

TCEQ DOCKET NO. 2023-0322-IWD

**APPLICATION BY CHAMBERS
COUNTY IMPROVEMENT DISTRICT
NO. 1 FOR NEW TPDES PERMIT NO.
WQ0005341000**

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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 Chambers County Improvement District No.1 (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005341000, authorizing a discharge of treated domestic and nonhazardous industrial wastewater via Outfall No. 001 from the Applicant's proposed, second, wastewater treatment facility (WWTF), the Chambers County Improvement District No. 1's WWTF #2 (proposed facility), at a daily average flow limit of 0.96, 1.92, 4.42, 6.92 and 9.42 million gallons per day (MGD) in the Interim I, II, III, IV, and Final Phases (respectively) of the draft permit. Clean Water Action (CW Action) filed a timely request (Request) for a Contested Case Hearing (Hearing).

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Maps (2)

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

If this permit is ultimately issued, the proposed facility, a Centralized Waste Treatment facility, will be located approximately 1.5 miles east of intersection of FM 1405 and South Road, southeast of the City of Baytown, Chambers County, Texas 77523, and serve the businesses developing within the Applicant's service area that need wastewater treatment services beyond the treatment capacity of the Applicant's existing WWTF #1. The proposed facility will receive domestic and nonhazardous industrial wastewater from offsite and treat both to remove contaminants with a wastewater system that will include an activated sludge treatment system consisting of headworks mechanical screens and odor treatment, oil-water separation, aerated equalization tanks, and biological treatment in the form of aeration tanks in the activated sludge process, clarifiers, filtration units, and ultraviolet disinfection. The treated wastewater (effluent) will be pumped through pipes combining in the junction box and discharged through a submerged diffuser. Sludge treatment prior to off-site disposal will involve the use of gravity thickener, aerobic digester, and belt filter press.

The route of the proposed discharge of treated effluent is via pipeline directly to Upper Galveston Bay in Segment No. 2421 of the Bays and Estuaries.

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, starting at the discharge point (via pipe to Upper Galveston Bay).

The designated uses and dissolved oxygen criterion for Segment No. 2421, according to Appendix A of 30 TAC § 307.10, the Texas Surface Water Quality Standards (TSWQS), are primary contact recreation, high aquatic life use, oyster waters, and 4.0 mg/L dissolved oxygen (DO). Through his Technical Review, the ED provides 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 the goal of the Technical Review to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ's *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010* (IPs).

The first component of the ED's Technical Review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. Along with other available information, reviewing the receiving waters for the proposed discharge 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, and per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs, an antidegradation review of the receiving waters was performed. The Tier 1 review preliminarily determined that existing water quality uses will not be impaired by this permitting action, as numerical and narrative criteria to protect existing uses will be maintained. The Tier 2 review preliminarily determined that no significant degradation of water quality is expected in Upper Galveston Bay, which has been identified as having high aquatic life use, and that existing use will be maintained and protected.

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.

The second component of the ED's Technical Review involved WQD staff on the Modeling Team performing water quality modeling using a "Continuously Stirred Tank Reactor" (CSTR) model. CSTRs are widely used in WWTFs to reduce the organic matter and microorganism present in sludge by anaerobic digestion. CSTRs are used in ponds, impoundments, reservoirs, or portions of larger open water bodies when the geometry of the water body makes the use of other models questionable, because CSTRs have effective mixing and perform under steady state with uniform properties. CSTRs are most commonly used in industrial processing, primarily in homogeneous liquid-phase flow reactions where constant agitation is required and involve a reaction tank in which reagents, reactants and often solvents flow into the reactor while the product of the reaction concurrently exits the tank. In this manner, the tank reactor is considered to be a valuable tool for continuous chemical processing.

In this context, the CSTR model is a standard analytical tool used for dissolved oxygen (DO) analyses at the TCEQ for the type of receiving waters in this case and procedures for its use in the analysis of discharge applications have been established and are readily available.

The proposed permit's water quality-related limits, established by WQD staff's modeling results using the CSTR 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, the effluent limits below are predicted to be necessary to ensure that dissolved oxygen levels will be maintained above the criterion stipulated by the Standards Implementation Team for Upper Galveston Bay (4.0 mg/L). Other effluent set combinations may also be adequate and can be evaluated upon request.

