

TCEQ DOCKET NO. 2023-0120-MWD

**APPLICATION BY SJWTX, INC.
AND MARY JANE CIELENCKI
FOR NEW TPDES PERMIT NO.
WQ0016052001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by SJWTX, Inc. and Mary Jane Cielencki (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016052001 (proposed permit), authorizing the discharge of treated domestic wastewater (proposed discharge) at a daily average flow limit of 0.06/ 0.15/ 0.26 million gallons per day (MGD) in the Interim I/ Interim II/ Final phases, respectively, from the Simmons Valley Wastewater Treatment Facility (proposed facility).

Owen Powell, Annette Gass, Rita Acker, Catherine Martin, Amanda Saunders, Eric Cardenas, Josephine Rosales, Lisa O’Sullivan, Susan Marder, Linda Mohr, Edward Lette, Kasi Finley, Marlin Brown, Juli Coen, Eva Silverfine, Alejandro Ruiz, Star McDonald, Dirk Davidek, Colette Laine, Nathan Segovia, Robert Evans, Ben Hudson, Jessica Bailey, Juanita Proffitt, Chris and Michelle Phelps, Mike and Linda Clark, Becky and Sidney Atkinson, Ruth and Tony Taylor, Kristen and William Wessale, Angela and Robert Butler, and the group “The Neighbors of Spring Branch,” all filed timely hearing requests (requests). The requests filed on this application fall into three categories. Categories 1 and 2 can be characterized as requests that are deficient on their face. Category 3 includes requests that are characterized as valid on their face.

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map and its Appendix

III. FACILITY/DISCHARGE ROUTE DESCRIPTION AND THE ED’S TECHNICAL REVIEW

If this permit is issued, the proposed facility will be located 0.25 miles northwest of the intersection of Rebecca Clark Road and U.S. Highway 281 North, in Comal County, Texas, serve the Simmons Valley Subdivision, and will be a Membrane Bioreactor (MBR) facility. Treatment units throughout the three phases of the proposed permit include an ultra-violet (UV) disinfection chamber, a sludge press, multiple equalization and sludge holding tanks, and multiple MBR and Pre-Aeration skids. The route of the proposed discharge is via pipe to Cypress Creek, then to the Guadalupe River Above Canyon Lake (Segment No. 1806 of the Guadalupe River Basin).

The TCEQ has primary authority over water quality in Texas and also federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies. The Texas Water Code (TWC) § 26.027, authorizes the TCEQ to issue permits for discharges into water in the state, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the TWC and TCEQ rules. Specifically, the ED’s review evaluates

impacts from the proposed discharge on the receiving waters in the route for the proposed discharge, starting at the discharge point (via pipe to Cypress Creek).

The designated uses for Segment No. 1806, as listed at 30 TAC § 307.10, Appendix A (Texas Surface Water Quality Standards (TSWQS)) are primary contact recreation, public water supply, aquifer protection, and exceptional aquatic life use. The ED must provide the proper effluent limitations (limits) to protect these uses.

The Technical Review process for surface water quality is conducted by staff in the ED's Water Quality Division, (WQD staff) on the Standards Implementation Team (Standards Team), and WQD staff in the Water Quality Assessment Section (Modeling Team).

With a goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process WQD Staff reviewed the application according to the TSWQS and TCEQ's *Implementation procedures for the Texas Surface Water Quality Standards-June 2010 (IPs)*. WQD staff performed multiple analyses during the Technical Review of the proposed permit, including but not limited to a review of the receiving waters of the route for the proposed discharge route by the Standards Team, and Water Quality Modeling runs by the Modeling Team using an "uncalibrated QUAL-TX" model.

Reviewing the receiving waters of the discharge route, along with other available information, allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge's possible impact and assign the corresponding Minimum Dissolved Oxygen (DO) criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ's IPs. For every new discharge, the Standards Team performs an antidegradation analysis of the proposed discharge. As with all determinations, reviews, or analyses related to the Technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

Segment No. 1806 is currently listed on the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listing is for bacteria from the confluence of Honey Creek in Comal County upstream to the confluence of Big Joshua Creek in Kendall County (AU 1806_08). The proposed facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment. In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limit of 126 CFU or MPN of *E. coli* per 100 ml has been added to the proposed permit.

