

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 14, 2022

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

RE: Application by Harris County MUD No. 495 TPDES Permit No. WQ0015222001;
TCEQ Docket No. 2022-0148-MWD

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Harrison.Malley@tceq.texas.gov if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cole Malley".

Cole Malley, Staff Attorney - Environmental Law Division

Enclosure,

cc: Mailing List

TCEQ DOCKET NO. 2022-0148-MWD

APPLICATION BY	§	BEFORE THE
HARRIS COUNTY MUD NO. 495 FOR	§	TEXAS COMMISSION ON
TPDES PERMIT NO. WQ0015222001	§	ENVIRONMENTAL QUALITY
	§	
	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Harris County MUD No. 495 (Applicant) for a TPDES Permit No. WQ0015222001. The Office of the Chief Clerk received contested case hearing requests from Christopher L. Spicer and Donnisha Spicer

Attached for Commission consideration is a satellite map of the area showing the locations of the facility, outfall, and requestors.

II. FACILITY DESCRIPTION

The Harris County Municipal Utility District No. 495 has applied to the TCEQ for an amendment of the existing permit to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 0.90 million Executive Director's Response to Comments Harris County Municipal Utility District No. 495 TPDES Permit No. WQ0015222001 2 gallons per day (MGD) to an annual average flow not to exceed 1.50 MGD. The existing wastewater treatment facility serves Harris County Municipal Utility District No. 495.

The wastewater treatment facility is located at 5455 ½ Porter Road, in Harris County, Texas 77493. The treated effluent is discharged to South Mayde Creek, thence to Buffalo Bayou, thence to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for Executive Director's Response to Comments Harris County Municipal Utility District No. 495 TPDES Permit No. WQ0015222001 3 South Mayde Creek. The designated uses for Segment No. 1014 are primary contact recreation and limited aquatic life use.

The Harris County Municipal Utility District No. 495 Wastewater Treatment Facility is an activated sludge process plant operated in the extended aeration mode in all phases. Treatment units in the Interim I phase include one bar screen, five aeration basins, two final clarifiers, three aerobic digesters and one chlorine contact chamber. Treatment units in the Interim II phase will include one bar screen, nine aeration basins, three final clarifiers, three aerobic digesters and three chlorine contact chambers. Treatment units in the Final phase will include one bar screen, three concrete aeration basins, three concrete final clarifiers, two concrete aerobic digesters and three concrete chlorine contact chambers. The existing wastewater treatment

facility serves Harris County Municipal Utility District No. 495. Effluent limits in the draft permit, based on a thirty-day average, are 10 milligrams per liter (mg/L) five-day carbonaceous biochemical oxygen demand, 15 mg/L total suspended solids, 2.0 mg/L ammonia nitrogen, 126 colony-forming units or most probable number of E. coli per 100 milliliters, and 6.0 mg/L minimum dissolved oxygen in all phases. 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.

III. PROCEDURAL BACKGROUND

The TCEQ received the application on March 10, 2020, and declared it administratively complete on June 12, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on June 24, 2020, in the Houston Chronicle dba Examiner in English and June 21, 2020, in the El Perico Newspaper in Spanish. ED staff completed the technical review of the application on February 1, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published April 21, 2021, in the Houston Chronicle dba Examiner in English and April 18, 2021 in the El Perico Newspaper in Spanish. The Combined Notice of Receipt and Intent/ Notice of Application and Preliminary Decision was published on November 3, 2021, in the Houston Chronicle dba Examiner in English and October 31, 2021, in the El Perico Newspaper in Spanish. The comment period closed December 3, 2021. The hearing request period ended on January 20, 2022. 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

HB 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. SB 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 ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

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

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

- letter with the chief clerk prior to the filing of the ED'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.²

B. Hearing Request Requirements

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 ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the time, 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 ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.⁴

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

⁴ 30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/“Affected Person” Status

To grant a contested case hearing, the Commission must determine that a requestor is an “affected” person by conducting the following analysis:

- (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) Except as provided by § 55.103 of this title (relating to Definitions), 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 a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (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.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

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.”⁵ The Commission may not refer an issue to the State Office of Administrative Hearings (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 whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁶

V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

1. Parties the Executive Director recommends the Commission find affected persons

Christopher L. Spicer and Donnisha Spicer

The Spicers submitted timely comments and hearing requests in which they articulated several concerns they had with the permit and application. Their property is less than ¼ mile from the facility and is along the discharge route.

