

## TCEQ DOCKET NO. 2023-0386-MWD

APPLICATION BY THE  
VANTAGE AUSTIN, LLC FOR  
TPDES PERMIT NO. WQ0016132001

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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### EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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#### 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 The Vantage Austin, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016132001, authorizing the discharge of treated domestic wastewater at a daily average flow limit of 0.15, 0.30, and 0.45 million gallons per day (MGD) during the Interim phase I, II, and Final phase (respectively) of the draft permit. Mark Shipman, Marvin Mueller, and Jonah Special Utility District (Jonah) filed timely requests (Requests) for a Contested Case Hearing (Hearing). However, on March 23, 2023, Mr. Mueller filed a withdrawal of his comments and his Request of a Hearing with the TCEQ Chief Clerk's Office. Although the GIS map prepared by the ED's staff still represents Mr. Mueller's location, this Response only analyzes Mark Shipman's and Jonah's Requests.

#### II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map

#### III. DESCRIPTION OF THE FACILITY, DISCHARGE ROUTE, AND THE EXECUTIVE DIRECTOR'S TECHNICAL REVIEW

The Applicant's Wastewater Treatment Facility, the Williamson County Municipal Utility District No. 44 WWTF (Wilco facility) will be located approximately 1.0 mile north of the intersection of County Road 140 and County Road 194, in Williamson County, Texas 78626, and will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units across all phases of the Draft permit include a fine screen, anoxic basins, aerobic basins, MBR basins, and chlorine contact basins, with one of each basin in Interim Phase I, two of each basin in Interim Phase II, and three of each basin in the Final Phase. The discharge route for the proposed discharge is to East Fork Ranger Branch, then to Ranger Branch, then to Berry Creek, then to the San Gabriel River/North Fork San Gabriel River in Segment No. 1248 of the Brazos 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 ("water in the state"). The Texas Water Code (TWC) section (§) 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 (detention basin),

according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS) and the TCEQ's *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010* (IPs).

The unclassified receiving water uses, the designated uses, and the dissolved oxygen criterion for the receiving waters of the proposed discharge route, according to Appendix A of 30 TAC § 307.10 (TSWQS), is limited aquatic life use and 3.0 mg/L Dissolved Oxygen (DO) for East Fork Ranger Branch; and limited aquatic life use and 3.0 mg/L DO for Ranger Branch; high aquatic life use and 5.0 mg/L DO for Berry Creek. The dissolved oxygen criterion and designated uses for Segment No. 1248, according to Appendix A, are high aquatic life use, primary contact recreation, public water supply, aquifer protection, and 5.0 mg/L dissolved oxygen. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer. The Wilco facility will be located just outside of these zones, so aquifer protection does not apply. 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 IPs.

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 Draft 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 a "Continuously Stirred Tank Reactor" (CSTR) model.

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. Reviewing the receiving waters of the discharge route, along with other available information, allows the Standards Team to preliminarily determine the aquatic life uses for 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 applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs. As with all determinations, reviews, or analyses related to the Technical review of the Draft 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.

Correspondingly, the Tier 1 review determined that existing water quality uses will not be impaired by the proposed discharge, with the numerical and narrative criteria to protect existing uses being maintained. The Tier 2 review preliminarily determined that significant degradation of water quality is not expected in Berry Creek, which was identified as having high aquatic life use, because existing uses will be maintained and protected. Because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with

30 TAC §§ 307.4(h) and (l) (TSWQS) and determined that East Fork Ranger Branch, an unclassified waterbody, has a limited aquatic life use, with 3.0 mg/L DO.

Because the Applicant proposed a Total Phosphorus (TP) limit of 0.5 mg/L in its application, a nutrient screening was performed by the Standards Team, which confirmed and recommended a TP limit of 0.5 mg/L TP in all phases of the draft permit. Therefore, the antidegradation review recommended the same limit based on East Fork Ranger Branch and Ranger Branch being intermittent with perennial pools, which would make both water bodies effluent dominated.<sup>1</sup>

The second component of the ED's Technical Review involved WQD staff on the Modeling Team performing water quality modeling runs using a combination of a "calibrated" and "uncalibrated QUAL-TX" models. In this context, The QUAL-TX model applies to advective reaches of streams or pooled reaches and is a standard analytical tool used at the TCEQ for DO analyses of these types of receiving waters, and procedures for its use in the analysis of discharge applications have been established and are readily available.