One Total Maximum Daily Load for Bacteria in the Guadalupe River Above Canyon Lake for Segment No. 1806 (TMDL Project No. 65) has been approved for the segment. The TMDL was adopted by TCEQ on July 25, 2007, and it was approved by the U.S. Environmental Protection Agency (EPA) on September 25, 2007. Field investigations identified that excessive bacteria concentrations are confined to two small assessment areas within the City of Kerrville. The TMDL does not call for reduced bacteria limits for wastewater treatment facilities, so current or future facilities that discharge to the affected area are subject to the standard bacteria limits described in the Bacteria Rule.

The proposed permit's water quality-related limits, established by WQD staff's modeling results using an uncalibrated QUAL-TX model, will maintain and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-

day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH₃-N) are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on the Modeling Team's results, effluent limits for all flow phases of 5.0 mg/L CBOD₅, 2.0 mg/L NH₃-N, and 4.0 mg/L DO, based on a 30-day average, is predicted to ensure that DO levels will be maintained above the criterion established by the Standards Team for Cypress Creek (3.0 mg/L DO). Coefficients and kinetics used in the model are a combination of site specific, standardized default, and estimated values.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, *eff.* 7/22/2010) and the EPA-approved portions of the TSWQS (*eff.* 3/6/2014).

No priority watershed of critical concern has been identified in Segment 1806. However, the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs Riffle Beetle (*Heterelmis comalensis*), and the fountain darter (*Etheostoma fonticula*) can occur in Comal County. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES); September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in critical concern or high priority watersheds, as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. EPA review is not required for the determination of the presence of endangered or threatened species.

IV. PROCEDURAL HISTORY

The TCEQ received the application on October 7, 2021, and declared it administratively complete on December 14, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Comal County, Texas in the *Herald Zeitung* on January 9, 2022. The ED completed the technical review of the application on April 13, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) and Notice of Public Meeting in Comal County, Texas in the *Herald Zeitung* on May 31, 2022, and July 6, 2022 (respectively). The public comment period ended on August 11, 2022, at the close of the public meeting. The period for filing a request a Contested Case Hearing (requests) ended on December 9, 2022. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

V. ACCESS TO RULES, LAWS AND RECORDS

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”)
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>

Commission records for the Proposed facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid. The permit application has been available for viewing and copying at the circulation desk of the Mammen Family Public Library located at 131 Bulverde Crossing, Bulverde, Texas 78163, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

If you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit, the TCEQ rules, or to address potential permit violations, you may contact the TCEQ Regional Office (Region 13) in San Antonio, TX at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186. In addition, environmental or citizen complaints may be filed electronically at: https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaint_s.html (select “use our online form”) or through sending an email to the following address: cmplaint@TCEQ.state.tx.us.

If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

VI. EVALUATION OF 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 (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the commission’s consideration of Requests. This application was declared administratively complete on March 23, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709.

A. **LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS**

The ED may submit written responses to Requests. Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. whether 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 by filing a written withdrawal 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.

B. HEARING REQUEST REQUIREMENTS

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . ., based only on the requestor's timely comments, and not 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 Response to Comment.

A hearing request must substantially comply with the following:

- (1) give the name, address, 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 is responsible for receiving all official communications and documents for the group;
- (2) identify the person's 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 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 facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;
 - (B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor 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 the requestor's comments that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (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 public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
 - (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.

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 State Office of Administrative Hearing (SOAH) for a hearing.” “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 or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and

(3) is relevant and material to the decision on the application.”

VII. ANALYSIS OF THE HEARING REQUESTS

For this permit application the relevant public comment period ended on July 25, 2022, and the period for filing a Request for Reconsideration or a Request ended on October 31, 2022. The ED’s analyses determined whether the Requests followed TCEQ rules, if Dana Garrett and Shalaina Walker qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

A. **WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).**

Category 1: Chris and Michelle Phelps, Mike and Linda Clark, Colette Laine, Lisa O’Sullivan, Ingrid Giral-Caanen, Amanda Saunders, Edwards Lette, Marlin Brown, Juli Coen, Dirk Davidek, Robert Evans, Ben Hudson, and Jessica Bailey all filed timely requests that only provided the requisite contact information and requested a hearing. These Category 1 requests lacked written explanations plainly describing the requestors locations and distances relative to the facility and why these requestors believe they will be affected by the application in a way not common to the public.