Interim I phase: (0.96 MGD): 53 mg/L CBOD₅, 3 mg/L NH₃-N, and 2 mg/L DO
 Interim II phase: (1.92 MGD): 30 mg/L CBOD₅, 3 mg/L NH₃-N, and 6 mg/L DO
 Interim III phase: (4.42 MGD): 13 mg/L CBOD₅, 3 mg/L NH₃-N, and 6 mg/L DO
 Interim IV phase: (6.92 MGD): 10 mg/L CBOD₅, 2 mg/L NH₃-N, and 5 mg/L DO
 Final phase: (9.42 MGD): 10 mg/L CBOD₅, 2 mg/L NH₃-N, and 6 mg/L DO

Coefficients and kinetics used in the model are a combination of site-specific, estimated, and standardized default values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

The proposed permit's entire set of effluent limits are:

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase I	Flow	0.96 MGD	0.96 MGD
	CBOD ₅	53	163
	NH ₃ -N	3	-
	DO	2, minimum	-
	Oil and Grease	38.0	127
	Total Suspended Solids (TSS)	11.3	29.6
	Antimony, Total	0.0312	0.111
	Arsenic, Total	0.0199	0.0993
	Cadmium, Total	0.0102	0.0172
	Chromium, Total	0.0522	0.167
	Cobalt, Total	0.0703	0.182
	Copper, Total	0.0241	0.0509
	Lead, Total	0.157	0.332
	Mercury, Total	0.000246	0.000641
	Nickel, Total	0.146	0.309
	Selenium, Total	0.0698	0.176
	Silver, Total	0.00737	0.0156
	Tin, Total	0.0367	0.0955

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase I	Titanium, Total	0.00612	0.0159
	Vanadium, Total	0.0518	0.0628
	Zinc, Total	0.250	0.530
	Acetone	7.97	30.2
	Acetophenone	0.0562	0.114
	Bis(2-ethylhexyl) phthalate	0.101	0.215
	2-Butanone	1.85	4.81
	Butylbenzyl phthalate	0.0887	0.188
	Carbazole	0.276	0.598
	o-Cresol	0.561	1.92
	p-Cresol	0.205	0.698
	n-Decane	0.437	0.948
	Fluoranthene	0.0268	0.0537
	n-Octadecane	0.302	0.589
	Phenol	1.08	3.65
	Pyridine	0.182	0.370
	2,4,6-Trichlorophenol	0.106	0.155
	<i>Enterococci</i> ¹	14 CFU/100 mL	35 CFU 100 mL
	pH, standard unit (SU)	6.0 SU, minimum	9.0 SU

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase II	Flow	1.92	1.92
	CBOD ₅	30	60
	NH ₃ -N	3	6
	DO	6, minimum	-
	Oil and Grease	38.0	127
	Total Suspended Solids (TSS)	11.3	29.6
	Antimony, Total	0.0312	0.111
	Arsenic, Total	0.0199	0.0993
	Cadmium, Total	0.0102	0.0172
	Chromium, Total	0.0522	0.167
	Cobalt, Total	0.0703	0.182
	Copper , Total	0.0241	0.0509
	Lead, Total	0.157	0.332
	Mercury, Total	0.000246	0.000641
	Nickel, Total	0.146	0.309
	Selenium, Total	0.0698	0.176
Phase II	Silver, Total	0.00737	0.0156
	Tin, Total	0.0367	0.0955
	Titanium, Total	0.00612	0.0159
	Vanadium , Total	0.0518	0.0628
	Zinc, Total	0.250	0.530
	Acetone	7.97	30.2
	Acetophenone	0.0562	0.114
	Bis(2-ethylhexyl) phthalate	0.101	0.215

¹ Units are *most probable number* (MPN) or *colony forming units* (CFU) per 100 mls.