The Draft permit's limits, established by the Modeling Team's QUAL-TX modeling results, will maintain, and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH<sub>3</sub>-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.

Coefficients and kinetics used in the model are a combination of site-specific, standardized default, and estimated values. Based on model results, the following limits are predicted to be adequate for all three flow phases to ensure that dissolved oxygen levels will be maintained above the criteria established by the Standards Team for East Fork Ranger Branch (3.0 mg/L), Ranger Branch (3.0 mg/L), Berry Creek (5.0 mg/L), and the San Gabriel River (5.0 mg/L):

|                         |  |
|-------------------------|--|
| <b>Interim I phase</b>  | <b>(0.15 MGD): 5.0 mg/L CBOD<sub>5</sub>, 2.0 mg/L NH<sub>3</sub>-N, and 5.0 mg/L DO</b> |
| <b>Interim II phase</b> | <b>(0.30 MGD): 5.0 mg/L CBOD<sub>5</sub>, 2.0 mg/L NH<sub>3</sub>-N, and 5.0 mg/L DO</b> |
| <b>Final Phase</b>      | <b>(0.45 MGD): 5.0 mg/L CBOD<sub>5</sub>, 2.0 mg/L NH<sub>3</sub>-N, and 5.0 mg/L DO</b> |

The limits above and the phosphorus limit proposed by the Applicant are consistent with the Edwards Aquifer Rules' (30 TAC Chapter 213, Subchapter A) required limits of 5.0 mg/L TSS and 1.0 mg/L TP, at a minimum.

In all phases of the Draft permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per week by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Additionally, in all phases of the Draft permit, the effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and must be monitored five times per week by grab sample at each chlorine contact chamber. With prior approval of the ED, an equivalent method of disinfection may be substituted.

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<sup>1</sup> The first three miles of the receiving streams are shallow with clear water and Berry Creek has a bedrock bottom in some areas, and there is a sparse riparian corridor.

The discharge from the Draft permit 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 (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 watersheds of critical concern or high priority 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. With respect to the presence of endangered or threatened species, the Draft permit does not require EPA's review.

Segment No. 1248 is not currently listed on the State's inventory of impaired and threatened waters (2020 Clean Water Act Section 303(d) list).

#### IV. PROCEDURAL HISTORY

The TCEQ received the application on March 25, 2022, and declared it administratively complete on April 28, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Williamson County, Texas in English in the *Williamson County Sun* on May 8, 2022, and in Spanish in *El Mundo* on May 12, 2022. The ED completed the technical review of the application on July 8, 2022, and prepared the Draft permit, which if approved, establishes the conditions under which the Wilco facility must operate. Because the NORI included an incorrect description of the proposed discharge route, the Applicant published a Combined Notice of Application and Preliminary Decision (NAPD) and NORI in Williamson County, Texas in English in the *Williamson County Sun* on August 28, 2022, and in Spanish in *El Mundo* on September 15, 2022. The public comment period ended on October 14, 2022, the ED's Response to Public Comment (RTC) was filed on December 21, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 27, 2023. 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, 84<sup>th</sup> 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](http://www.sos.state.tx.us)
- TCEQ rules: Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/) (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
- TCEQ website: [www.tceq.texas.gov](http://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](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](mailto:complaint@TCEQ.texas.gov)



Commission records for the Wilco 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](http://www.tceq.texas.gov/goto/cid). The permit application has been available for viewing and copying at Weir City Hall located at 2205 South Main Street, Weir, Texas 78674, since publication of the NORI. The final permit application, Draft permit, statement of basis/technical summary, and the ED's preliminary decision are available for viewing and copying at the same location since publication of the NAPD.

