

**TCEQ Docket No. 2016-0590-MWD**

<b>APPLICATION BY TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION FOR A NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMIT NO. WQ0015399001</b>	<b>§ § § § § §</b>	<b>BEFORE THE TEXAS  COMMISSION ON  ENVIRONMENTAL QUALITY</b>
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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on the application by Tri-County Point Property Owners Association (Tri-County POA) for a new TPDES Permit No. WQ0015399001. Timely hearing requests were filed by: Rebecca Barker, John R. Hamrick, Ricky Jackson, Bill Martin, Glen Mears, Peggy Redmond, and Dale Rocarek. Attached for Commission consideration is Attachment A – Satellite map of the area.

**I. FACILITY DESCRIPTION**

Tri-County Point POA has applied for new TPDES Permit No. WQ0015399001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The wastewater treatment facility (WWTF) was previously permitted under TPDES Permit No. WQ0012880001, which expired on January 1, 2015. The existing WWTF serves the Boca Chica subdivision. The compliance history for the existing WWTF is satisfactory.

The Tri-County Point Property Owners Association WWTF is an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The WWTF is in operation.

The effluent limitations in the draft permit, based on a 30-day average, are 20 mg/l five-day biochemical oxygen demand (BOD<sub>5</sub>), 20 mg/l total suspended solids (TSS), Report mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 126 colony forming units (CFU) or

most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 2.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The WWTF is located approximately 12,000 feet southwest of the intersection of State Highway 35 and Five Mile Branch, in Jackson County, Texas 77465. The treated effluent is discharged to an unnamed drainage ditch; thence to a small lake; thence to a salt marsh; thence to Carancahua Bay in Segment No. 2456 of the Bays and Estuaries. The unclassified receiving water uses are minimal aquatic life use for the unnamed drainage ditch and high aquatic life use for the small lake. The designated uses for Segment No. 2456 are exceptional aquatic life use, oyster waters, and primary contact recreation.

The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 TAC § 307.5 and the Procedures to Implement 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 the small lake, salt marsh, and Carancahua Bay, which have been identified as having high and exceptional aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality limited streams as established in the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP).

In a case such as this, end-of-pipe compliance with pH limits from 6.0 to 9.0 standard units reasonably assures instream compliance with TSWQS for pH due to the

relatively small discharge volume authorized and the often corresponding minimal or limited aquatic life uses within unclassified waterbodies. This conservative assumption is based on TCEQ sampling conducted throughout the state that indicates that instream buffering quickly restores pH levels to ambient conditions.

The effluent limitations in the draft permit have been reviewed for consistency with the WQMP. The proposed effluent limitations are contained in the approved WQMP, under the expired previous authorization WQ0012880001.

The Executive Director reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the General Land Office (GLO) and determined that the action is consistent with the applicable CMP goals and policies.

## **II. BACKGROUND**

The TCEQ received Tri-County Point POA's application for a new TPDES permit on June 17, 2015 and declared it administratively complete on September 23, 2015. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 28, 2015 in the *Jackson County Herald Tribune*. The application was determined technically complete on October 23, 2015. The Notice of Application and Preliminary Decision (NAPD) was published December 16, 2015 in the *Jackson County Herald Tribune*. The comment period for this application closed on January 15, 2016. The Executive Director's Response to Comments was mailed on March 10, 2016; the Hearing Request Period ended on April 11, 2016.

This application was administratively complete after September 1, 1999; therefore, this application is subject to procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

## **III. THE EVALUATION PROCESS FOR HEARING REQUESTS**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment and for the Commission's consideration

of hearing requests. The application in this case was declared administratively complete on September 23, 2015; therefore, it is subject to the House Bill 801 requirements. The Commission implemented House Bill 801 by adopting procedural rules in title 30, chapters 39, 50, and 55 of the Texas Administrative Code.

### **A. Response to Requests**

“The ED, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . . .”<sup>1</sup>

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

- (1) Whether the requester is an affected person
- (2) Which 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 in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED’s RTC
- (6) Whether the issues are relevant and material to the decision on the application
- (7) A maximum expected duration for the contested case hearing

### **B. Hearing Request Requirements**

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 ED’s RTC."

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,

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<sup>1</sup> 30 TEX. ADMIN. CODE § 55.209(d) (West 2015).

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 requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester 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 requester should, to the extent possible, specify any of the ED's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy.
- (5) Provide any other information specified in the public notice of application.

### **C. Requirement that Requester Be an Affected Person**

To grant a contested case hearing, the Commission must determine that a requester 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
- (6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.

