

DOCKET NO. 2022-0940-MWD

APPLICATION BY	§	BEFORE THE
CITY OF DRIPPING SPRINGS	§	
FOR MAJOR AMENDMENT TO TEXAS	§	TEXAS COMMISSION ON
LAND APPLICATION PERMIT	§	
NO. WQ0014488001	§	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 Dripping Springs (Applicant) seeking a major amendment to Texas Land Application Permit (TLAP) Permit Number WQ0014488001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Hays Trinity Groundwater Conservation District (HTGCD), Protect Our Water (POW), Save Our Springs (SOS), Jennifer Schaeffer, Scott Emerson, and Cynthia J. Wesson.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

The City of Dripping Springs has applied for a major amendment to Texas Land Application Permit No. WQ0014488001 to authorize the addition of a subsurface drip irrigation site of 13.8 acres with a flow volume not to exceed a daily average flow of 60,000 gallons per day in the final phase and the addition of a surface irrigation site of 17 acres with a flow volume not to exceed a daily average flow of 50,000 gallons per day in the final phase, an increase in the total land application acreage from 113.53 acres to 144.33 acres, and an increase in the total wastewater treatment facility flow volume in the final phase to a volume not to exceed a daily average flow from 319,000 gallons per day to 429,000 gallons per day. The existing permit authorizes the disposal of treated wastewater at a volume not to exceed a daily average flow of 133,000 gallons per day via subsurface area drip irrigation of 30.53 acres of public access land and the disposal of treated wastewater at a volume not to exceed a daily average flow not to exceed 186,000 gallons via surface irrigation of 83 acres of public access land. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on February 22, 2019.

The wastewater treatment facility and on-site subsurface disposal site (identified in the permit as Outfall 001) are located approximately 0.55 miles east of the intersection of Ranch Road 12 and Farm-to-Market Road 150, as measured along Farm-to-Market Road 150, and from that point, approximately 1,110 feet south of Farm-to-Market Road 150, in Hays County. An existing offsite subsurface disposal area (also identified in the permit as Outfall 001) is located approximately 0.44 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, as measured along Ranch Road 12, and from that point, approximately 1,280 feet east of Ranch Road 12, in Hays County. Another existing offsite surface disposal area (identified in the permit as

Outfall 002) is located approximately 1.5 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, and from that point approximately 1,000 feet west of Ranch Road 12 in Hays County. The proposed subsurface disposal area (identified in the permit as Outfall 003) will be located approximately 0.31 mile north of the intersection of U.S. Highway 290 and Ranch Road 12, along Ranch Road 12, and, from that point, approximately 0.26 mile west of Ranch Road 12, in Hays County. The proposed surface disposal site (identified in the permit as Outfall 004) will be located approximately 1.65 miles west and 0.65 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, in Hays County. The wastewater treatment facility and on-site subsurface disposal site are located in Hays County, Texas 78619. All other disposal sites are located in Hays County, Texas 78620. The wastewater treatment facility and the disposal sites are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

III. Procedural Background

TCEQ received the application for a major amendment on February 16, 2018, and declared it administratively complete on May 25, 2018. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on February 3, 2022 in the *Austin American Statesman* and in Spanish on February 3, 2022, in *El Mundo*. The application was determined to be technically complete on June 22, 2021. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on February 3, 2022, in the *Austin American Statesman*, and in Spanish on February 3, 2022 in *El Mundo*. A public meeting was held on March 28, 2022. The public comment period ended at the close of the public meeting on March 28, 2022.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

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).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify 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 Hearing Requests Complied with Section 55.201(c) and (d).

Hays Trinity Groundwater Conservation District (HTGCD), Protect Our Water (POW), Save Our Springs (SOS), Jennifer Schaeffer, Scott Emerson, and Cynthia J. Wesson submitted hearing requests. While the hearing requests were timely in compliance with section 55.201(c), they did not demonstrate how they were affected by identifying personal justiciable interests affected by the application, discussed in more detail below. The Executive Director concludes that the hearing requests of Hays Trinity Groundwater Conservation District (HTGCD), Protect Our Water (POW), Save Our Springs (SOS), Scott Emerson, Jennifer Schaeffer, and Cynthia J. Wesson fail to comply with the section 55.201(d) requirements.