If you would like to file a complaint about the Wilco facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 11) in Austin, Texas at (512) 339-2929 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 below at the seventh bullet point of "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 Wilco 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 . . . ."<sup>2</sup>

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.<sup>3</sup>

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<sup>2</sup> 30 TAC § 55.209(d).

<sup>3</sup> *Id.* at § 55.209(e).

## **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 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.<sup>4</sup>

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.<sup>5</sup>

## **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.

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<sup>4</sup> 30 TAC § 55.201(c).

<sup>5</sup> *Id.* at § 55.201(d).

- (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.<sup>6</sup>
- (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.<sup>7</sup>

#### ***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."<sup>8</sup> "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."<sup>9</sup>

### **VII. ANALYSIS OF THE HEARING REQUESTS**

For this permit application the relevant public comment period ended on October 21, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 27, 2023. The ED's analyses determined

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<sup>6</sup> 30 TAC § 55.203(a)-(c).

<sup>7</sup> *Id.* at § 55.203(d).

<sup>8</sup> 30 TAC § 50.115(b).

<sup>9</sup> *Id.* at § 55.203(d).

whether the Requests followed TCEQ rules, if the requestors 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).***

1. **Mark Shipman** filed a timely, written Request that provided the requisite contact information, raised issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Shipman'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 Mr. Shipman believes he will be affected by the application in a way not common to the public. Mr. Shipman's Request stated he lives in proximity to the Wilco facility and raised issues related to possible adverse impact from the Draft permit on human health and the environment, and possible foul odors.

The ED recommends finding that the Request of Mark Shipman substantially complied with 30 TAC §§ 55.201(c) and (d).

2. **Jonah Special Utility District (Jonah)** filed a timely, written Request that provided the requisite contact information, raised issues that form the basis of its Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Jonah'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 Jonah believes it will be affected by the application in a way not common to the public. Jonah's Request stated it is a political subdivision of Texas, operating under Texas Water Code Chapter 65, and a holder of a Certificate of Convenience and Necessity (CCN No.11970) for water service and that the Wilco facility is located within its service area, and raised concerns about issues Jonah has statutory authority over, or unique interests in. Jonah's Request raised concerns over regionalization, maintaining Jonah's service areas, protecting the investments Jonah has made in its infrastructure, and the quality of surface and groundwater sources used to serve its customers.

The ED recommends finding that the Request of Jonah Special Utility District substantially complied with 30 TAC §§ 55.201(c) and (d).

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

1. **Mark Shipman** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Mr. Shipman's Request stated that the Wilco facility will be in proximity to his home, which according to the GIS map prepared by the ED's staff is only 0.59 linear miles from the Wilco facility. This increases the likelihood that the Mr. Shipman will be affected in a way not common to the general public. Mr. Shipman's Request raised relevant issues to a decision on the application, including whether the Wilco facility possible impact from the draft permit on human health and the environment, and possible foul odors. Mr. Shipman's proximity, which was explained briefly and specifically, in plain language in his

Request, and his concerns related to odors, possible adverse impacts to human health and the environment from the Wilco facility, are issues related to the interests of the requestors, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood that Mr. Shipman may be personally affected in a way not common to the general public.

The ED recommends that the Commission find that Mark Shipman is an Affected Person under 30 TAC § 55.203.

2. **Jonah Special Utility District (Jonah)** filed a Request that effectively identified a personal, justiciable interest affected by the application.

Jonah's Request stated that the Wilco facility is entirely within its service area and in proximity to its service lines, which according to the GIS map prepared by the ED's staff, the Wilco facility is located within Jonah's service area and Jonah's water service lines are 2.41 miles from the Wilco facility.

Jonah's Request raised relevant issues to a decision on the application because the Request raised concerns about unique interests Jonah has in the application, such as protecting the water quality of Lake Granger, which is fed by the San Gabriel River, both of which, are sources of raw water for its customers. Likewise, Jonah's Request raised Regionalization as an issue, which it has statutory authority over. All of this increases the likelihood that Jonah will be affected in a way not common to the general public. Jonah's Request raised relevant issues to a decision on the application,

Jonah's proximity, which was explained briefly and specifically, in plain language in its Requests, and its concerns related to regionalization and water quality 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 Jonah will be personally affected in a way not common to the general public.