When the requester is a group or association, it must also comply with requirements found in 30 TAC § 55.205 which provides:

- (a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:
  - (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
  - (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
  - (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
- (b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and reply shall be filed according to the procedure in §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing).

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

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

## **IV. HEARING REQUEST ANALYSIS**

### **A. Whether the Hearing Requests Comply with 30 TAC § 55.201(c) and (d)**

Rebecca Barker, John R. Hamrick, Ricky Jackson, Bill Martin, Glen Mears, Peggy Redmond, and Dale Rocarek, submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their addresses and phone numbers, or those of their representative, and requested a hearing. They identified themselves as persons with what they believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided lists of disputed issues of fact that were raised during the public comment period. The ED concludes that these hearing requests substantially comply with the section 55.201(c) and (d) requirements.

### **B. Whether the Individual Requesters Meet the Affected Person Requirements**

#### **1. Rebecca Barker**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Rebecca Barker is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. In her hearing request Ms. Barker indicated that she owns property in the Boca Chica subdivision; however the address she provided is in Robstown, Texas. Ms. Barker raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; and 3) concerns over the negative impact to human health caused by unauthorized discharges and sanitary sewer overflows. Ms. Barker, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

The Executive Director cannot determine Ms. Barker's location relative to the WWTF or the discharge route, nor did Ms. Barker describe how her interests in the issues she raised are different from the interests of the general public.

All of the issues Rebecca Barker raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Rebecca Barker is not an affected person.

## **2. John R. Hamrick**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that John Hamrick is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Hamrick indicated that he lives in section 2 and owns properties in other sections. The address Mr. Hamrick provided is neither adjacent to the facility nor the discharge route, he did not provide the addresses of the other properties he owns. Mr. Hamrick raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; 3) safety of his drinking water; 4) negative impact to property values. Mr. Hamrick, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues John Hamrick raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that John Hamrick is not an affected person.

## **3. Ricky Jackson**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ricky Jackson is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest

affected by the application, that is not common to members of the general public. Mr. Jackson indicates that he owns property in the Boca Chica subdivision; however, the address he provided is in Jonestown, Texas. Mr. Jackson raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; and 3) concerns over the negative impact to human health caused by unauthorized discharges and sanitary sewer overflows. Mr. Jackson, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues Ricky Jackson raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Ricky Jackson is not an affected person.

#### **4. Bill Martin**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Bill Martin is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Martin indicates that he owns property in the Boca Chica subdivision; however, the address he provided is in Canyon Lake, Texas. Mr. Martin raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; and 3) whether the public notice requirements were met. Mr. Martin, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues Bill Martin raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Bill Martin is not an affected person.

## 5. Glen Mears

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Glen Mears is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Mears indicates that he lives in the Boca Chica subdivision, and provided an address on Porpoise Drive. Mr. Mears does not appear to live along the discharge route nor near the facility. Mr. Mears raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; 3) concerns over the negative impact to human health caused by unauthorized discharges and sanitary sewer overflows; 4) concerns regarding the capacity of the WWTF to meet the future needs of the area; and 5) concerns over whether the actions of the Tri-County Point POA president are appropriate. Mr. Mears, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues Glen Mears raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Glen Mears is not an affected person.

## 6. Peggy Redmond

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Peggy Redmond is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Redmond indicates she owns lots 276 and 277 on Lobster Lane in the Tri-County Point Association. Ms. Redmond does not appear to live along the discharge route, nor is her property near the facility. Ms. Redmond raised general issues regarding: 1) concerns

with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; and 3) concerns over the negative impact to human health caused by unauthorized discharges and sanitary sewer overflows.

Ms. Redmond, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues Peggy Redmond raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Peggy Redmond is not an affected person.

## **7. Dale Rocarek**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Dale Rocarek is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Rocarek indicates he owns lots 276 and 277 on Lobster Lane in the Tri-County Point Association. Mr. Rocarek does not appear to live along the discharge route, nor is his property near the facility. Mr. Rocarek raised general issues regarding: 1) concerns with operation and maintenance of the WWTF; 2) concerns with the developer relating to the expired permit; and 3) concerns over the negative impact to human health caused by unauthorized discharges and sanitary sewer overflows. Mr. Rocarek, however, did not identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public, and therefore, is not an affected person.

All of the issues Dale Rocarek raised are interests that are in common with the general public; therefore, the Executive Director recommends that the Commission find that Dale Rocarek is not an affected person.