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
	2-Butanone	1.85	4.81
	Butylbenzyl phthalate	0.0887	0.188
	Carbazole	0.276	0.598
	o-Cresol	0.561	1.92
	p-Cresol	0.205	0.698
	n-Decane	0.437	0.948
	Fluoranthene	0.0268	0.0537
	n-Octadecane	0.302	0.589
	Phenol	1.08	3.65
	Pyridine	0.182	0.370
	2,4,6-Trichlorophenol	0.106	0.155
	<i>Enterococci</i>	14 CFU/100 mL	35 CFU/100 mL
	pH, standard unit (SU)	6.0 SU, minimum	9.0 SU
Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase III	Flow	4.42	4.42
	CBOD ₅	13	26
	NH ₃ -N	3	6
	DO	6, minimum	-
	Oil and Grease	38.0	127
	Total Suspended Solids (TSS)	11.3	29.6
	Antimony, Total	0.0312	0.111
	Arsenic, Total	0.0199	0.0993
	Cadmium, Total	0.0102	0.0172
	Chromium, Total	0.0522	0.167
	Cobalt, Total	0.0703	0.182
	Copper , Total	0.0241	0.0509
	Lead, Total	0.157	0.332
	Mercury, Total	0.000246	0.000641
	Nickel, Total	0.146	0.309
	Selenium, Total	0.0698	0.176
	Silver, Total	0.00737	0.0156
	Tin, Total	0.0367	0.0955
	Titanium, Total	0.00612	0.0159
	Vanadium, Total	0.0518	0.0628
	Zinc, Total	0.250	0.530
Phase III	Acetone	7.97	30.2
	Acetophenone	0.0562	0.114
	Bis(2-ethylhexyl) phthalate	0.101	0.215
	2-Butanone	1.85	4.81
	Butylbenzyl phthalate	0.0887	0.188
	Carbazole	0.276	0.598
	o-Cresol	0.561	1.92
	p-Cresol	0.205	0.698
	n-Decane	0.437	0.948
	Fluoranthene	0.0268	0.0537

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase III	n-Octadecane	0.302	0.589
	Phenol	1.08	3.65
	Pyridine	0.182	0.370
	2,4,6-Trichlorophenol	0.106	0.155
	<i>Enterococci</i>	14 CFU/100 mL	35 CFU/100 mL
	pH, standard unit (SU)	6.0 SU, minimum	9.0 SU

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Phase IV	Flow	6.92	6.92
	CBOD ₅	10	20
	NH ₃ -N	2	4
	DO	5, minimum	-
	Oil and Grease	38.0	127
	Total Suspended Solids (TSS)	11.3	29.6
	Antimony, Total	0.0312	0.111
	Arsenic, Total	0.0199	0.0993
	Cadmium, Total	0.0102	0.0172
	Chromium, Total	0.0522	0.167
	Cobalt, Total	0.0703	0.182
	Copper, Total	0.0241	0.0509
	Lead, Total	0.157	0.332
	Mercury, Total	0.000246	0.000641
	Nickel, Total	0.146	0.309
	Selenium, Total	0.0698	0.176
	Silver, Total	0.00737	0.0156
	Tin, Total	0.0367	0.0955
	Titanium, Total	0.00612	0.0159
	Vanadium, Total	0.0518	0.0628
	Zinc, Total	0.250	0.530
	Acetone	7.97	30.2
	Acetophenone	0.0562	0.114
	Bis(2-ethylhexyl) phthalate	0.101	0.215
	2-Butanone	1.85	4.81
	Butylbenzyl phthalate	0.0887	0.188
	Carbazole	0.276	0.598
	o-Cresol	0.561	1.92
	p-Cresol	0.205	0.698
	n-Decane	0.437	0.948
	Fluoranthene	0.0268	0.0537
	n-Octadecane	0.302	0.589
	Phenol	1.08	3.65
	Pyridine	0.182	0.370
	2,4,6-Trichlorophenol	0.106	0.155
	<i>Enterococci</i>	14 CFU/100 mL	35 CFU/100 mL
	pH, standard unit (SU)	6.0 SU, minimum	9.0 SU

Outfall 001	Pollutant	Daily Average mg/L	Daily Maximum mg/L
Final Phase	Flow	9.42	9.42
	CBOD ₅	10	20
	NH ₃ -N	2	4
	DO	6, minimum	-
	Oil and Grease	38.0	127
	Total Suspended Solids (TSS)	11.3	29.6
	Antimony, Total	0.0312	0.111
	Arsenic, Total	0.0199	0.0993
	Cadmium, Total	0.0102	0.0172
	Chromium, Total	0.0522	0.167
	Cobalt, Total	0.0703	0.182
	Copper, Total	0.0241	0.0509
	Lead, Total	0.157	0.332
	Mercury, Total	0.000246	0.000641
	Nickel, Total	0.146	0.309
	Selenium, Total	0.0698	0.176
	Silver, Total	0.00737	0.0156
	Tin, Total	0.0367	0.0955
	Titanium, Total	0.00612	0.0159
	Vanadium, Total	0.0518	0.0628
	Zinc, Total	0.250	0.530
	Acetone	7.97	30.2
	Acetophenone	0.0562	0.114
	Bis(2-ethylhexyl) phthalate	0.101	0.215
	2-Butanone	1.85	4.81
	Butylbenzyl phthalate	0.0887	0.188
	Carbazole	0.276	0.598
	o-Cresol	0.561	1.92
	p-Cresol	0.205	0.698
	n-Decane	0.437	0.948
	Fluoranthene	0.0268	0.0537
	n-Octadecane	0.302	0.589
	Phenol	1.08	3.65
	Pyridine	0.182	0.370
	2,4,6-Trichlorophenol	0.106	0.155
	<i>Enterococci</i>	14 CFU/100 mL	35 CFU/100 mL
	pH, standard unit (SU)	6.0 SU, minimum	9.0 SU