1. Hays Trinity Groundwater Conservation District (HTGCD)

Hays Trinity Groundwater Conservation District (HTGCD) submitted a timely comment and hearing request in which they articulated several concerns they had with the permit. 30 TAC § 55.203(b) provides that governmental authorities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. Additionally, 30 TAC § 55.203(c)(7) provides that in determining whether a person is affected, factors considered for governmental entities includes their statutory authority over or interest in the issues relevant to the application.

In their hearing request, HTGCD states that their organization “is a state agency authorized by Chapter 8843 Special District Local Laws Code (SB 1147), and Chapter 36 of the Texas Water Code to protect and manage the quality and quantity of the Trinity Aquifer within the boundaries of its jurisdiction, which include all of the proposed new irrigation sites.” HTGCD requested a hearing on specific issues related to contamination of groundwater, soil suitability, sufficient conditions and monitoring requirements, necessity of a karst field study, the need for a clear delineation of creek-bed setbacks and buffers, and an accurate assessment of groundwater.

However, HTGCD did not demonstrate their authority over the issues raised in the application, and their hearing request failed to comply with the requirements in 30 TAC § 55.203. It is not apparent from HTGCD’s enabling legislation and rules that they are authorized to manage groundwater quality within their jurisdiction. Section 8843.101, Special District Local Laws Code, states that the district has the rights, powers, privileges, functions, and duties provided by the general law of this state, including chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. HTGCD’s hearing request does not cite to any specific statutory authority in Chapter 36 or general law of the state that grants the district authority over issues raised in the City’s application. Thus, the Executive Director recommends that the Commission find HTGCD is not an affected person.

The Executive Director recommends the Commission find that the Hays Trinity Groundwater Conservation District is not an affected person.

2. Protect Our Water (POW)

Protect Our Water (POW) submitted timely comments on the City of Dripping Spring’s application in which they stated that their organization, “is supportive of the City’s plans to extend its land application permit... [and] believe a public hearing would provide greater transparency and allow our public community and potentially impacted residents to better understand the City’s plan.” In their hearing request, they requested a hearing on specific issues related to the City’s management plan, due diligence, capacity, and increased visibility. Based off the comments received, the ED determined that the interests POW seeks to protect are germane to the organization’s purpose and the relief they requested would not require the participation of the individual members in the case.

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015 must meet the requirements in 30 TAC § 55.205(b).

30 TAC § 55.205(b) requires that the organization identify one or more members of the group or association who would otherwise have standing to request a hearing in their own right. In their hearing request, POW failed to identify any member of the organization who had a justiciable interest that could be affected by this application. The only address the hearing request provided is 1.9 miles away from the facility. Furthermore, it appears to be the organization’s office address rather than any one particular member.

Therefore, as POW failed to identify any members of the association who would otherwise have standing to request a hearing in their own right, the ED has determined

that POW has not met this this requirement for associational standing and should not be considered an affected person.

The Executive Director recommends the Commission find that Protect Our Water is not an affected person.

3. Save Our Springs (SOS)

Save Our Springs (SOS) submitted timely comments on the City of Dripping Spring's application in which they stated that their organization, "is a Texas non-profit that works to protect the Edward's Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Hill Country region and its watersheds, with special emphasis on Barton Springs. SOS has members who own property adjacent to and near the irrigation fields and/or have drinking-water wells downgradient from the proposed irrigation fields, who would be adversely affected by the Draft Permit Amendment." In their hearing request, they requested a hearing on specific issues related to water quality protection including degradation of creeks and streams, lax enforcement of permit standards, adequate storage, and nuisance conditions. Based off the comments received, the ED determined that the interests SOS seeks to protect are germane to the organization's purpose, and the relief they requested would not require the participation of the individual members in the case.

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205(b).

30 TAC § 55.205(b) requires that the organization identify one or more members of the group or association who would otherwise have standing to request a hearing in their own right. In their hearing request, SOS identified three of their members who they believe would have standing in their own right to request a hearing. They identified their Executive Director, Bill Bunch, and Chris and Karen Hill. SOS states that Bill Bunch has swam in Onion Creek near the irrigation site and will continue to do so. SOS claims that the likelihood of contamination in these areas by wastewater irrigation at the Carter Ranch site as allowed under the draft permit will cause a direct harm to Mr. Bunch and, thus, to SOS's recreation, conservation, scientific, aesthetic, and personal health safety interests. Mr. Bunch lives in Austin, approximately 20 miles from the irrigation area. SOS also identified Chris and Karen Hill, who live about two miles from the facility. SOS states that the Hills' recreation, conservation, aesthetic, and personal health and safety interests will be harmed by the amended draft permit because the Hills receive their drinking water from the Dripping Springs Water Supply Corporation. Some of the drinking water provided to the Hills comes from groundwater wells near Onion Creek that could be contaminated by irrigated wastewater recharging into the Trinity Aquifer. The Hills are not listed on the affected landowner's map. The Hills also enjoy walking in the area near the irrigation sites.