The ED recommends finding that the Category 1 requests of Robert Butler, Chris and Michelle Phelps, Mike and Linda Clark, Colette Laine, Lisa O’Sullivan, Ingrid Giral-Caanen, Amanda Saunders, Edwards Lette, Marlin Brown, Juli Coen, Dirk Davidek, Robert Evans, Ben Hudson, and Jessica Bailey did not substantially comply with 30 TAC §§ 55.201(c) and (d).

Category 2: Kristen and William Wessale, Ruth and Tony Taylor, Becky and Sidney Atkinson, Angela and Robert Butler, Owen Powell, Catherine Martin, Eric Cardenas, Josephine Rosales, Susan Marder, Linda Mohr, Kasi Finley, Eva Silverfine, Star McDonald, Nathan Segovia, and Juanita Proffitt all filed timely requests that provided the requisite contact information, requested a hearing, and raised possibly relevant issues. However, these Category 2 requests lacked written explanations plainly describing the requestors’ locations and distances relative to the facility and why these requestors believe they will be affected by the application in a way not common to the public.

The ED recommends finding that the Category 2 requests of Kristen and William Wessale, Ruth and Tony Taylor, Becky and Sidney Atkinson, Angela and Robert Butler, Owen Powell, Catherine Martin, Eric Cardenas, Josephine Rosales, Susan Marder, Linda Mohr, Kasi Finley, Eva Silverfine, Star McDonald, Nathan Segovia, and Juanita Proffitt did not substantially comply with 30 TAC §§ 55.201(c) and (d).

Category 3: Annette Gass, Rita Acker, Alejandro Ruiz, and the group the “Neighbors of Spring Branch” filed timely requests that provided the requisite contact information, requested a hearing, and included written explanations plainly describing the requestors locations and distances relative to the facility and why these requestors believe they will be affected by the application in a way not common to the public.

Annette Gass: Although Ms. Gass’ timely requests provided her contact information, requested a hearing, included a written explanation plainly describing her location and distance relative to the proposed facility and why she believes she will be affected by the application in a way not common to the public, Ms. Gass’ requests did not comply

with 30 TAC § 55.201(c) because Ms. Gass failed to make timely comments during the comment period.

The ED recommends finding that the Category 3 request of Annette Gass did not substantially comply with 30 TAC §§ 55.201(c) and (d).

Rita Acker: Although Ms. Acker's timely request provided her contact information, requested a hearing, included a written explanation plainly describing her location and distance relative to the proposed facility and why she believes she will be affected by the application in a way not common to the public, Ms. Acker's request did not comply with 30 TAC § 55.201(c) because Ms. Acker failed to make timely comments during the comment period.

The ED recommends finding that the Category 3 request of Rita Acker did not substantially comply with 30 TAC §§ 55.201(c) and (d).

Alejandro Ruiz: Mr. Ruiz's timely request provided his contact information, requested a hearing, included a written explanation plainly describing his location and distance relative to the proposed facility and why he believes he will be affected by the application in a way not common to the public, and raised issues that form the basis of his request in timely comments not withdrawn before the RTC was filed.

Mr. Ruiz's request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why he believes he will be affected by the application in a way not common to the public.

Mr. Ruiz's request stated he lives in proximity to the proposed facility and along the proposed discharge route and raised concerns about the possible adverse impacts to human health, the environment, and wildlife from spills at the proposed facility and from the proposed discharge, which are relevant issues to a decision on the application.

The ED recommends finding that Alejandro Ruiz's request substantially complied with 30 TAC §§ 55.201(c) and (d).

"Neighbors of Spring Branch" (NSB): NSB filed timely requests that provided the requisite contact information for a single member responsible for receiving all official communications and documents for the group, stated its interests and that the interests NSB seeks to protect are germane to the organization's purpose, requested a hearing, included a written explanation plainly describing the location and distance relative to the proposed facility of a member who has standing to request a hearing in their own right, and raised issues that form the basis of the request in timely comments not withdrawn before the RTC was filed.

The ED recommends finding that the Neighbors of Spring Branch's request substantially complied with 30 TAC §§ 55.205.

B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203.

Category 1: Because Chris and Michelle Phelps, Mike and Linda Clark, Colette Laine, Lisa O'Sullivan, Ingrid Giral-Caenen, Amanda Saunders, Edwards Lette, Marlin Brown, Juli Coen, Dirk Davidek, Robert Evans, Ben Hudson, and Jessica Bailey filed timely requests that only provided the requisite contact information and requested a hearing, their requests failed to identify a personal, justiciable interest affected by the application.