Regulations in Title 40 of the Code of Federal Regulations (40 C.F.R.) require that wastewater discharge permits include technology-based limitations based on effluent limitations guidelines, where applicable, or on best professional judgment in the absence of guidelines. Technology-based effluent limitations from 40 C.F.R. Part 437 Subpart D, Multiple Wastestreams apply to the proposed discharge from this facility. New Source Performance Standards are presented in Appendix A.

Calculations of water quality-based effluent limitations for the protection of aquatic life and human health are presented in Appendix B of the Fact Sheet or Technical Summary of the proposed permit. Aquatic life criteria established in Table 1

and human health criteria established in Table 2 of 30 TAC Chapter 307 (TSWQS) are incorporated into the calculations, as are recommendations from WQD staff's Critical Conditions memorandum dated January 19, 2022. TCEQ practice for determining significant potential is to compare the reported analytical data from the facility against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85 percent of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70 percent of the calculated daily average water quality-based effluent limitation.

This facility is not in operation and has yet to discharge. Therefore, there is no analytical data provided for Outfall 001. Other Requirement No. 7 has been placed in the Other Requirements section of the proposed permit and requires the submittal of analytical data within 30 days of the final sampling event. Based on a technical review of the analytical results, an amendment may be initiated by WQD staff to include additional effluent limitations or monitoring requirements.

A completed Total Maximum Daily Load (TMDL) has been approved for Segment No. 2421; *TMDL Project No. 74: Six Total Maximum Daily Loads for Bacteria in Waters of the Upper Gulf Coast Segments Nos. 2421, 2422, 2423, 2424, 2432, and 2439*. In August 2008, the TCEQ adopted Six Total Maximum Daily Loads for Bacteria in Waters of the Upper Gulf Coast. The U.S. Environmental Protection Agency (USEPA) approved the TMDL on February 4, 2009. This document describes TMDLs for six segments in the Galveston Bay system along the Texas upper Gulf Coast near Houston and Galveston, where concentrations of bacteria exceed the criteria used to evaluate the attainment of the designated oyster waters use. The waste load allocations (WLAs) specified in the TMDL and subsequent updates are applicable to discharges in proximity to the six segments covered by the TMDL. This facility is located in the area covered by the WLA requirements of the TMDL. The proposed permit's limits for *Enterococci* are consistent with the requirements of the TMDL.

Segment No. 2421 is currently listed on the state's inventory of impaired and threatened waters, the 2020 Clean Water Act § 303(d) list. The listings are for Dioxin and Polychlorinated biphenyl (PCBs) in edible fish tissue for the entire reach from Red Bluff to Five mi Cut to Houston Point to Morgans Point (AU 2421_01), Western portion of the bay (AU 2421_02), and Main portion of the bay (AU 2421_03).

Information submitted with the application indicates dioxin and PCBs are not manufactured or used in any process at the facility, therefore the proposed discharge is not expected to cause additional loadings of dioxin and PCBs in edible tissue. A prohibition of the acceptance and/or processing of wastes that contain dioxins or PCBs has been placed in the proposed permit as Other Requirement No. 5.

Whole Effluent Toxicity Testing ((WET) or Biomonitoring) requirements are included on the proposed permit. At Outfall 001 the WQD staff in the Water Quality Assessment Section recommended saltwater chronic and 24-hour acute testing. For chronic testing, the recommendation was the mysid shrimp (*Mysidopsis bahia*) and the inland silverside (*Menidia beryllina*) as test species and a testing frequency of once per quarter for both test species. Also recommended was a dilution series of 3%, 5%, 6%, 8%, and 11% with a critical dilution of 8%. The critical dilution is in accordance with the "Aquatic Life Criteria" section of the "Water Quality Based Effluent Limitations/Conditions" section of the proposed permit. For 24-hour acute testing, the recommendation was for the same test species and a testing frequency of once per six

months for each test species. Because the proposed facility is a new facility, not yet constructed, there is no WET testing history to review. WET testing will commence within 90 days of initial discharge.

