

DOCKET NO. 2023-0571-MWD

APPLICATION BY
EPITOME DEVELOPMENT, LLC
FOR NEW TPDES PERMIT
NO. WQ0016226001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Epitome Development, LLC (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016226001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Patricia Daffin and Nathan Vassar on behalf of Prairie Crossing Wastewater, LLC, 05 Ranch Investments, and Prairie Crossing MUDs.

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

II. Description of Facility

Epitome Development LLC applied for new Texas Pollutant Discharge Elimination System Permit No. WQ0016226001 to authorize the discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.10 MGD and a Final volume not to exceed a daily average flow of 0.30 MGD.

The Taylor Tract Wastewater Treatment Facility is an activated sludge process plant operated in the single stage nitrification mode. Treatment units in the Interim and the Final phases will include a mechanical bar screen, an aeration basin, a final clarifier, cloth-media disk filters, a multi-stage aerobic digester, and a chlorine contact chamber. The facility has not been constructed.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3.0 mg/l ammonia-nitrogen (NH₃-N), 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The plant site will be located 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas 76574.

Outfall Location:

Outfall Number	Latitude	Longitude
001	30.523506 N	97.442402 W

The treated effluent will be discharged via Outfall 001 to an unnamed tributary, thence to an unnamed impoundment, thence to an unnamed tributary, thence to Battleground Creek, thence to Soil Conservation Service Site 31 Reservoir, thence to Battleground Creek, thence to Brushy Creek in Segment 1244 of the Brazos River Basin. The unclassified receiving water use are limited aquatic life use for the unnamed tributary, unnamed impoundment, and Battleground Creek. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily 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 has preliminarily 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 is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

III. Procedural Background

The TCEQ received Epitome Development LLC's application on September 27, 2022, and declared it administratively complete on October 4, 2022. The English Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 6, 2022, in the *Austin American-Statesman*. The Spanish NORI was published on October 6, 2022, in *El Mundo Newspaper*. The English Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit were published on December 20, 2022, in the *Austin American-Statesman*. The Spanish NAPD was published on December 22, 2022, in *El Mundo Newspaper*. The application was technically complete on November 14, 2022. The comment period for this application closed on January 23, 2023.

This application was administratively complete on or 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

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each

submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To

facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;

- distance restrictions or other limitations imposed by law on the affected interest;

- whether a reasonable relationship exists between the interest claimed and the activity regulated;

- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- likely impact of the regulated activity on use of the impacted natural resource by the person;

- whether the requestor timely submitted comments on the application which were not withdrawn; and

- for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

- the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

- the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

“When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;
was raised during the public comment period by an affected person whose hearing request is granted; and
is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Requests Complied with Section 55.201(c) and (d).

Patricia Daffin, Prairie Crossing Wastewater, LLC, Prairie Crossing MUDs 1 and 2, and 05 Ranch Investments submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their name, address, email address, and requested a public hearing. They identified themselves as persons with what they believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided a list of disputed issues of fact raised during the public comment period.

The Executive Director concludes that the hearing requests of Patricia Daffin, Prairie Crossing Wastewater, LLC, Prairie Crossing MUDs, and 05 Ranch Investments substantially comply with the section 55.201(c) and (d) requirements.

B. Whether the Requestor Meets the Affected Person Requirements.

Patricia Daffin

According to the information provided by Patricia Daffin, she lives approximately 0.14 miles from the facility. Additionally, Ms. Daffin is listed on the downstream landowner map. She raised concerns regarding overflow at the facility and contamination of water for livestock watering. Ms. Daffin’s concerns about water contamination and overflow at the facility site are protected by the law under which the application will be considered and, thus, are referrable. Ms. Daffin has a

personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is an affected person.

The Executive Director recommends the Commission find that Patricia Daffin is an affected person.

Prairie Crossing Wastewater, LLC

According to the information provided by Prairie Crossing Wastewater, LLC, it is the holder of existing TPDES Permit No. WQ0015850001. The existing Prairie Crossing facility is located approximately 1.58 miles from the proposed Epitome Development facility. Prairie Crossing Wastewater, LLC raised issues regarding water quality, regionalization and the need for the final phase, the designated uses of the receiving stream, whether the draft permit complies with antidegradation requirements, whether the application is complete and accurate, and nuisance odor. The hearing request indicated that Prairie Crossing Wastewater, LLC corresponded with the Applicant regarding regionalization and were willing to provide service. Prairie Crossing Wastewater, LLC's concerns about regionalization, designated uses, water quality, whether the permit complies with antidegradation requirements, odor, and whether the application is complete and accurate are protected by the laws under which the application will be considered and are, thus, referable. Prairie Crossing Wastewater, LLC has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is an affected person.