The ED recommends that the Commission find that Robert Butler, Chris and Michelle Phelps, Mike and Linda Clark, Colette Laine, Lisa O'Sullivan, Ingrid Giral-Caanen, Amanda Saunders, Edwards Lette, Marlin Brown, Juli Coen, Dirk Davidek, Robert Evans, Ben Hudson, and Jessica Bailey are not Affected Persons under 30 TAC § 55.203.

Category 2: Because Kristen and William Wessale, Ruth and Tony Taylor, Becky and Sidney Atkinson, Angela and Robert Butler, Owen Powell, Catherine Martin, Eric Cardenas, Josephine Rosales, Susan Marder, Linda Mohr, Kasi Finley, Eva Silverfine, Star McDonald, Nathan Segovia, and Juanita Proffitt filed timely requests that provided the requisite contact information, requested a hearing, and raised possibly relevant issues, but lacked a written explanation plainly describing the requestors' locations and distances relative to the facility, and why these requestors believe they will be affected by the application in a way not common to the public, their requests failed to identify a personal, justiciable interest affected by the application.

The ED recommends that the Commission find that Kristen and William Wessale, Ruth and Tony Taylor, Becky and Sidney Atkinson, Angela and Robert Butler, Owen Powell, Catherine Martin, Eric Cardenas, Josephine Rosales, Susan Marder, Linda Mohr, Kasi Finley, Eva Silverfine, Star McDonald, Nathan Segovia, and Juanita Proffitt are not Affected Persons under 30 TAC § 55.203.

Category 3 – Annette Gass: Ms. Gass' timely requests failed to identify a personable justiciable interest affected by the application because she did not file timely comments, and therefore, her requests were not based on issues from timely comments not withdrawn before the RTC was filed.

The ED recommends finding that the Commission find that Annette Gass is not Affected Person under 30 TAC § 55.203.

Category 3 – Rita Acker: Ms. Acker's timely request failed to identify a personable justiciable interest affected by the application because she did not file timely comments, and therefore, her request was not based on issues from timely comments not withdrawn before the RTC was filed.

The ED recommends finding that the Commission find that Rita Acker is not Affected Person under 30 TAC § 55.203.

Category 3 – Alejandro Ruiz: Mr. Ruiz filed a timely request that effectively identified a personal, justiciable interest affected by the application. Mr. Ruiz's request stated that the proposed facility will be in proximity to his home, which according to the GIS map prepared by the ED's staff is only 1.06 linear miles from the proposed facility and is along the proposed discharge route within proximity to the discharge point. This increases the likelihood that Mr. Ruiz will be affected in a way not common to the general public. Mr. Ruiz's request raised relevant issues to a decision on the application, including the possible adverse impacts to human health, the environment, and wildlife from spills at the proposed facility and from the proposed discharge.

Mr. Ruiz's proximity, which was explained briefly and specifically, in plain language in his request, and his concerns related to possible adverse effects on human health, the environment, and wildlife from the proposed discharge and from spills at the proposed facility, are issues related to the interests of the requestor, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated,

which increases the likelihood Mr. Ruiz will be personally affected in a way not common to the general public.

Category 3 – “Neighbors of Spring Branch” (NSB): NSB filed timely requests that effectively identified a personal, justiciable interest affected by the application.

NSB’s timely request identified a member, Annette Gass, who has standing to request a hearing in her own right. NSB’s request included a written explanation plainly describing the location and distance of Ms. Gass relative to the proposed facility, and raised issues that form the basis of the request in timely comments not withdrawn before the RTC was filed.

NSB’s request stated that the proposed facility will be in proximity to Ms. Gass’ home, which according to the GIS map prepared by the ED’s staff is only 0.49 linear miles from the proposed facility and is along the proposed discharge route within proximity to the discharge point. This increases the likelihood that Ms. Gass would be affected in a way not common to the general public. NSB’s request raised relevant issues to a decision on the application, including the possible adverse impacts to human health, the environment, and livestock from the proposed facility and from the proposed discharge.

Ms. Gass’ proximity, which was explained briefly and specifically, in plain language in NSB’s request, and NSB’s concerns related to possible adverse effects on human health, the environment, and livestock from the proposed facility and discharge, are issues related to the interests of NSB, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood that NSB will be personally affected in a way not common to the general public.