### **C. Whether Issues Raised Are Referable to SOAH for a Contested Case Hearing**

The ED analyzed the issues raised in the hearing requests in accordance with the regulatory criteria and provides the following recommendations regarding whether the issues can be referred to SOAH if the Commission grants the hearing requests. Except where noted, all issues were raised during the public comment period, and none of the issues were withdrawn. All identified issues are considered disputed unless otherwise noted. The ED has also listed the relevant RTC responses.

1. *Whether, based on the history of issues with the WWTF, it will be properly operated and maintained. (Response 3)*

This is an issue of fact that is relevant and material to a decision on the application. The ED recommends the Commission refer this issue to SOAH if it grants the hearing requests.

2. *Whether the drinking water is safe. (Response 4)*

This is an issue of fact; however, it is not relevant and material to a decision on the application. The ED does not recommend referring this issue to SOAH if the Commission grants the hearing requests.

3. *Whether the application should be denied because there are duties and obligations associated with the expired permit that have not been fulfilled by the developer. (Responses 5 and 6)*

This is an issue of fact; however, it is not relevant and material to a decision on the application. The ED does not recommend referring this issue to SOAH if the Commission grants the hearing requests.

4. *Whether unauthorized discharges and sanitary sewer overflows endanger human health. (Response 6)*

This is an issue of fact that is relevant and material to a decision on the application. The ED recommends referring this issue to SOAH if the Commission grants the hearing requests.

5. *Whether the WWTF negatively impacts property values. (Response 8)*

This is an issue of fact; however, it is not relevant and material to a decision on the application. The ED does not recommend referring this issue to SOAH if the

Commission grants the hearing requests.

6. *Whether the capacity of the current WWTF is sufficient for the anticipated future development in the area. (Response 9)*

This is an issue of fact; however, it is not relevant and material to a decision on the application. The ED does not recommend referring this issue to SOAH if the Commission grants the hearing requests.

7. *Whether the actions of the Tri-County Point POA board president are appropriate. (Response 10)*

This is an issue of fact; however, it is not relevant and material to a decision on the application. The ED does not recommend referring this issue to SOAH if the Commission grants the hearing requests.

8. *Whether the public notice requirements regarding the application were met. (Response 2)*

This is an issue of fact that is relevant and material to a decision on the application. The ED recommends referring this issue to SOAH if the Commission grants the hearing requests.

## V. CONTESTED CASE HEARING DURATION

If there is a contested case hearing on this application, the ED recommends that the duration of the hearing be six months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

## VI. CONCLUSION

The Executive Director recommends the Commission:

1. Find that none of the individuals that requested a contested case hearing are affected persons and deny their hearing requests.
2. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
3. If referred to SOAH, refer the following issues:

Issue 1. Whether, based on the history of issues with the WWTF, it will be properly operated and maintained.

- Issue 4. Whether unauthorized discharges and sanitary sewer overflows endanger human health.
- Issue 8. Whether the public notice requirements regarding the application were met.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Director  
Environmental Law Division

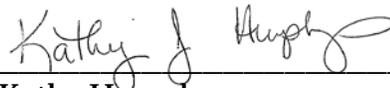


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#### CERTIFICATE OF SERVICE

I certify that on May 13, 2016, the original and seven copies of the "Executive Director's Response to Hearing Request" for new Permit WQ0015399001 for Tri-County Point Property Owners Association was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Kathy Humphreys

**MAILING LIST**  
**TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION**  
**DOCKET NO. 2016-0590-MWD; PERMIT NO. WQ0015399001**

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REQUESTER(S)/INTERESTED

PERSON(S)

See attached list.