A reasonable potential (RP) determination was performed in accordance with 40 C.F.R. § 122.44(d)(1)(ii) to determine whether the proposed discharge will reasonably be expected to cause or contribute to an exceedance of a state water quality standard or criterion within that standard. Each test species is evaluated separately. The RP determination is based on representative data from the previous three years of chronic WET testing. This determination was performed in accordance with the methodology outlined in the TCEQ letter to the EPA dated December 28, 2015, and approved by the EPA in a letter dated December 28, 2015. However, with no WET testing history, and therefore zero failures, a determination of no RP was made. Additional WET limits are not required and both test species may be eligible for the testing frequency reduction after one year of quarterly testing.

The proposed discharge is not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. 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 (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 watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. Though the piping plover, *Charadrius melodus* Ord, can occur in Segment No. 2421 and Chambers County, the county is north of Copano Bay and not a watershed of high priority per Appendix A of the biological opinion. This determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

IV. PROCEDURAL HISTORY

The TCEQ received the application on November 18, 2021, and declared it administratively complete on December 22, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Chambers County, Texas in English in the *Baytown Sun* on January 2, 2022, and in Spanish in *El Perico* on December 26, 2021. The ED completed the technical review of the application on June 22, 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) in Chambers County, Texas in English in the *Baytown Sun* on August 2, 2022, and in Spanish in *El Perico* on August 4, 2022. The public comment period ended on September 6, 2022, the ED's Response to Public Comment (RTC) was filed on November 21, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on December 28, 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/>
- Environmental or citizen complaints may be filed electronically at:
<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select “use our online form”) or by sending an email to the following address: complaint@TCEQ.texas.gov

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 Sam & Carmena Goss Memorial Branch Library, located at 1 John Hall Drive, Mont Belvieu, Chambers County, Texas; and at the Sterling Municipal Library, located at 1 Mary Elizabeth Wilbanks Avenue, Baytown, Harris County, Texas, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are now available for viewing and copying at the same location since publication of the NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 12) in Houston, TX at (713) 767-3500 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the 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 executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests”²

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.³

B. HEARING REQUEST REQUIREMENTS

To consider a Request, the Commission must first conclude that the conditions of 30 TAC §§ 55.201, 55.203, and 55.205 (Request by Group or Association), are met.

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 requester’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.⁴

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

² 30 TAC § 55.209(d).

³ *Id.* at § 55.209(e).

⁴ 30 TAC § 55.201(c).

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.⁵

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC §§ 55.203 and 55.205 that the 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.⁶
- (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.⁷

⁵ *Id.* at § 55.201(d).

⁶ 30 TAC § 55.203(a)-(c).

⁷ *Id.* at § 55.203(d).

Under 30 TAC § 55.205(a) a group or association may only request a Hearing if all the following requirements are met.

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
 - (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
 - (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may not be granted unless all of the following requirements are met:
- (1) comments on the application are timely submitted by the group or association;
 - (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
 - (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
 - (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

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.”⁸ “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.”⁹

VII. ANALYSIS OF THE HEARING REQUESTS

For this permit application the relevant public comment period ended on September 6, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on December 28, 2022. The ED’s analyses determined whether the Requests followed TCEQ rules, if the requestor qualifies as an affected group, what issues may be referred for a hearing, and the length of that hearing.

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

1. **CW Action** filed timely Requests that provided the requisite contact information for one individual responsible for receiving all official communications and documents for the group; requested a hearing, raised issues that form the basis

⁸ 30 TAC § 50.115(b).

⁹ *Id.* at § 55.203(d).

of the Requests in timely comments not withdrawn before the RTC was filed; included a written explanation plainly describing the location and distance relative to the proposed facility of at least one of its members.

While CW Action's Request appears to comply with 30 TAC § 55.201(c), it does not comply with 30 TAC § 55.201(d) because it failed to identify a personable justiciable interest for any of its named members, nor did it describe why CW Action believes it or its members will be affected by the application in a way not common to the public. This means that CW Action's Request did not identify a member who would have the right to request a Hearing themselves.