The ED recommends finding that the Commission find that the Neighbors of Spring Branch is an Affected Group under 30 TAC §§ 55.203 and 55.205.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

The following issues were raised in Mr. Ruiz’s and NSB’s requests.

1. Whether the draft permit will protect human health and the environment.

(RTC Response Nos. 2, 8, and 15) These are issues of fact. If it can be shown that these issues are factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes these issues are relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer these issues.

2. Whether the proposed facility will protect against spills at the proposed facility if the Applicant maintains and operates it according to the TCEQ’s rules and the draft permit.

(RTC Response No.10) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

3. **Whether the draft permit and proposed discharge is protective of animal life.**

(RTC Response No. 2) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application.

The ED concludes these issues are relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

4. **Whether the draft permit's nuisance odor controls comply with TCEQ rules.**

(RTC Response No. 16) This is an issue of fact. If it can be shown that this issue is factually accurate, that information would be relevant and material to a decision on the application, however, this issue was raised solely in NSB's request and not in its timely comments.

The ED concludes this issue is relevant and material; however, if this case is referred to SOAH, the ED recommends the Commission not referring this issue.

IX. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED 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.

X. REQUESTS FOR RECONSIDERATION

Owen Powell, Marian Henderson, and Marilyn and Michael Myers, all filed timely Requests for Reconsideration (RFR). However, all three of the RFRs failed to raise any new information for the ED to analyze. Therefore, the ED recommends denying all three RFRs.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Alejandro Ruiz and the Neighbors of Spring Branch is an affected person and an affected group under 30 TAC §§ 55.203 and 55.205.
2. Grant the requests of Alejandro Ruiz and the Neighbors of Spring Branch, and deny all other requests.
3. Should the Commission decide to refer this case to SOAH:
 - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - b. refer the identified issues above in section (C)(1)-(3) to SOAH for a contested case hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor, *Interim Executive Director*

Charmaine Backens, *Acting Director*
Office of Legal Services

Guy Henry, *Acting Deputy Director*
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on January 30, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016052001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936

Attachment A

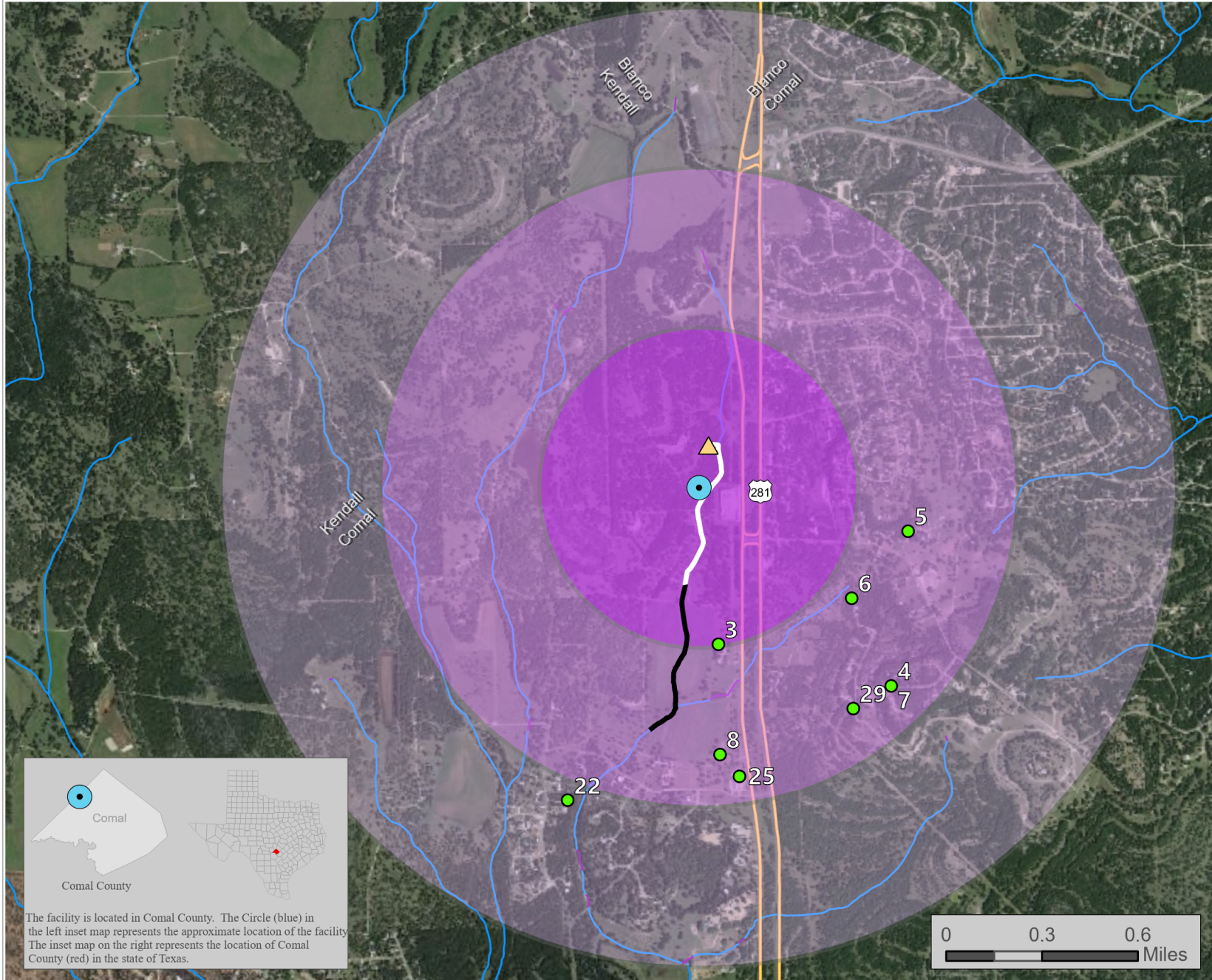
SJWTX, Inc. and Mary Jane Cielencki GIS Map