In their hearing request, the Spicers described how they believe the permit will prevent them from enjoying the use of their property. The issues they identified include but are not limited to odor, toxicity of effluent, contamination, TCEQ procedures, permit requirements, water quality surface standards, algae, and human health.

Due to the Spicers’ proximity to the facility and because their interests are not common to the general public and were timely raised, the Executive Director recommends that the Commission find the Spicers affected persons as they have complied with requirements set forth in 30 TAC § 55.203.

B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).

Issue 1) Whether the draft permit is protective of aquatic and terrestrial wildlife. (RTC Responses 7, 19)

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 2) Whether the draft permit will be protective of surface water quality. (*RTC Responses 4, 8*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 3) Whether the nutrient limits in the draft permit will comply with the Texas Surface Water Quality Standards and prevent algal blooms. (*RTC Responses 4, 8, 19, 22*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 4) Whether the draft permit is protective of human health. (*RTC Response 4*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 5) Whether existing uses will be protected and maintained under the draft permit. (*RTC Responses 4, 8*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 6) Whether the draft permit complies with TCEQ's antidegradation policy and procedures. (*RTC Response 22*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 7) Whether the draft permit will cause flooding and erosion. (*RTC Responses 2, 3, 5, 7, 10*)

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 8) Whether the draft permit complies with TCEQ's odor abatement requirements. (*RTC Response 6*)

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 9) Whether the draft permit will address noise from the facility. (*RTC Response 8*)

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 10) Whether the WWTF will attract pests. *(RTC Response 14)*

- This issue involves a disputed question of fact, that was not withdrawn and but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 11) Whether the application is complete and accurate. *(RTC Responses 9, 12, 20)*

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 12) Whether the draft permit will contaminate the soil and groundwater. *(RTC Responses 11, 17)*

- This issue involves a disputed question of fact, that was not withdrawn and that is relevant and material to a decision on the application. The Executive Director concludes that this issue **is appropriate** for referral to SOAH.

Issue 13) Whether the draft permit will require the applicant to treat the effluent to drinking water standards. *(RTC Response 13)*

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 14) Whether the draft permit has sufficiently accounted for rainfall in effluent limitations. *(RTC Response 15)*

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 15) Whether the draft permit has sufficiently accounted for the effects from ambient temperatures. *(RTC Response 16)*

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

Issue 16) Whether the draft permit has sufficient protections against non-biodegradable products including drugs, personal care products, and household chemicals. *(RTC Response 17)*

- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The

Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

- Issue 17)** Whether the discharge route has sufficient capacity to carry and dilute the effluent. *(RTC Response 18, 22)*
- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

- Issue 18)** Whether the applicant should be required to submit additional studies with the application. *(RTC Response 9, 21)*
- This issue involves a disputed question of fact, that was not withdrawn but is neither relevant nor material to a decision on the application. The Executive Director concludes that this issue **is not appropriate** for referral to SOAH.

VI. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission find Christopher L. Spicer and Donnisha Spicer affected persons and grant their hearing requests.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by the affected person as identified by the Executive Director:

Issue 1) Whether the draft permit is protective of aquatic and terrestrial wildlife. *(RTC Responses 7, 19)*

Issue 2) Whether the draft permit is protective of surface water quality. *(RTC Responses 4, 8)*

Issue 3) Whether the nutrient limits in the draft permit comply with the Texas Surface Water Quality Standards and will prevent algal blooms. *(RTC Responses 4, 8, 19, 22)*

Issue 4) Whether the draft permit is protective of human health. *(RTC Response 4)*

Issue 5) Whether existing uses will be protected and maintained under the draft permit. *(RTC Responses 4, 8)*

Issue 6) Whether the draft permit complies with TCEQ's antidegradation policy and procedures. *(RTC Response 22)*

Issue 8) Whether the draft permit complies with TCEQ's odor abatement requirements. (*RTC Response 6*)

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker,
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Harrison Cole Malley
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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on February 14, 2022, the “Executive Director’s Response to Hearing Request” for TCEQ Permit WQ0015222001 for Harris County MUD No. 495 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.



