

TCEQ DOCKET NO. 2023-0280-MWD

APPLICATION BY	§	BEFORE THE
HARRIS COUNTY MUNICIPAL UTILITY	§	TEXAS COMMISSION ON
DISTRICT NO. 542 FOR	§	ENVIRONMENTAL QUALITY
TPDES PERMIT NO. WQ0015312001	§	

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 Municipal Utility District No. 542 (Applicant) for a TPDES Permit No. WQ0015312001. The Office of the Chief Clerk received a contested case hearing request from Mary Jo Stavinoha.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility and Ms. Stavinoha.

Upon review of her request, the Executive Director recommends that the Commission deny the hearing request as Ms. Stavinoha failed to comply with the requirements set forth in 30 TAC § 55.201(c) and (d).

II. FACILITY DESCRIPTION

Harris County Municipal Utility District No. 542 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015312001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day.

The facility is located at 20901 ½ Rosehill Church Road, in Harris County, Texas 77377. The treated effluent is discharged to Harris County MUD No. 542 drainage channel, thence to Willow Creek, thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for Harris County MUD No. 542 drainage channel and limited aquatic life use for Willow Creek. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use.

In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination was required.

III. PROCEDURAL BACKGROUND

TCEQ received this application on May 11, 2021, and declared it administratively complete on July 14, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 4, 2021, in the *Houston Chronicle dba Cypress Creek Mirror* in English and August 1, 2021, in the *El Perico Newspaper* in Spanish. ED staff completed the technical review of the application on May 13, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published July 6, 2022, in the *Houston Chronicle dba Cypress Creek Mirror* in English and June 26, 2022, in the *El Perico Newspaper* in Spanish. The comment period closed August 5, 2022. This application was administratively complete 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 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

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

² 30 TAC § 55.209(e).

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

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:

- (1) 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.
- (2) 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.
- (3) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

³ 30 TAC § 55.201(c).

⁴ 30 TAC § 55.201(d).

- (a) whether the interest claimed is one protected by the law under which the application will be considered;
 - (b) distance restrictions or other limitations imposed by law on the affected interest;
 - (c) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (d) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (e) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (f) 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
 - (g) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (4) 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:
- (a) 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;
 - (b) the analysis and opinions of the ED; and
 - (c) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (5) 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

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

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

Mary Jo Stavinoha

Under 30 TAC § 55.201, individuals requesting a contested case hearing must provide timely comments and identify personal justiciable interests that would be affected by the application when they submit their request for a contested case hearing.

While Ms. Stavinoha submitted a timely comment, she stated only that she requested a public hearing. She provided no other comments or information identifying any personal justiciable interests that could be affected by the application.⁷ Furthermore, the address she provided is over 15 miles away from the Applicant's facility.

Because Ms. Stavinoha did not meet the requirements under 30 TAC § 55.201, the ED recommends that Commission find that Ms. Stavinoha is not an affected person and deny her hearing request.

VI. CONCLUSION

The Executive Director recommends that the Commission deny Ms. Stavinoha's hearing request.

⁷ Because Ms. Stavinoha's only comment was the statement "I request a public hearing" the ED did not prepare a Response to Comments on this application.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor,
Interim Executive Director

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 8, 2023, the "Executive Director's Response to Hearing Request" for TPDES Permit No. WQ0015312001 for Harris County Municipal Utility District No. 542 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. 542
TCEQ Docket No. 2023-0280-MWD; TPDES Permit No. WQ0015312001**

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INTERESTED PERSON(S)

Mary Jo and Rusty Stavinoha
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Tomball, Texas 77377