The ED recommends that the Commission find that Jonah Special Utility District is an Affected Person under 30 TAC § 55.203.

#### VIII. ISSUES RAISED IN THE HEARING REQUEST:

The issues below were raised in Mr. Shipman's and Jonah Requests

1. **Whether the draft permit will protect human health and the environment according to the TSWQS.**

(RTC Response No. 1) This is an issue of fact. If it can be shown that the draft permit will not protect surface and groundwater quality according to the TSWQS, 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.

**2. Whether the draft permit will protect surface and groundwater quality according to the TSWQS.**

(RTC Response Nos. 1 & 2) This is an issue of fact. If it can be shown that the draft permit will not protect water quality according to the TSWQS, 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's nuisance odor controls comply with TCEQ rules.**

(RTC Response Nos. 3 & 5) 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.

**4. Whether the Draft permit complies with Texas' Regionalization policy.**

(RTC Response No. 1) This is an issue of fact; if it can be shown that the Draft permit does not comply with Texas' Regionalization policy, 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 not 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. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The ED recommends the following actions by the Commission:

1. Find that Mark Shipman and Jonah Special Utility District affected persons under 30 TAC §§ 55.203.
2. Grant the Requests of Mark Shipman and Jonah Special Utility District
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 in section VII. 1.-4. to SOAH for a Hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor, *Interim Executive Director*

Charmaine Backens, *Acting Director*  
Office of Legal Services

Guy Henry, *Acting Deputy Director*  
Environmental Law Division



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Michael T. Parr II, Staff Attorney  
Environmental Law Division  
State Bar No. 24062936  
P.O. Box 13087, MC 173  
Austin, Texas 78711 3087  
Telephone No. 512-239 0611  
Facsimile No. 512-239-0626  
REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

XI. CERTIFICATE OF SERVICE

I certify that on April 3, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016132001 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.



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

ATTACHMENT A  
ED's GIS Map



# The Vantage Austin, LLC 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: 3/24/2023  
CRF 0084371  
Cartographer: Abanda