The Executive Director recommends the Commission find that Prairie Crossing Wastewater, LLC is an affected person.

05 Ranch Investments

According to the information provided by 05 Ranch investments, it owns the land in Williamson County on which the wastewater treatment facility authorized by TPDES permit No. WQ0015850001 is located, which is approximately 1.58 miles from Epitome's proposed facility. 05 Ranch Investments raised the following issues: water quality, regionalization and need for the final phase, the designated uses of the receiving stream, whether the draft permit complies with antidegradation requirements, whether the application is complete and accurate, and nuisance odor. However, 05 Ranch Investments did not demonstrate how they are affected based on their location or in a manner not common to the general public in regard to the issues raised. Due to their distance from the proposed facility and the proposed discharge route, 05 Ranch Investments has not demonstrated how it is affected in a manner not common to the general public. The ED recommends denial of its hearing request.

The Executive Director recommends the Commission find that 05 Ranch Investments is not an affected person.

Prairie Crossing MUDs (1 and 2)

According to the information provided by Prairie Crossing MUDs, they are a political subdivision authorized by TCEQ to provide services within an area of Williamson County. Prairie Crossing MUDs 1 and 2 are located approximately 1.37 miles and 0.79 miles from the proposed facility respectively. Prairie Crossing MUDs raised the following issues: water quality, regionalization and need for the final phase, the designated uses of the receiving stream, whether the draft permit complies with antidegradation requirements, whether the application is complete and accurate, and nuisance odor. However, Prairie Crossing MUDs did not demonstrate how they are affected based on their location in relation to the proposed wastewater treatment facility and discharge route. Additionally, the Prairie Crossing MUDs did not demonstrate that the proposed facility is located within their jurisdiction. Thus, the ED recommends denial of its hearing request.

The Executive Director recommends the Commission find that the Prairie Crossing MUDs is not an affected person.

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

The following issues were raised during the public comment period.

- 1. Whether the draft permit is adequately protective of water quality and the receiving waters including the protection of surface water, the existing uses of the receiving waters, and livestock in accordance with applicable regulations including the Texas Surface Water Quality Standards. (RTC Response No. 3)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect water quality, including surface water and livestock, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

- 2. Whether the draft permit contains adequate provisions to protect against flooding at the facility site. (RTC Response No. 2)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect against flooding at the facility site, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

- 3. Whether the permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code section 26.0282 and the general policy to promote regional or area-wide systems under Texas Water Code section 26.081. (RTC Response No. 4)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the permit does not comply with TCEQ's regionalization policy, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

4. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 9)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect against nuisance odor, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

5. Whether the application is complete and accurate. (RTC Response No. 10)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the application is not complete and accurate, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

6. Whether the draft permit complies with applicable antidegradation requirements. (RTC Response No. 6)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with applicable antidegradation requirements, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Patricia Daffin and Prairie Crossing Wastewater, LLC as affected persons and grant their hearing requests.

Find 05 Ranch Investments and the Prairie Crossing MUDs not affected persons and deny their hearing requests.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on July 10, 2023, the “Executive Director’s Response to Hearing Requests” for new Texas Pollutant Discharge Elimination System (TPDES) No. WQ0016226001 by Epitome Development, LLC was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Epitome Development, LLC
TCEQ Docket No./TCEQ Expediente N.º 2023-0571-MWD;
TPDES Permit No./TPDES Permiso N.º WQ0016226001

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INTERESTED PERSON(S)/PERSONA(S)
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See attached list/vease la lista adjunta