Harrison Cole Malley

MAILING LIST
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 495
DOCKET NO. 2022-0148-MWD; PERMIT NO. WQ0015222001

FOR THE APPLICANT:
via electronic mail:

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FOR THE CHIEF CLERK:

<https://www14.tceq.texas.gov/epic/eFiling/>
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Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S)/INTERESTED PERSONS
See attached list

REQUESTER(S):

Christopher L. Spicer
23910 Stockdick School Road
Katy, Texas 77493

Christopher & Donnisha Spicer
23910 Stockdick School Road
Katy, Texas 77493

INTERESTED PERSON(S):

Albert Thompson, Jr.
Thompson AW, Sr Estate
P.O. Box 758
Katy, Texas 77492

Attachment A

Application for TPDES Permit WQ0015222001

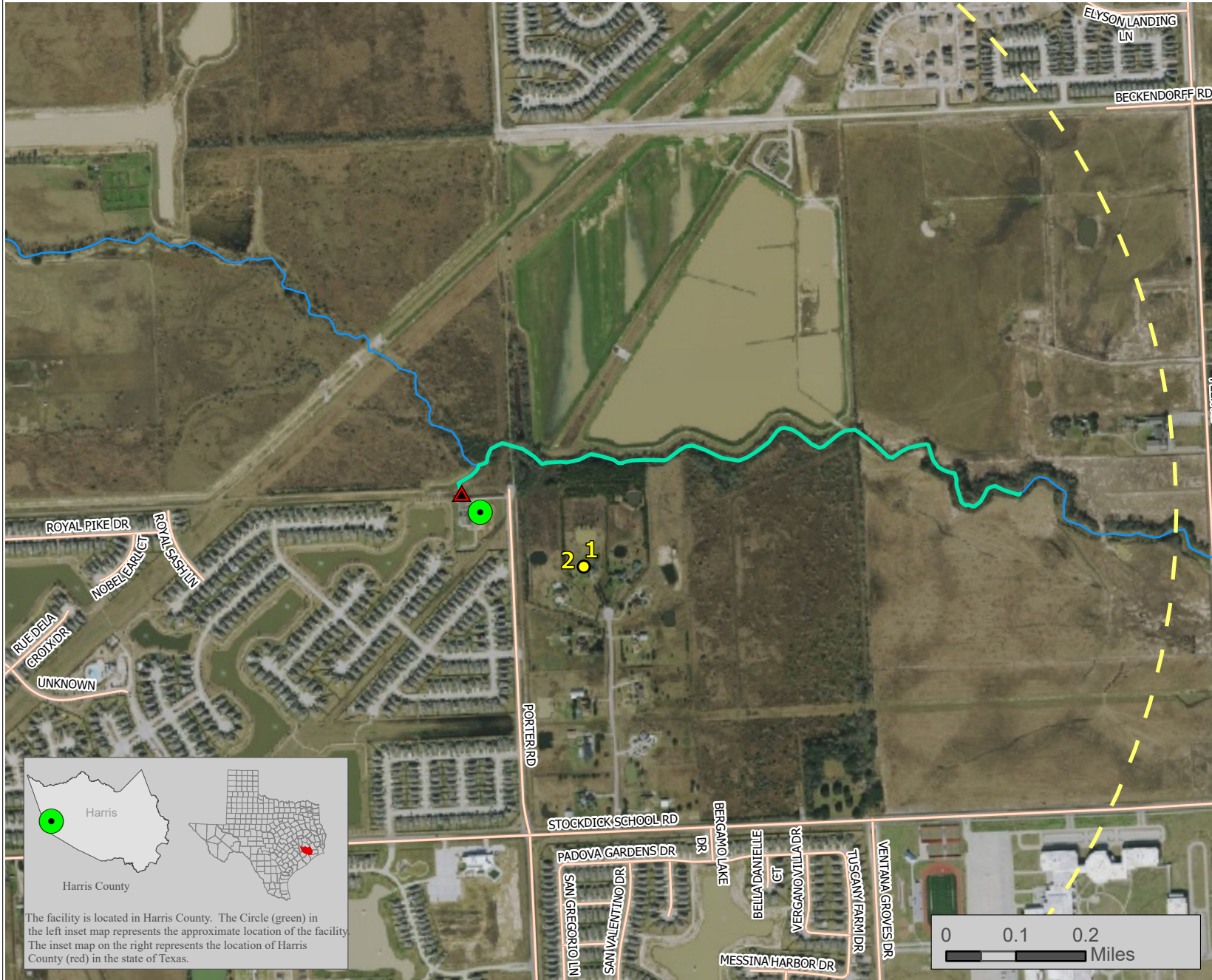
Harris County MUD 495

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: 1/31/2022
CRF 0065378
Cartographer: cschrade



- Facility
- 1 mi Radius
- Outfall
- 1 mi Discharge Route
- Stream/River
- Requestor

Requestors

- 1) Christopher L Spicer
Distance from Facility: 0.17 mi
Distance from Outfall: 0.21 mi
- 2) Donnisha Spicer
Distance from Facility: 0.17 mi
Distance from Outfall: 0.21 mi

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