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Palacios, Texas 77465-6009

Ricky Jackson  
17933 Easy Street  
Jonestown, Texas 78645-9661

Mr. Bill Martin  
675 Firefly Drive  
Canyon Lake, Texas 78133-6519

Glen Allen Mears  
502 Porpoise Drive  
Palacios, Texas 77465-1959

Dale Rocarek & Peggy Redmond  
67 Lobster Lane  
Palacios, Texas 77465

**Attachment A**  
**Satellite Map of the Area**

# Tri-County Point Property Owners Association

## WQ0015399001

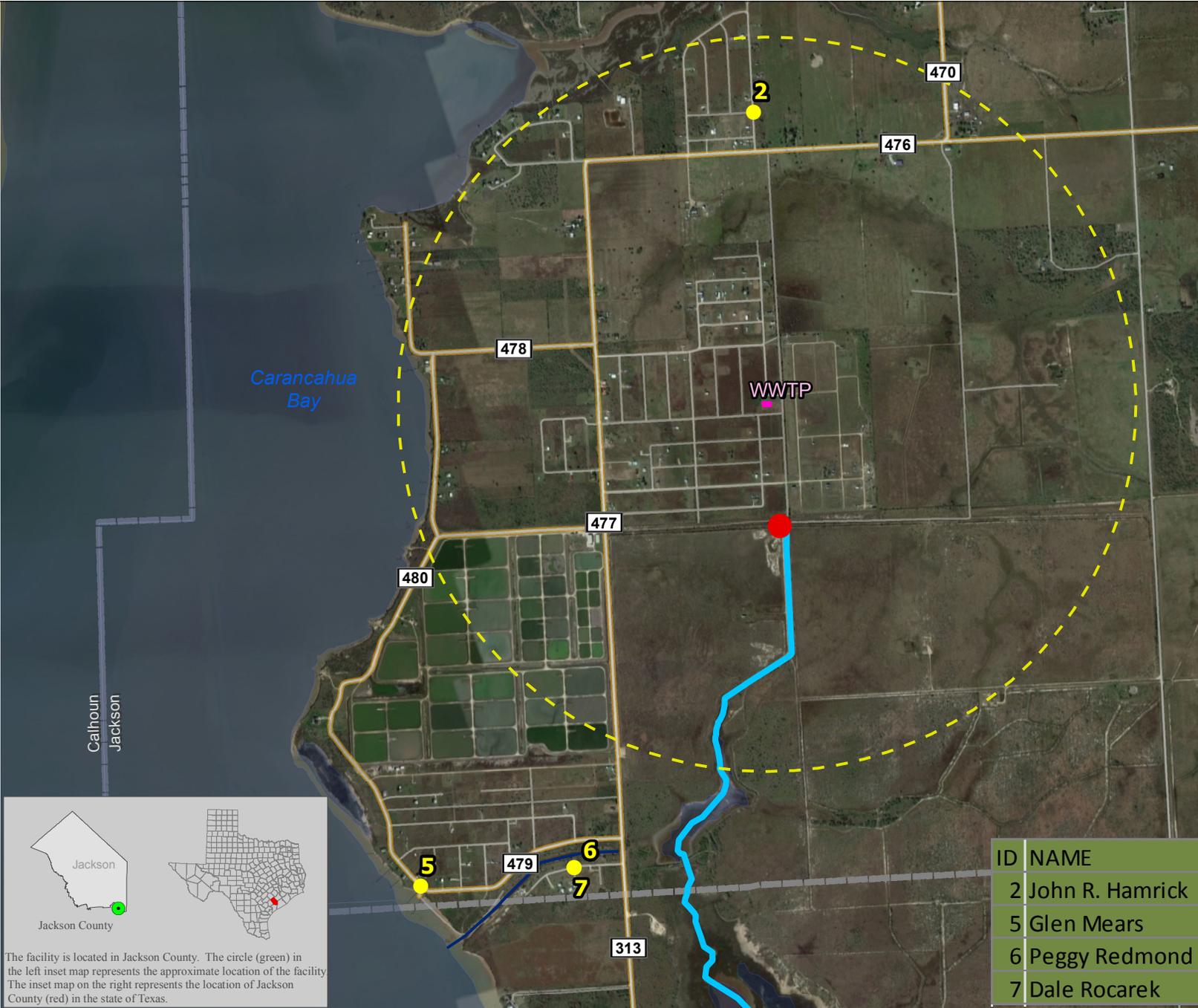
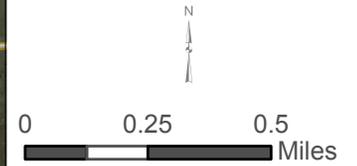
Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

ID	NAME	CITY
1	Rebecca Barker	Robstown
3	Ricky Jackson	Jonestown
4	Bill Martin	Canyon Lake



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

Date: 5/10/2016

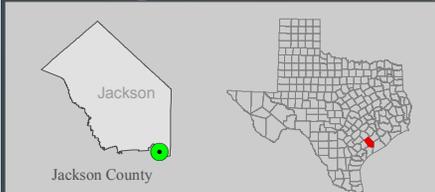


- Outfall
- ⊕ WWTP Boundary
- - - 1 mi radial distance from WWTP boundary
- ~ Downstream discharge from outfall
- ~ Watercourse
- ☁ Waterbody
- Intermediate Roads
- Minor Roads
- County Boundary
- Requester

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.

ID	NAME
2	John R. Hamrick
5	Glen Mears
6	Peggy Redmond
7	Dale Rocarek



The facility is located in Jackson 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 Jackson County (red) in the state of Texas.