The ED recommends finding that the Request of Clean Water Action did not substantially comply with both 30 TAC §§ 55.201(c) and (d).

B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203 AND 55.205

1. **CW Action:** the determination as to affected person status of CW Action requires an analysis of the affectedness of its named members. Similarly, CW Action filed timely requests that failed to effectively identify a personal, justiciable interest affected by the application of one of its members.

CW Action's timely Request identified three members, Dakshina Jandhyala, John Chandler, and Kevin Topek, and by providing the address of two of its members, Mr. Jandhyala and Mr. Chandler, CW Action's Request plainly described the location and distance of its members relative to the proposed facility, raised issues that formed the basis of its Requests in timely comments not withdrawn before the ED filed the RTC, and neither the claim asserted nor the relief requested requires the participation of any of the named members.

However, CW Action's Request relies on the recreational interests of its members. The recreational interests of CW Action's members do not demonstrate that its members will be affected in a way uncommon to the public. This is because any individual is capable of recreating in Upper Galveston Bay. Likewise, CW Action's Request revealed through its members' addresses that none of its members will live in proximity to the proposed facility, nor the receiving waters. The GIS map prepared by the ED's staff, locates CW Action's members, Mr. Jandhyala and Mr. Chandler as residing 31.34 and 47.54 miles (respectively) from the proposed facility. This decreases the likelihood that Mr. Jandhyala and Mr. Chandler might be affected in a way not common to the public.

Though CW Action's Request raised possibly relevant issues to a decision on the application, the lack of a unique impact to its members precludes a demonstration that a reasonable relationship exists between the interests claimed and the activity regulated, which decreases the likelihood that CW Action, nor its members, will be personally affected in a way not common to the general public.

The ED recommends finding that the Commission find that Clean Water Action is not an Affected Group under 30 TAC §§ 55.203 and 55.205.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

Although the ED is recommending denial of CW Action's Request, if the Commission decides to refer the application to SOAH for a Hearing, the ED has described the issues raised in CW Action's Request below, of whether:

1. The proposed discharge will adversely impact water quality in violation of applicable rules and statutes.

(RTC Response No. 1) This is mixed is a mixed issue of fact and law. If the proposed discharge violates the Clean Water Act, that is a question of law, which would not be relevant and material to a decision on the application. If shown that the proposed discharge is in violation of TCEQ rules, that information would be relevant and material to a decision on the application. However, this issue was raised in a Request that the ED recommends denying.

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.

2. The proposed discharge is consistent with the Coastal Management Plan.

(RTC Response No. 4) This is an issue of fact. If shown that this issue is factually accurate, that information would be relevant and material to a decision on the application. However, the issue was raised in a Request that the ED recommends denying.

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. The draft permit has the appropriate monitoring requirements

(RTC Response No. 5) This is an issue of fact. If shown that this issue is factually accurate, that information would be relevant and material to a decision on the application. However, the issue was raised in a Request that the ED recommends denying.

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.

4. The draft permit has the appropriate odor prevention measures.

(RTC Response No. 7) This is an issue of fact. If shown that this issue is factually accurate, that information would be relevant and material to a decision on the application. However, the issue was raised in a Request that the ED recommends denying.

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.

5. The draft permit has the appropriate cooling water intake structure requirements

(RTC Response No. 6) This is an issue of fact. If shown that this issue is factually accurate, that information would be relevant and material to a decision on the application. However, the issue was raised in a Request that the ED recommends denying.

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.

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

CW Action filed a timely Requests for Reconsideration (RFR). However, the RFR failed to raise any new information for the ED to analyze. Therefore, the ED recommends denying the RFR from CW Action.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Clean Water Action is not affected person, or affected group under 30 TAC §§ 55.203 and 55.205.
2. Deny the Requests and RFR of Clean Water Action.
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 VII. 1.- 4. to SOAH for a Hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

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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

XII. CERTIFICATE OF SERVICE

I certify that on March 20, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0005341000 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.

A handwritten signature in black ink, appearing to read "Michael T. Parr II", is written above a horizontal line.