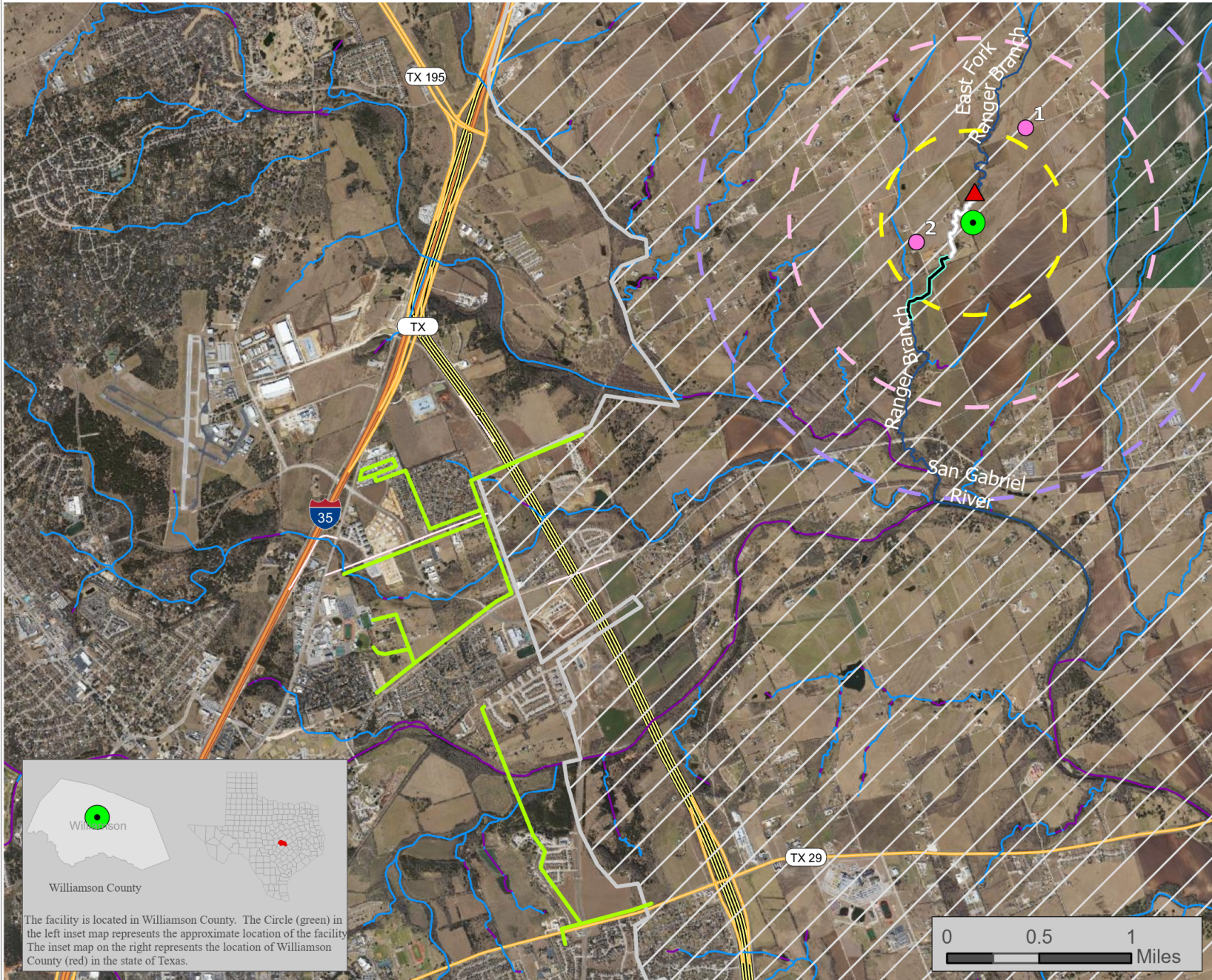


- Facility Point
- Outfall
- Requestors
- 0.5-Mile Discharge Route
- 1.0-Mile Discharge Route
- Discharge route
- Jonah WSUD CCN No. 10970
- 0.5-Mile Buffer
- 1.0-Mile Buffer
- 1.5-Mile Buffer
- County Boundary
- Jonah WSUD CCN No. 10970 Service Area

The distance between the Facility Point and Outfall is 0.17 miles. The distance between the Facility Point and Mark Shipman is 0.32 miles. The distance between the Facility Point and Marvin Mueller is 0.59 miles. The distance between the Facility Point and Jonah WSUD CCN No. 10970 is 2.41 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 Williamson 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 Williamson County (red) in the state of Texas.



MAILING LIST  
The Vantage Austin, LLC  
TCEQ Docket No. 2023-0386-MWD; Permit No. WQ0016132001

FOR THE APPLICANT

Seshu Yalamanchili, Owner  
The Vantage Austin, LLC  
5900 Balcones Drive, Suite 100  
Austin, Texas 78731

Daniel Ryan, P.E., Vice President  
LJA Engineering, Inc.  
7500 Rialto Boulevard, Building II  
Suite 100  
Austin, Texas 78735

Lauren Crone, P.E., Project Manager  
LJA Engineering, Inc.  
7500 Rialto Boulevard, Building II  
Suite 100  
Austin, Texas 78735

REQUESTER(S)

John J. Carlton  
The Carlton Law Firm, P.L.L.C.  
4301 Westbank Drive, Suite B130  
Austin, Texas 78746

LT COL Mark G. Shipman  
757 County Road 149  
Georgetown, Texas 78626

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Michael Parr, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711

Abdur Rahim, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE  
RESOLUTION

via electronic mail:

Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711

FOR THE CHIEF CLERK

via eFilings:

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