

TCEQ DOCKET NO. 2023-0574-IWD

APPLICATION BY	§	BEFORE THE
LYONDELL CHEMICAL COMPANY	§	
FOR TPDES PERMIT NO.	§	TEXAS COMMISSION ON
WQ0002927000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Request on an application by the Lyondell Chemical Company (Applicant) for a major amendment to TPDES Permit No. WQ0002927000. The Office of the Chief Clerk received a contested case hearing request from Douglas R. Stewart.

The Executive Director recommends that the Commission grant the hearing requests for Mr. Stewart.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility, discharge points, and requestor.

II. FACILITY DESCRIPTION

The applicant has applied to TCEQ for a major amendment to TPDES Permit No. WQ0002927000. The amendment would make the following revisions to the existing permit: to use a site-specific hardness for calculating water quality-based effluent limits; to authorize increased copper limits at Outfall 001; to remove limits and monitoring requirements for total aluminum, total zinc, and total xylenes at Outfall 001; to add wastestreams to Outfalls 001, 002, and 008; to modify various wastewater descriptions; to increase the daily maximum pH limit at Outfall 002; to reduce the monitoring frequency at Outfalls 002 and 003 for total organic carbon and oil and grease; to use site-specific partitioning coefficients for aluminum at Outfalls 003, 004, and 005 for calculating water quality-based effluent limits; to update the discharge and monitoring locations for Outfalls 008, 009, and 010; to revise the discharge route description for Outfall 009; to remove Other Requirements Nos. 5, 12, and 14; and to update Other Requirement No. 4. The Executive Director has prepared a draft permit which includes all the amendments which the Applicant originally requested except the request to reduce the monitoring frequency at Outfalls 002 and 003 for total organic carbon.

The facility is located at 2502 Sheldon Road in the City of Channelview, Harris County, Texas 77530. The effluent is discharged via Outfalls 001-006, and 008 to Harris County Flood Control District (HCFCD) ditch G103-02-03; via Outfall 009 to an unnamed ditch, thence to Bear Lake, which is considered to be part of the San Jacinto River Tidal; via Outfall 010 to a Wallisville roadside ditch; thence all to San Jacinto

River Tidal in Segment No. 1001 of the San Jacinto River Basin. The unclassified receiving waters have minimal aquatic life use for HCFCD ditch G103-02-03, the unnamed ditch, and the Wallisville roadside ditch. The designated uses for Segment No. 1001 are primary contact recreation and high aquatic life use.

In accordance with Title 30 Texas Administrative Code Section 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in San Jacinto River Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and protected.

Segment No. 1001 is currently listed on the State's inventory of impaired and threatened waters, the 2020 Clean Water Act Section 303(d) list. The listing is for dioxin and polychlorinated biphenyls (PCBs) in edible tissue from the Lake Houston Dam to Interstate Highway 10 (AUs 1001_1 and 1001_02). The permittee indicated that dioxin and PCBs, which were banned by the EPA in 1979, are not expected to be present in the effluent. Furthermore, the application¹ reported non-detectable levels of PCBs at the minimal analytical level (MAL) of 0.2 micrograms per liter (µg/L) at Outfalls 001. through 004. Effluent data for primarily stormwater driven Outfalls 005, 006, and 008-010 was not included with the application. The discharge is not expected to contribute to the impairments for dioxin and PCBs in edible tissue.

III. PROCEDURAL BACKGROUND

The TCEQ received Lyondell Chemical Company's application for a renewal with major amendment on January 5, 2021, and declared it administratively complete on March 5, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Houston Chronicle dba Pasadena Citizen* on March 31, 2021, and in the *Houston Chronicle dba La Voz* on April 4, 2021, for the alternative language publication. The technical review was complete on September 20, 2021, and the Applicant published the Notice of Application and Preliminary Decision (NAPD) in the *Houston Chronicle dba Pasadena Citizen* on October 27, 2021, and in the *Houston Chronicle dba La Voz* on October 27, 2021, for the alternative language publication. The comment period for this application closed on November 29, 2021. The hearing request period closed November 28, 2022. This application was filed after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the

¹ Lyondell Chemical Company's TCEQ-10055 (05/10/2019) Industrial Wastewater Permit Application Technical Report 1.0, Worksheet 2.0 for Outfalls 001-004, Pollutant Analyses Requirements.

requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.²

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.³

B. Hearing Request Requirements

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

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the ED's Response to Comment.⁴

A hearing request must substantially comply with the following:

- (1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

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

³ 30 TAC § 55.209(e).

⁴ 30 TAC § 55.201(c).

- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.⁵

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

To grant a contested case hearing, the Commission must determine that a requestor is an "affected" person by conducting the following analysis:

- (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 general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (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;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record,

⁵ 30 TAC § 55.201(d).

