

DOCKET NO. 2021-1213-MWD

APPLICATION BY
CITY OF HOLLIDAY
FOR NEW TPDES PERMIT
NO. WQ0014674001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by City of Holliday (Applicant) seeking a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014674001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Charles A. Finnell.

Attached for Commission consideration are the following:

Exhibit A - Compliance History Report

Exhibit B - Executive Director's Satellite Map

II. Description of Facility

The City of Holliday has applied to the TCEQ for a renewal of the existing permit that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.20 million gallons per day (MGD). The City of Holliday Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, a grit chamber, an oxidation ditch, a final clarifier, three sludge drying beds, and a chlorine contact chamber. The existing wastewater treatment facility serves the City of Holliday.

Effluent limits in the draft permit, based on a 30-day average, are 20 mg/l BOD₅, 20 mg/l TSS, Report mg/l NH₃-N, 126 colony-forming units or most probable number of *E. coli* per 100 milliliters, and 4.0 mg/l minimum dissolved oxygen. The effluent shall contain a chlorine residual in the range of 1.0 to 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). The pH must be in the range of 6.0 to 9.0 standard units.

The wastewater treatment facility is located one-mile northeast of the City of Holliday on the north extension of College Street, approximately 0.25 miles north of the intersection of U.S. Highway 82 and U.S Highway 277, in Archer County, Texas 76366. The treated effluent is discharged to an unnamed tributary, thence to Holliday Creek, thence to Lake Wichita in Segment No. 0219 of the Red River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary.

The designated uses for Segment No. 0219 are primary contact recreation and high aquatic life use.

III. Procedural Background

The TCEQ received this application on August 13, 2020, and declared it administratively complete on October 21, 2020. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published on November 12, 2020, in the *Archer County News*. ED staff completed the technical review of the application on January 21, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) was published on April 15, 2021, in the *Archer County News*. The public comment period ended, on May 17, 2021. The ED denied the public meeting request on May 24, 2021.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- 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;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

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;

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;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. 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. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

whether the interest claimed is one protected by the law under which the application will be considered;

distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

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

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

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;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

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 SOAH for a hearing." 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

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.

30 TAC § 55.201(i)(5).

V. Analysis of the Request

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

A. Whether the Hearing Request Complied with Section 55.201(c) and (d).

Charles A. Finnell submitted a timely hearing request that raised issues presented during the public comment period that have not been withdrawn. He provided his name, email address, and requested a public hearing. However, he did not provide his address. He identified himself as a person with what he believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided a list of disputed issues of fact they raised during the public comment period. The Executive Director concludes that the hearing request of Charles A. Finnell did not substantially comply with the section 55.201(c) and (d) requirements.

Charles A. Finnell

According to the information provided by Mr. Finnell, his property surrounds the facility. However, Mr. Finnell never gave his home address, only his law office address. He raised concerns about harm to the stream and impact to the surrounding land. These issues are protected by the laws under which the application will be considered. However, Mr. Finnell discusses how he donated the property to Midwestern State University (MSU), therefore, he does not own the land. Without knowing where he lives, we cannot find that he has 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 is not an affected person.¹

The Executive Director recommends the Commission find that Charles A. Finnell is not an affected person.

B. There is No Right to a Contested Case Hearing on this Renewal Application

This is an application for a renewal to an existing Texas Pollutant Discharge Elimination System Permit No. WQ0014674001 and the Commission must determine whether there is a right to a contested case hearing. The contested case hearing request 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.

According to TCEQ rules, 30 TAC § 55.201(i)(5), there is no right to a contested case hearing 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.

The City of Holliday application seeks to renew Texas Pollutant Discharge Elimination System Permit No. WQ0014674001. The City of Holliday permit was previously renewed in 2016. Effluent limitations and monitoring requirements in the draft permit remain the same as the existing permit effluent limitations and monitoring requirements. This permit renewal would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The City of Holliday is not applying to increase the quantity of wastewater authorized to be disposed of. Therefore, the ED recommends finding that the application does not materially change the place or pattern of wastewater disposal from the existing permit and that the permit will maintain the quality of waste authorized to be discharged. Required opportunity for a public meeting has been given, only one public comment request was received. The Applicant has a satisfactory compliance history classification and an 0.21 numerical rating. **See Attachment A.** 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 Executive Director recommends finding that this 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.

¹ *Id.* § 55.203(a); *see also id.* § 55.211(c)(2).

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director 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.

VII. Conclusion

The Executive Director recommends the following action by the Commission:

Find Charles A. Finnell not as affected persons and deny his hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

Erin. E. Chancellor, Director
Environmental Law Division

Charmaine Backens, Deputy Director
Environmental Law Division



Aubrey Pawelka, Staff Attorney
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-0622
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on May 23, 2022, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0014674001 by City of Holliday 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.