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Attachment A

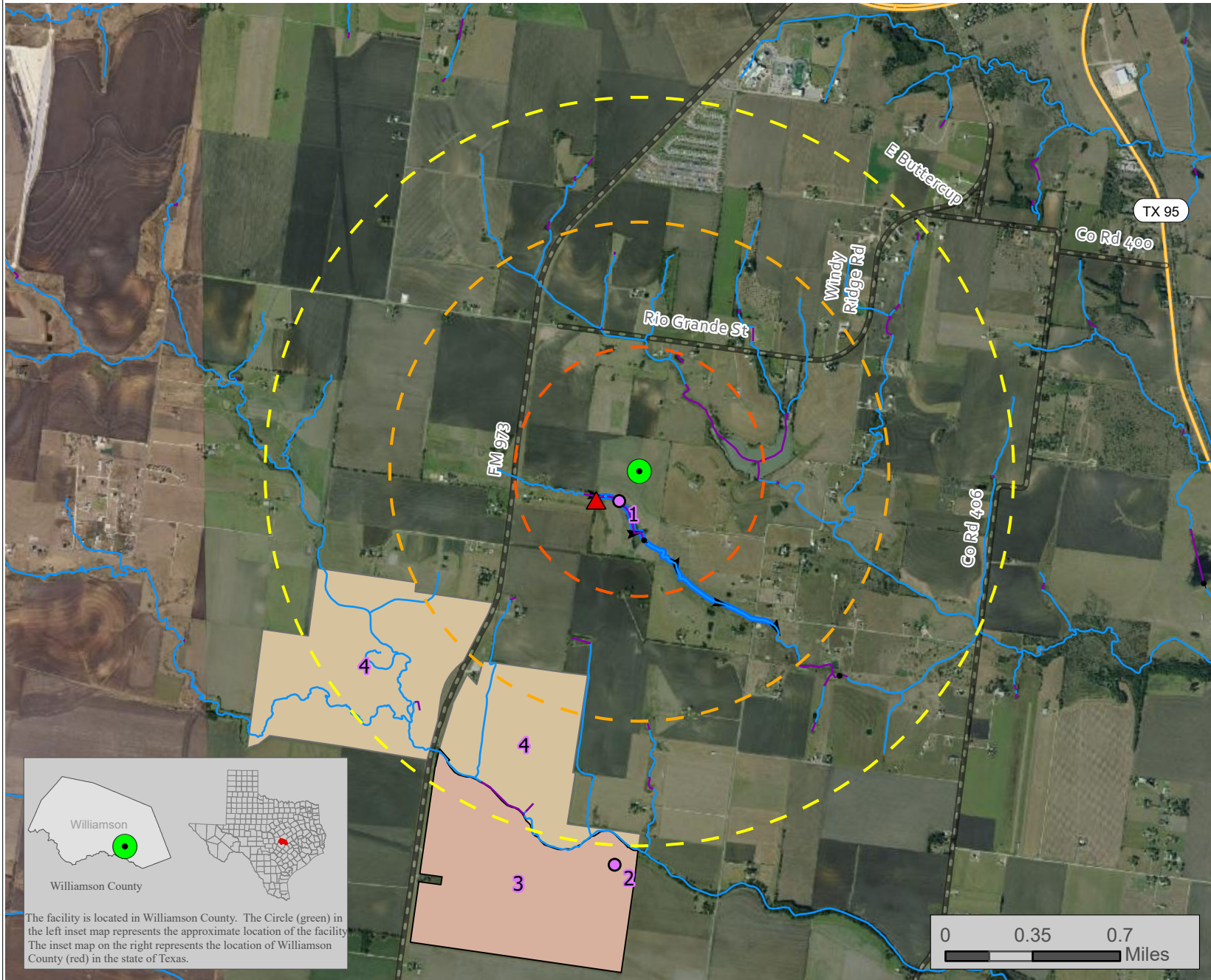
Epitome Development, LLC - WQ0016226001

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: 6/8/2023
CRF 0087991
Cartographer: jbartlin



- Requestors
- Facility
- ▲ Outfall
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- ▶ 1.0 Mile Discharge
- Prairie Crossing Mud #1
- Prairie Crossing Mud #2

The distance from Patricia Daffin (1) to the facility is 0.14 miles.

The distance from Prairie Crossing, LLC/05 Ranch (2) investments to the facility is 1.58 miles.

The distance from Prairie Crossing Mud #1 (3) to the facility is 1.37 miles.

The distance from Prairie Crossing Mud #2 (4) to the facility is .79 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.

