:
  - (i) increase significantly the quantity of waste authorized to be discharged; or

- (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

### **III. Evaluation of Hearing Requests**

#### ***A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d).***

All hearing requestors submitted timely written contested case hearing (CCH) requests that included contact information and raised disputed issues. Each hearing requestor identified their personal justiciable interest in the application that is not common to the general public. In addition, each requestor indicated that their property is within one radial mile of the wastewater treatment facility.

The ED recommends finding that all requestors substantially complied with 30 TAC §§ 55.201(c) and (d).

#### ***B. The Requestors Have no Right to a Contested Case Hearing on this Renewal Application.***

This is an application for renewal of a wastewater discharge permit and the Commission must determine whether there is a right to a contested case hearing. The CCH requests in this case should be denied under TWC § 26.028(d) and 30 TAC § 55.201(i)(5), because there is no right to a contested case hearing for this permit renewal.

30 TAC § 55.201(i)(5) states that there is no right to a CCH for applications that seek to renew or amend a permit under Texas Water Code, Chapter 26, if: (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, (2) The activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged, (3) Any required opportunity for public meeting has been given, (4) Consultation and response to all timely received and significant public comment was done, and (5) The Applicant's compliance history for the previous five years raises no issues regarding the Applicant's ability to comply with a material term of the permit.

This application seeks to renew TLAP permit no. WQ0013594001. This is a renewal of a permit issued in 2009. Effluent limitations and monitoring requirements in the draft permit remain the same as the existing permit effluent limitations and monitoring requirements. The Sludge Provisions, Special Provisions and Standard Provisions have been revised in the draft permit. Therefore, the ED recommends finding that the application does not materially change the place or pattern of wastewater disposal from the existing permit.

The substantial changes that are unique to this draft permit are the inclusion of the 5 new Special Provisions, Items 25, 26, 27, 28 and 29. These were added upon recommendation by the TCEQ Region 11 staff to address violations that are also the subject of a Compliance Agreement with the Applicant. These violations are concerned with unauthorized discharges, operations and maintenance issues, and odor. These added permit provisions will provide the Region staff with additional tools to ensure compliance and communicate more specifically what is expected at the Applicant's facilities. Inclusion of the new provisions complements and reinforces the said Compliance Agreement.

All required public meetings were held in this case. A public meeting was held for this permit application in Bee Caves on August 13, 2015. At the public meeting, 8 people provided formal oral comment, two of which were in favor of the permit. The ED

received numerous comments during the public comment period and responded to all timely received relevant and material, or significant public comments in the Amended RTC filed on November 5, 2015.

The compliance history for the Applicant does not raise an issue about the Applicant's ability to comply with the material terms of the draft permit. The Applicant has a satisfactory compliance history classification and a 2.25 numerical rating. The compliance history reflects an Agreed Order from 2011 for unauthorized discharges of wastewater. There is also a 2013 Compliance Agreement in place to address complaints about odors and sanitary sewer overflow concerns. Currently, the applicant is in the process of addressing recent notices of violations pertaining to the application of effluent for irrigation and the need for maintenance of one of the pond liners. The Applicant has cooperated in addressing issues that have been raised. The applicant generally meets the permitted effluent limitations of 5 mg/l CBOD, 5 mg/l TSS, and 2 mg/l NH<sub>3</sub>N. The applicant has demonstrated its general ability to operate the facility in compliance with the permit. Therefore, the Applicant's compliance history raises no issues regarding the Applicant's ability to comply with the material terms of the permit.

The ED recommends finding that the permit renewal application meets all of the conditions in 30 TAC § 55.201(i)(5) and that there is no right to a contested case hearing in this case.

The ED recommends that the Commission find that the Requestors are not entitled to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5).

## **VII. Executive Director's Recommendation**

The ED recommends the following actions by the Commission:

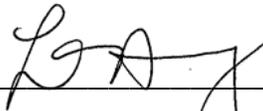
1. Find that there is no right to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5); and
2. Deny all contested case hearing requests.

Respectfully submitted,  
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.  
Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Director  
Environmental Law Division

By:  \_\_\_\_\_

Linda Horng, Staff Attorney  
Environmental Law Division  
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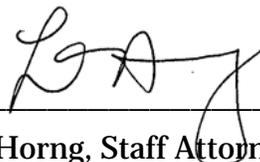
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REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY

### **Certificate of Service**

I certify that on March 14, 2016, the Executive Director's Response to Hearing Requests for West Travis Public Utility Agency, TCEQ Permit No. WQ0013594001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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Linda Horng, Staff Attorney  
Environmental Law Division  
State Bar No. 24078690

**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY  
DOCKET NO. 2016-0022-MWD; PERMIT NO. WQ0013594001**

**FOR THE APPLICANT:**

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**FOR THE EXECUTIVE DIRECTOR**  
via electronic mail:

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**FOR PUBLIC INTEREST COUNSEL**  
via electronic mail:

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FOR ALTERNATIVE DISPUTE  
RESOLUTION

via electronic mail:

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Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
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Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

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Texas Commission on Environmental  
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Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTER(S)/INTERESTED  
PERSON(S):

See attached list.