Aubrey Pawelka, Staff Attorney
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-0622
Fax: (512) 239-0606

**MAILING LIST CITY OF HOLLIDAY
DOCKET NO. 2021-1213-MWD; PERMIT NO. WQ0014674001**

FOR THE APPLICANT

via electronic mail:

Gerri Ayres, City Secretary
City of Holliday
P.O. Box 508
Holliday, Texas 76366
Tel: (940) 583-1202
gerri.ayres@hollidaytx.org

Danny Addison, Public Works Director
City of Holliday
P.O. Box 508
Holliday, Texas 76366
Tel: (940) 586-1313
danny.addison@hollidaytx.org

T. Dean Hinton, P.E.
Corlett, Probst & Boyd, PLLC
4605 Old Jacksboro Highway
Wichita Falls, Texas 76302
Tel: (940) 723-1455
tdh@cpbwf.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0622
Fax: (512) 239-0606
aubrey.pawelka@tceq.texas.gov

Abdur Rahim, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 3087
Austin, Texas 78711
Tel: (512) 239-0504
Fax: (512) 239-4430
abdur.rahim@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFilings:

<https://www14.tceq.texas.gov/epic/eFiling/>

Docket Clerk
Texas Commission on Environmental
Quality
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 PERSONS

See attached list

REQUESTER(S):

Charles A. Finnell
P.O. Box 468
Holliday, Texas 76366

INTERESTED PERSON(S):

David Mark Coleman
1634 Victory Avenue
Wichita Falls, Texas 76301

David Mark Coleman
3719 Cedar Elm Lane
Wichita Falls, Texas 76308

Attachment A



Compliance History Report

Compliance History Report for CN600682520, RN101609519, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator:	CN600682520, City of Holliday	Classification:	SATISFACTORY	Rating:	0.21
Regulated Entity:	RN101609519, HOLLIDAY WWTP	Classification:	SATISFACTORY	Rating:	0.31
Complexity Points:	7	Repeat Violator:	NO		
CH Group:	08 - Sewage Treatment Facilities				
Location:	ARCHER COUNTY, HOLLIDAY TX 76366 ARCHER, TX, ARCHER COUNTY				
TCEQ Region:	REGION 03 - ABILENE				

ID Number(s):

WASTEWATER EPA ID TX0025755

WASTEWATER PERMIT WQ0014674001

WASTEWATER AUTHORIZATION R14674001

WASTEWATER LICENSING LICENSE WQ0013768001

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: November 23, 2020

Agency Decision Requiring Compliance History: Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.

Component Period Selected: August 13, 2015 to November 23, 2020

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: WH

Phone: (512) 239-3581

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	August 18, 2015	(1283448)
Item 2	September 14, 2015	(1290591)
Item 3	October 20, 2015	(1296790)
Item 4	November 16, 2015	(1302240)
Item 5	December 14, 2015	(1309175)
Item 6	January 11, 2016	(1315962)
Item 7	February 15, 2016	(1325344)
Item 9	March 11, 2016	(1332081)
Item 10	April 13, 2016	(1339236)
Item 11	May 12, 2016	(1346044)
Item 12	June 13, 2016	(1352477)
Item 13	September 19, 2016	(1372578)

Item 14	September 21, 2016	(1365886)
Item 15	October 18, 2016	(1378753)
Item 16	November 14, 2016	(1384718)
Item 17	December 15, 2016	(1390850)
Item 18	January 16, 2017	(1397465)
Item 19	February 09, 2017	(1404354)
Item 20	March 15, 2017	(1411451)
Item 21	April 17, 2017	(1417946)
Item 22	June 16, 2017	(1431569)
Item 23	July 17, 2017	(1440160)
Item 24	August 11, 2017	(1443844)
Item 25	September 14, 2017	(1450450)
Item 26	October 16, 2017	(1456299)
Item 27	December 15, 2017	(1468152)
Item 28	January 16, 2018	(1474852)
Item 29	February 16, 2018	(1487073)
Item 30	April 18, 2018	(1493994)
Item 31	June 15, 2018	(1508028)
Item 32	July 20, 2018	(1514361)
Item 33	August 17, 2018	(1520412)
Item 34	October 11, 2018	(1533942)
Item 35	November 14, 2018	(1541774)
Item 36	December 13, 2018	(1545546)
Item 37	January 14, 2019	(1560636)
Item 38	February 19, 2019	(1560634)
Item 39	March 12, 2019	(1560635)
Item 40	April 12, 2019	(1572145)
Item 41	May 13, 2019	(1583897)
Item 42	July 08, 2019	(1593482)
Item 43	September 16, 2019	(1599812)
Item 44	October 11, 2019	(1613556)
Item 45	November 12, 2019	(1619371)
Item 46	December 11, 2019	(1626724)
Item 47	January 17, 2020	(1634365)
Item 48	February 18, 2020	(1640981)
Item 49	March 13, 2020	(1647500)
Item 50	May 14, 2020	(1660422)
Item 51	June 16, 2020	(1666935)
Item 52	July 13, 2020	(1673885)
Item 53	September 14, 2020	(1687233)
Item 54	September 21, 2020	(1680664)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 03/31/2020 (1653840)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Attachment B