*Protecting Texas by
Reducing and
Preventing Pollution*

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

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/19/2023
CRF 0082826
Cartographer: ABanda

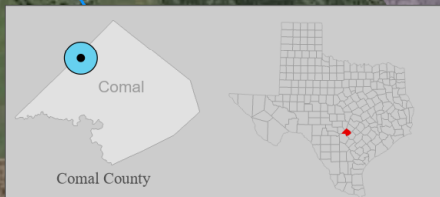


- Facility Point
- Outfall Point - 16052-001
- Requestors
- 0.5-Mile Facility Point Radius
- 1.0-Mile Facility Point Radius
- 1.5-Mile Facility Point Radius
- 0.5-Mile Discharge Route
- 1.0-Mile Discharge Route
- NHD Flowline**
- Connector
- Canal/Ditch
- Pipeline
- Stream/River
- Artificial Path
- Coastline
- County Boundary

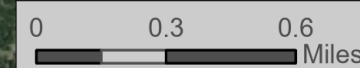
Please refer to Appendix A for a list of distances from the Facility Point to the Requestors. The distance between the Facility Point and the Outfall is 0.14 miles.

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 Comal County. The Circle (blue) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Comal County (red) in the state of Texas.



**Appendix A: Distances from Requestor to Facility Point
of SJWTX, Inc. and Mary Jane Cielencki GIS Map**

#	NAME	Distance (Mi)
1	Ingrid Giral-Caanen	62.28
2	Owen Powell	4.29
*3	Annette Gass (4)	0.49
*4	Angela and Robert Butler (6)	0.86
*5	Becky and Sidney Atkinson (4)	0.67
*6	Ruth and Tony Taylor (4)	3.02
*7	Kristen and William Wessale (5)	0.86
*8	Rita Acker	0.84
9	Catherine Martin	8.08
10	Amanda Saunders	6.77
11	Eric Cardenas	7.84
12	Josephine Rosales	3.05
13	Lisa O'Sullivan	6.23
14	Susan Marder	7.82
15	Linda Mohr	7.94
16	Edward Lette	3.82
17	Kasi Finley	6.81
18	Marlin Brown	11.17
19	Chris and Michelle Phelps	4.64
20	Mike and Linda Clark	4.64
21	Eva Silverfine	15.77
*22	Alejandro Ruiz	1.06
23	Star McDonald	22.11
24	Dirk Davidek	22.55
*25	Colette Laine (2)	0.91
26	Robert Evans	13.23
27	Ben Hudson	27.51
28	Jessica Bailey	2.53
*29	Juanita Proffitt	0.84

* Located within the 1.5-mile radius from the Facility Point

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DOCKET NO. 2023-0120-MWD; PERMIT NO. WQ0016052001

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See attached list

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