**REQUESTOR(S)**

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# **ATTACHMENT A**

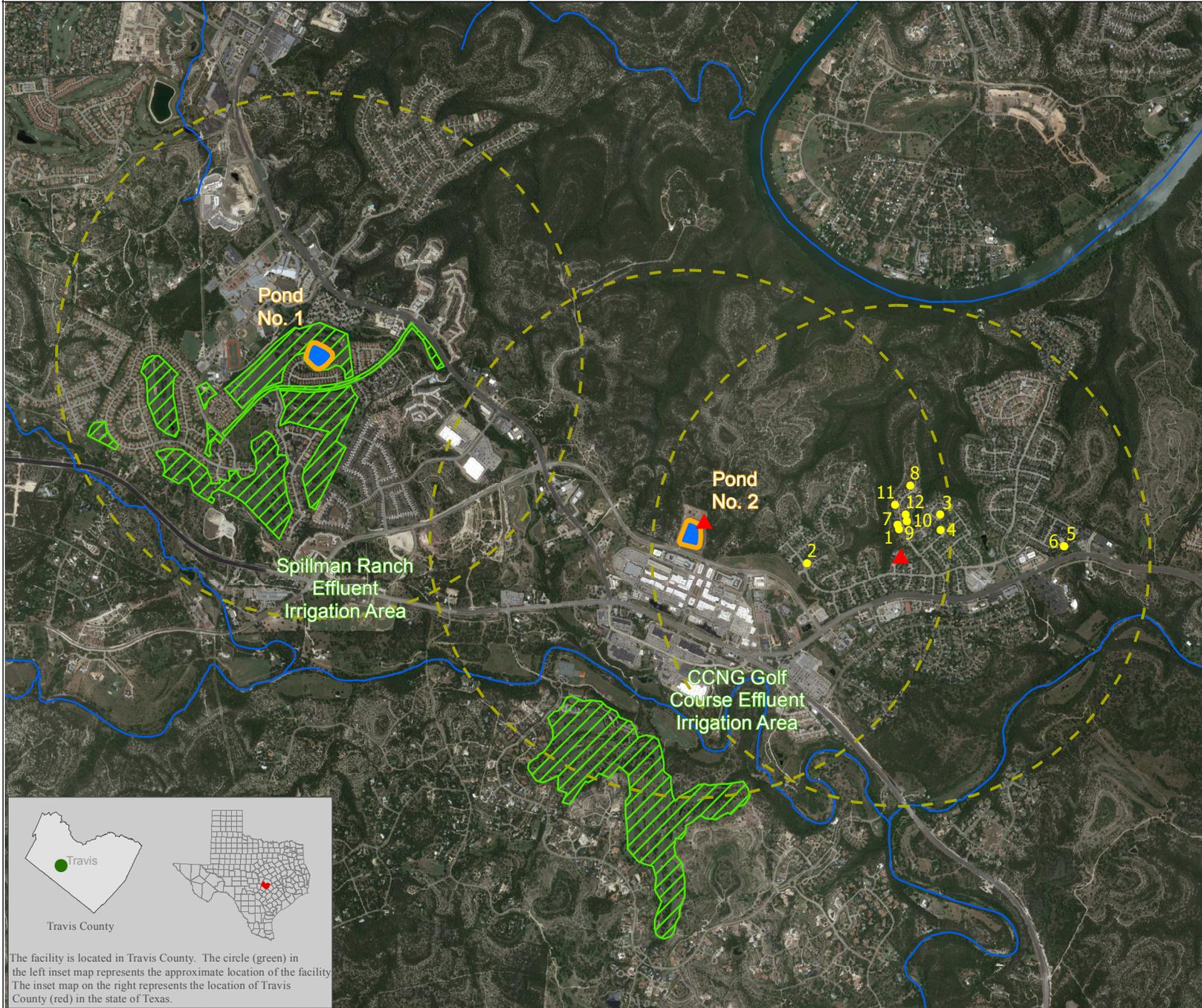
# West Travis County Public Utility Agency WQ0013594001

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



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

Date: 3/7/2016



- WWTP
- Pond
- Irrigation Area
- Watercourse
- 1 mile radial distance
- Requester

ID	NAME
1	Wenglar, Ty
2	Sinnott, Patricia
3	Harrod, John M
4	Brzoska, Eileen
5	Nabben, Johanna
6	Shade, Mark
7	Newell, Brian
8	Goff, Frederick W
9	Ruiz, Robert M
10	Ruiz, Donna
11	Kirshbom, Alan
12	Cook, M E

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. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

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