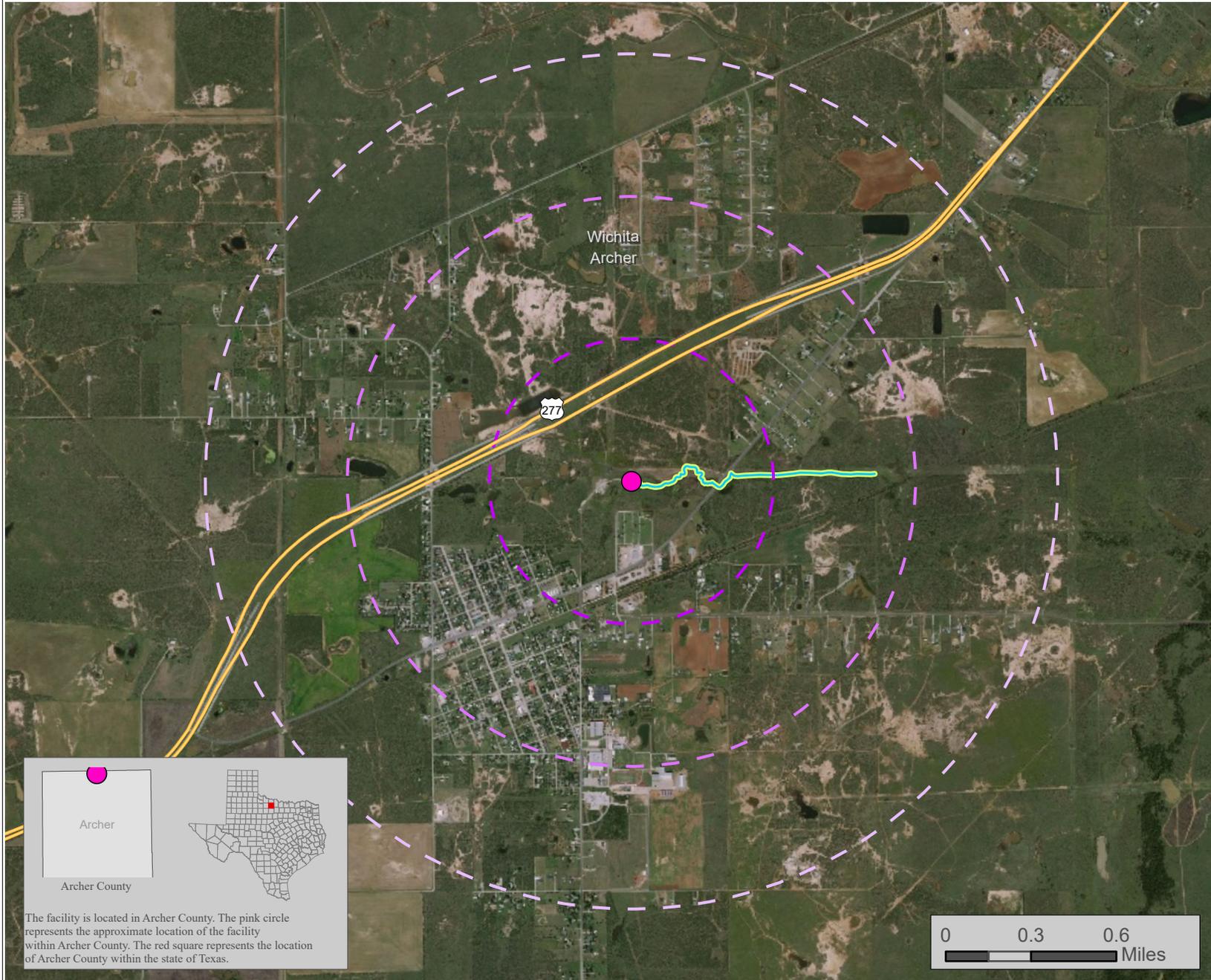
City of Holliday WQ0014674001

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: 5/16/2022
CRF 0057440_edit
Cartographer: jbartlin



- Facility Location
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius
- 1 Mile Discharge

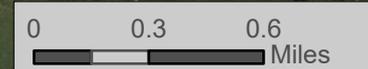
Major Roads

- Highway

Mr. Finnell did not provide the address of his property.



The facility is located in Archer County. The pink circle represents the approximate location of the facility within Archer County. The red square represents the location of Archer County within the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.