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

MAILING LIST

Chambers County Improvement District No. 1
TCEQ Docket No. 2023-0322-IWD; TPDES Permit No. WQ0005341000

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Attachment A

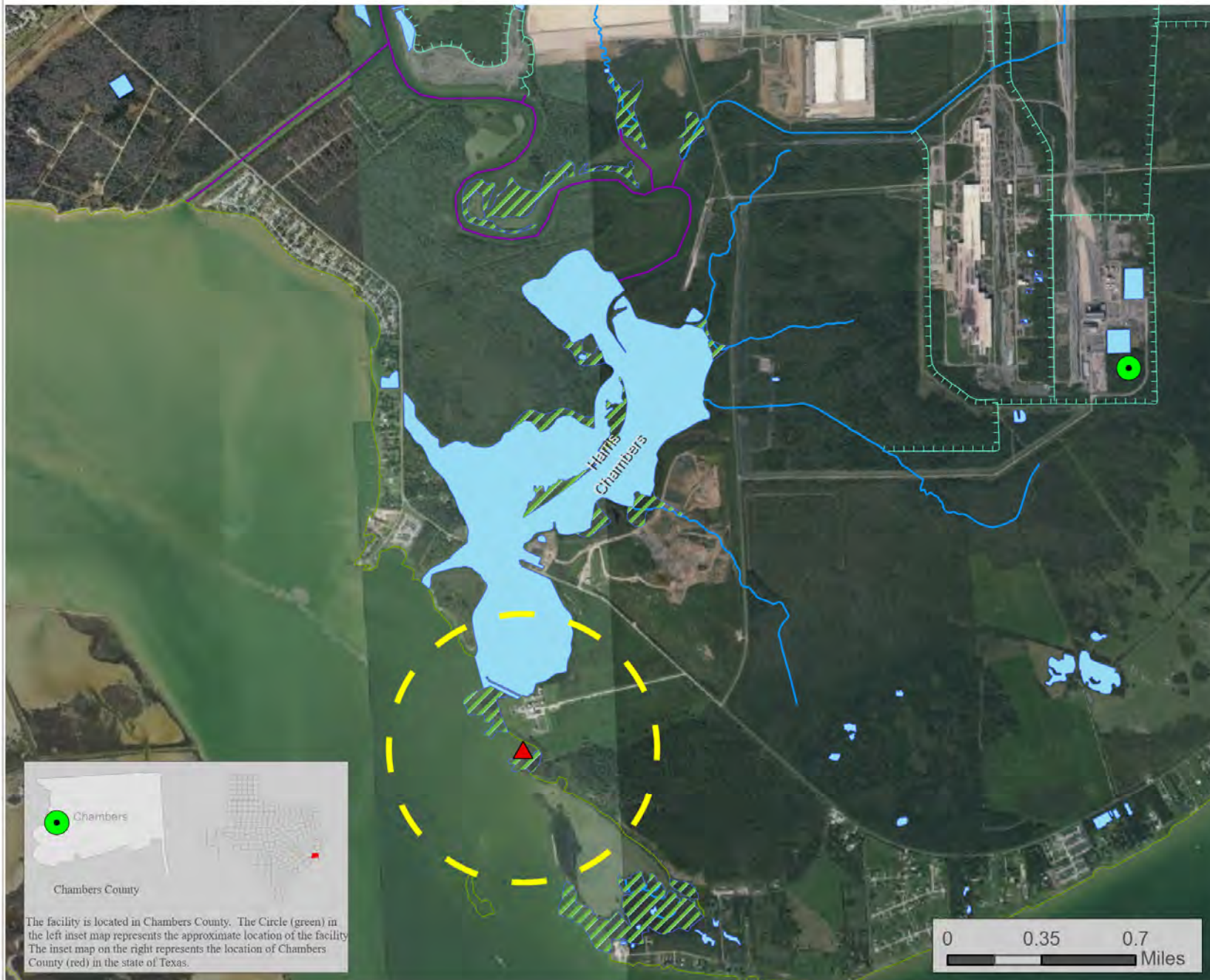
CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1 GIS MAP

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: 1/26/2023
CRF 0083139
Cartographer: ABanda



- Facility Point
- Outfall
- 0.5-Mile Outfall Radius
- Requestors
- County Boundary
- NHD Waterbodies**
 - Playa
 - Lake/Pond
 - Reservoir
 - Swamp/Marsh
 - Estuary
- Minor Roads**
- NHD Flowline**
 - Connector
 - Canal/Ditch
 - Pipeline
 - Stream/River
 - Artificial Path
 - Coastline

The distance from the Facility Point:
 - To Outfall Point is 2.66 Miles
 - To Requestor 1 (Dakshina Jandhyala) is 31.34 Miles
 - To Requestor 2 (John Chandler) is 47.54 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.