Attachment A

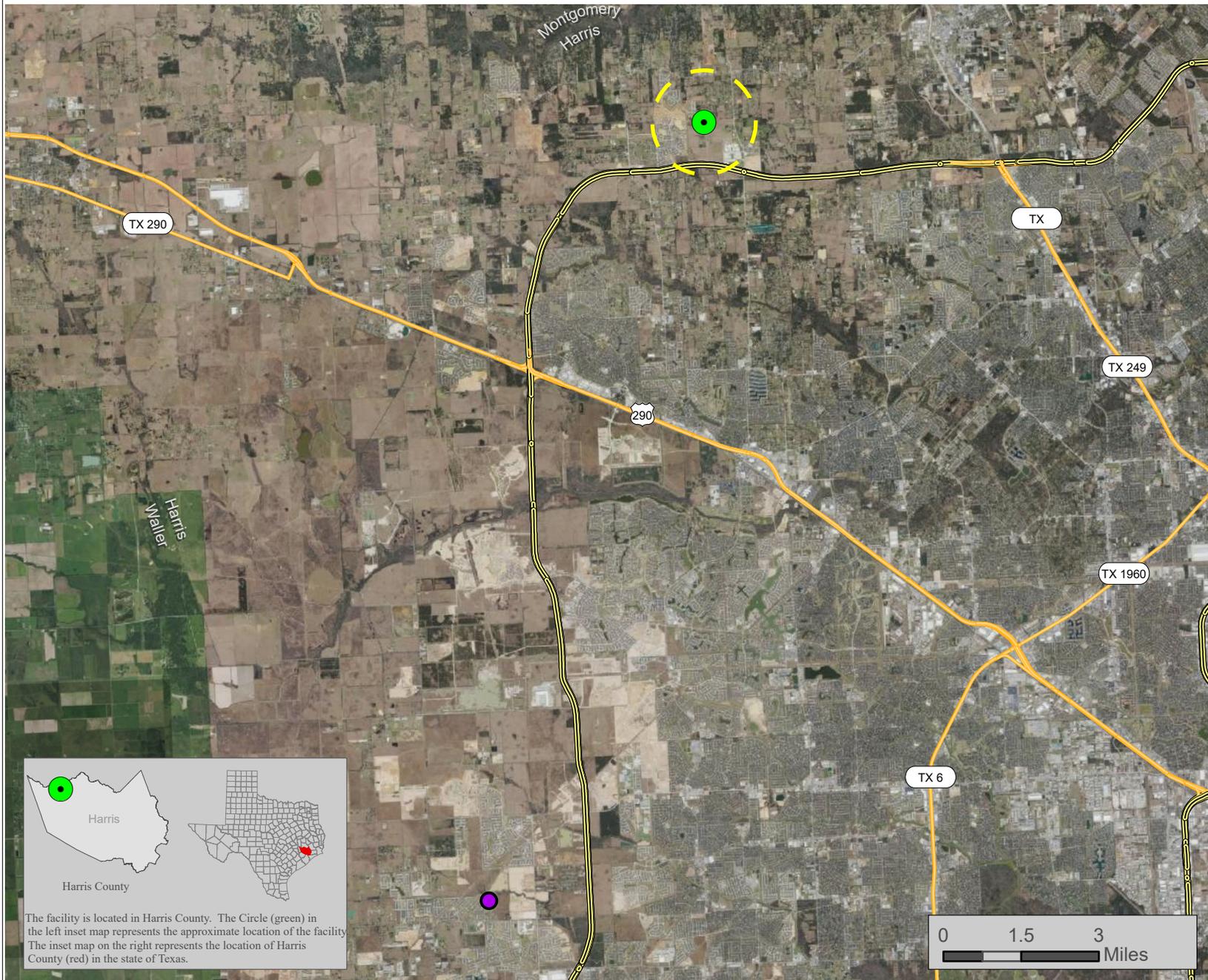
WQ0015312001 Harris County Municipal Utility District No. 542

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



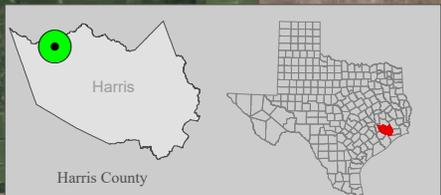
*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
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Date: 1/26/2023
CRF 0083556
Cartographer: jbartlin

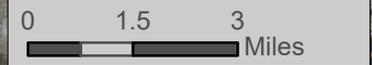


- Requesters
- Facility
- 1 Mile Radius

The distance from the facility to the requesters, Rusty and Mary Jo Stavinoha, is 15.56 miles.



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.



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.