Due to the distance that the individual members of SOS live from the irrigation site, they have not demonstrated how they are affected in a manner not common to the public. Therefore, as SOS failed to identify any members of the association who would otherwise have standing to request a hearing in their own right, the ED has determined that SOS has not met the requirement for associational standing and

should not be considered an affected person.

The Executive Director recommends the Commission find that Save Our Springs is not an affected person.

4. Jennifer Schaeffer

According to the information provided by Ms. Schaefer, her property could be impacted by the proposed facility. Ms. Schaefer's property is about 1.5 miles from the application areas, and it is not listed on the affected landowner's map. Jennifer Schaeffer submitted a hearing request that raises concerns about human health and safety, water quality, fish, wildlife and their habitats, and TCEQ's transparency. Jennifer Schaeffer's concerns are common to the general public, and she failed to prove that she 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 Ms. Schaefer has not demonstrated that she is affected based on her location or the issues she raises. Thus, the ED recommends denial of her hearing request.

The Executive Director recommends the Commission find that Jennifer Schaeffer is not an affected person.

5. Scott Emerson

Scott Emerson has not shown how he is affected based on his location or issues presented. He does not raise any issues that are affected by the laws under which the application will be considered. Scott Emerson is not listed on the affected landowner's map, and the address he provides is approximately 8.5 miles from the facility. His concerns are common to the general public, and he failed to prove he has a personal justiciable interest. Thus, his issues are not referrable, and the ED recommends denial of his hearing request.

The Executive Director recommends the Commission find that Scott Emerson is not an affected person.

6. Cynthia J. Wesson

Cynthia Wesson has not shown how she is affected based on her location or the issues she raises. She does not raise any issues that are affected by the laws under which the application will be considered. Cynthia Wesson is not listed on the affected landowners map, and the address she provides is approximately 7.5 miles from the facility. Her concerns are common to the general public, and she failed to prove she has a personal justiciable interest. She has not shown how she is individually affected by the issues she raises or the distance from the proposed application areas. Thus, the ED recommends denial of her hearing request.

The Executive Director recommends the Commission find that Cynthia J. Wesson is not an affected person.

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

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The ED does not recommend referring any issues to SOAH.

VI. Analysis of Request for Reconsideration

The Chief Clerk received two timely requests for reconsideration (RFR) from Hays Trinity groundwater Conservation District (HTGCD) and Scott Emerson. As required by 30 Texas Administrative Code § 55.201(d), HTGCD and Scott Emerson gave their request in writing and provided their name, address, and daytime telephone number. HTGCD and Mr. Emerson specifically requested reconsideration of the ED's decision on the Dripping Springs application

The issues brought up by HTGCD included contamination of groundwater, soil suitability, sufficient conditions and monitoring requirements, necessity of a karst field study, the need for a clear delineation of creek-bed setbacks and buffers, and an accurate assessment of groundwater. Mr. Emerson did not show how he was affected based on his location and brought up issues common to the general public. The RFRs did not present any new information not already considered by the ED during the permitting process. Therefore, the ED recommends denial of the RFRs.

VII. 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.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Hays Trinity Groundwater Conservation District (HTGCD), Protect Our Water (POW), Save Our Springs (SOS), Jennifer Schaeffer, Scott Emerson, and Cynthia J. Wesson not affected persons and deny their hearing requests.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on August 15, 2022, the “Executive Director’s Response to Hearing Request” for major amendment to Texas Land Application Permit (TLAP) No. WQ0014488001 by City of Dripping Springs 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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Kyle, TX 78640-1240