- 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.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.”⁶ The Commission may not refer an issue to the State Office of Administrative Hearings (SOAH) for a contested case hearing unless the Commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁷

V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

1. Parties the Executive Director recommends the Commission find Affected Persons

Douglas R. Stewart

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

Mr. Stewart submitted timely comments and a hearing request which contained his name, address, and phone number pursuant to 30 TAC § 55.201(d). According to the addresses he provided, the properties, including his home, identified in his request are just over a mile from the facility location. The specific distances are 1, 1.12, 1.33, 1.34, 1.38, 1.41, 1.43, 1.45, and 1.54 miles. However, the properties are located in close proximity to the various discharge locations around the facility with all of them being

⁶ 30 TAC § 50.115(b).

⁷ 30 TAC § 50.115(c).

approximately a half mile from one outfall. Mr. Stewart further stated that these lots extend to Bear Lake which is part of the discharge route.

In Mr. Stewart's request he raised specific issues regarding the draft permit's impact on his properties. Mr. Stewart's chief concerns were the draft permit's potential impacts to his current recreational uses in the receiving waters, questioning whether the effluent limits were protective of the receiving waters and if there could be potential impacts on human health.

In his request, Mr. Stewart stated that he recreates in the lake and he has several property interests which he believes will be affected. Mr. Stewart refers to his customers being affected and expressed concerns that the draft permit could compromise his and his customers' ability to safely recreate in the lake, thereby affecting the value of his business properties. According to the request, Mr. Stewart has a pier and boating facilities that he and his rental customers use when recreating. He attached a picture of the structure along with what appears to be the receiving waters in his request. Mr. Stewart also was concerned that the permit could affect his engineering business but did not elaborate on how it could be affected.

30 TAC § 55.203(c) outlines the factors the Commission takes into consideration when determining whether a requestor is affected. 30 TAC § 55.203(c)(1) specifically requires that the Commission consider whether the interest claimed is one protected by the law under which the application will be considered. In Mr. Stewart's request, he stated he had concerns about the permit's potential impact to his health, the environment, and his customers. Potential economic impacts of the regulated facility are not considered as part of the wastewater permitting process. Therefore, these issues are not relevant for determination of affectedness. However, Under Chapter 26 of the Texas Water Code, the Commission is tasked with maintaining water quality consistent with public health and enjoyment. These comprise the concerns Mr. Stewart raised, and he identified how he would personally be affected. Based upon the locations and uses of his property interests, the Executive Director believes he has sufficiently explained how he will be uniquely affected. Accordingly, these issues raised in his request are interests protected under the law and are relevant to the application.

Therefore, the Executive Director recommends that the Commission find that Mr. Stewart is an affected person having complied with the procedural and substantive requirements of 30 TAC Chapter 55.

B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).

1. Whether the draft permit complies with the TCEQ's antidegradation policy under 30 Tex. Admin. Code § 307.5. (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 comply with the antidegradation policy, 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 effluent limits in the draft permit are protective of water quality in accordance with the TSWQS in Chapter 307. (RTC Response 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 draft permit is not protective of water quality in accordance with the surface water quality standards 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 draft permit is protective of human health. (RTC Response 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 is not protective of human health 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 would unreasonably affect property values. (RTC Response 8)

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not have jurisdiction to address or consider property values or the marketability of adjacent property when determining whether to approve or deny a permit application. Additionally, TCEQ does not have the authority to address concerns about the impact of the facility on the economy, businesses, tourism, or resale of homes as part of the wastewater permitting process. This issue is neither relevant nor material to a decision on the application. The Executive Director recommends that this issue not be referred to SOAH.

VI. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Douglas R. Stewart an affected person.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by the affected person as identified by the Executive Director:
 - **Issue A) Whether the draft permit complies with the TCEQ's antidegradation policy under 30 Tex. Admin. Code § 307.5.**

- **Issue B) Whether the effluent limits in the draft permit are protective of water quality in accordance with the TSWQS in Chapter 307.**
- **Issue C) Whether the draft permit is protective of human health.**

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 20, 2023, the “Executive Director’s Response to Hearing Request” for TPDES Permit WQ0002927000 for Lyondell Chemical Company was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley

MAILING LIST LYONDELL CHEMICAL COMPANY
TCEQ Docket No. 2023-0574-IWD; TPDES Permit No. WQ0002927000

FOR THE APPLICANT:

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FOR THE CHIEF CLERK
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Texas Commission on Environmental
Quality
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<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S):

Douglas Stewart
16531 Shady Lane
Channelview, Texas 77530

INTERESTED PERSON(S):

Dr. Latrice Babin
Harris County Pollution Control Services
Department
101 South Richey Street, Suite H
Pasadena, Texas 77506

Jerry Caraviotis
Harris County Pollution Control
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Attachment A