0 0.35 0.7
Miles

The facility is located in Chambers 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 Chambers County (red) in the state of Texas.

CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 1 GIS MAP








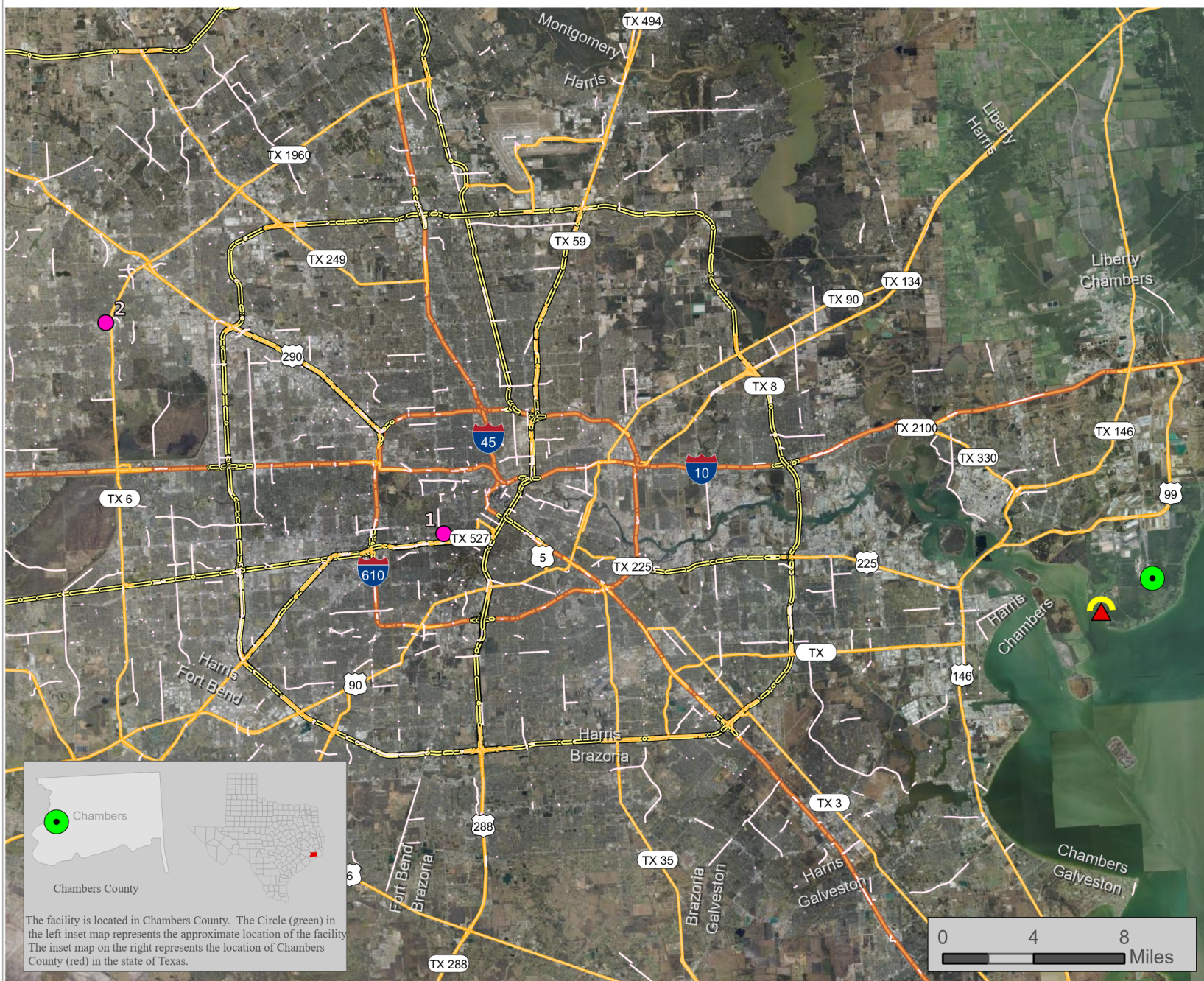
*Protecting Texas by
Reducing and
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Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

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Date: 1/26/2023
CRF 0083139
Cartographer: ABanda



-  Facility Point
-  Outfall
-  0.5-Mile Outfall Radius
-  Requestors
-  County Boundary



The distance from the Facility Point:
 - To Outfall Point is 2.66 Miles
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