City of Dripping Springs

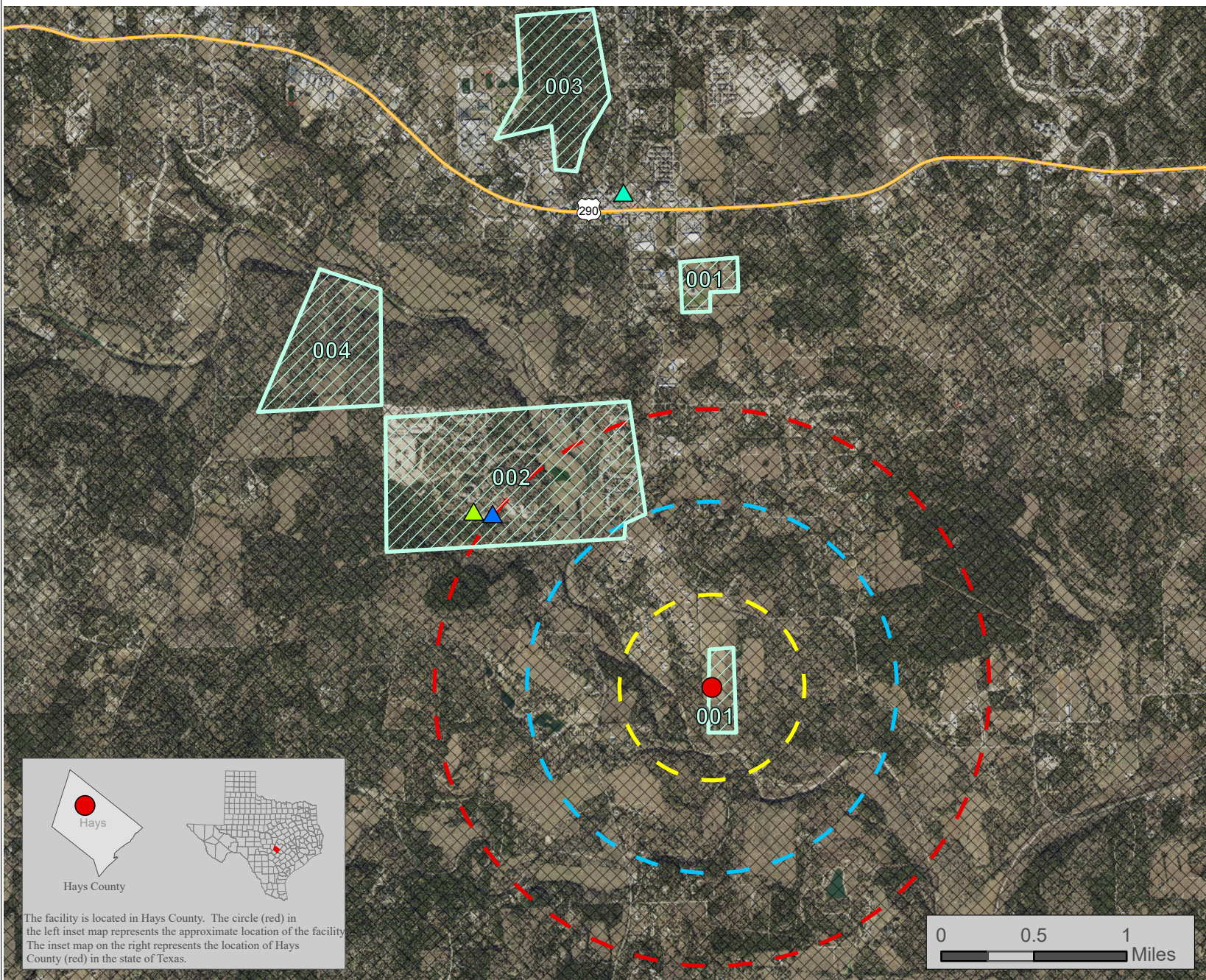
WQ0014488001

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

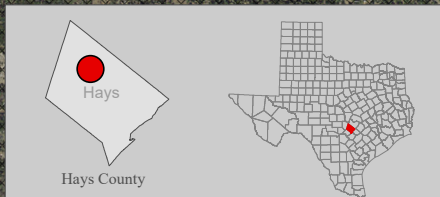


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
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Date: 8/11/2022
CRF 0073606
Cartographer: cschrade



- Save Our Springs office
- Chris and Karen Hill (Save Our Springs)
- Jennifer Schaeffer
- Facility
- 0.5 Mile from Facility
- 1 Mile from Facility
- 1.5 Mile from Facility
- Disposal Sites
- Colorado River Basin



The facility is located in Hays County. The circle (red) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Hays County (red) in 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.