Application by Lyondell Chemical Company

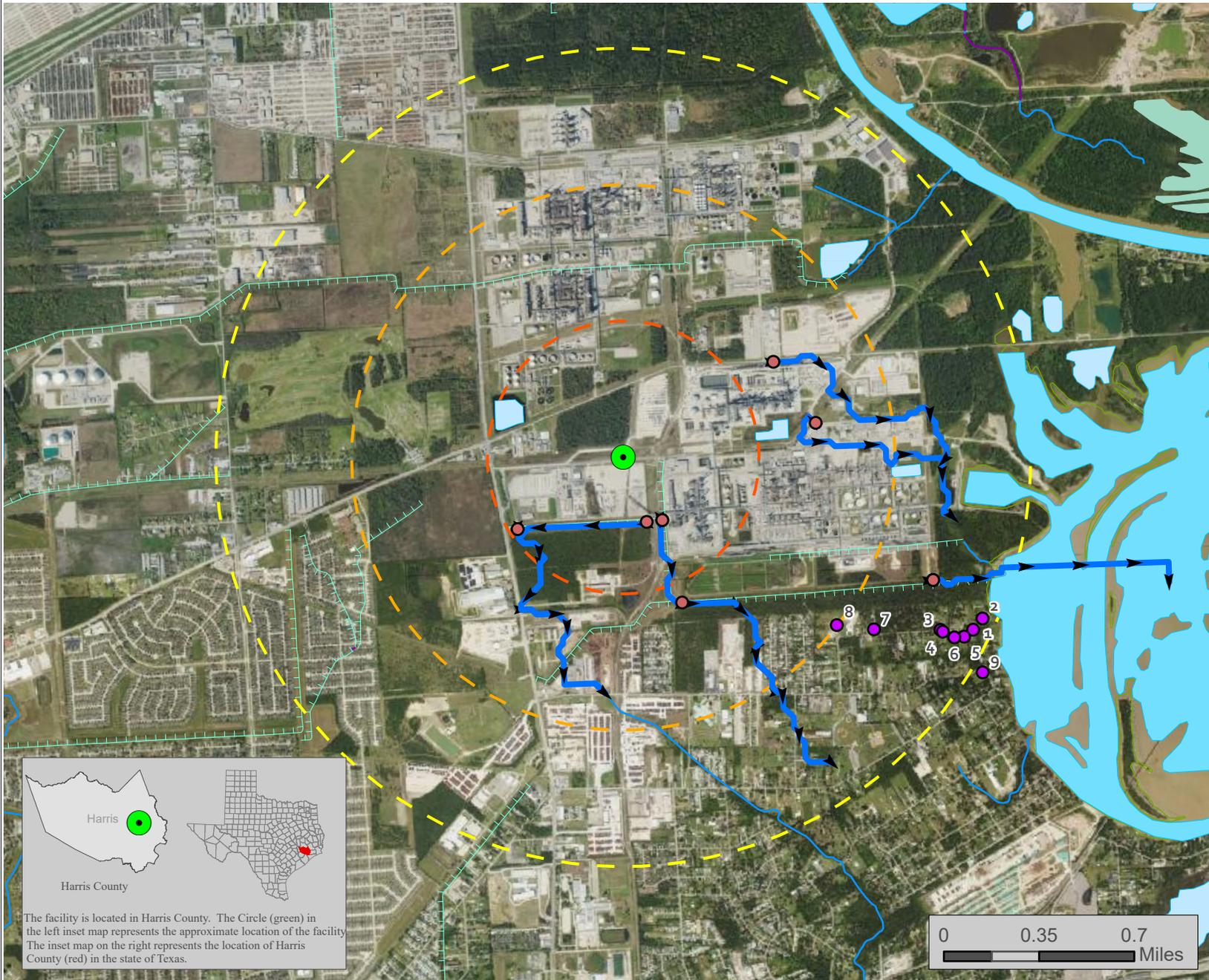
TPDES Permit No. WQ0002927000

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: 12/7/2023
CRF 0097732
Cartographer: jbartlin



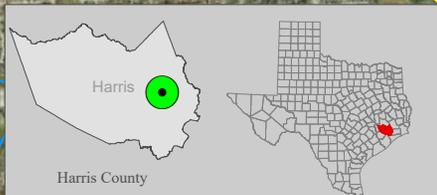
- Douglas Stewart
- Facility
- Outfalls
- 1.0 Mile Discharge Routes
- - - 0.5 Mile Radius
- - - 1.0 Mile Radius
- - - 1.5 Mile Radius

Distance from Facility

ID	Address	Miles
1	16918 Shady Lane	1.43
2	16916 Shady Lane	1.45
3	16817 Shady Lane	1.33
4	16816 Shady Lane	1.34
5	16818 Shady Lane	1.41
6	16810 Shady Lane	1.38
7	16547 Shady Lane	1.12
8	16531 Shady Lane	1.00
9	1525 Park Lane	1.54

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