

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 20, 2023

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

**Re: Application by Venetian 141 Swisher, LLC for New TPDES Permit No. WQ0016165001; TCEQ Docket No. 2023-1557-MWD**

Dear Ms. Gharis,

I have enclosed for filing the "Executive Director's Response to Hearing Requests."  
Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kathy J. Humphreys".

Kathy Humphreys  
Staff Attorney  
Environmental Law Division

Enclosure

CC: Mailing List

TCEQ DOCKET NO. 2023-1557-MWD

APPLICATION BY  
VENETIAN 141 SWISHER, LLC  
FOR NEW TPDES PERMIT NO.  
WQ0016165001

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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 Venetian 141 Swisher, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011041002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The Office of the Chief Clerk received a contested case hearing request from North Texas Municipal Water District.

The Executive Director recommends that the Commission grant the hearing request for North Texas Municipal Water District.

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

II. FACILITY DESCRIPTION

Venetian 141 Swisher, LLC (Venetian) applied for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The proposed wastewater treatment facility will serve a residential development located approximately 0.52 miles southwest of the intersection of FM Road 455 and North Main Street in Collin County, Texas, 75097.

The Weston 125A Wastewater Treatment Facility will be an activated sludge process plant operated in the single stage nitrification conventional aeration mode. Treatment units will include a bar screen, an on-site lift station, two aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/L five-day carbonaceous biochemical oxygen demand, 15 mg/L total suspended solids, 3 mg/L ammonia-nitrogen, 126 colony-forming units or most probable number of *E. coli* per 100 mL, and 4.0 mg/L minimum dissolved oxygen. 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 treated effluent will be discharged to an unnamed tributary of Honey Creek, thence to Soil Conservation Service (SCS) Site 8f Reservoir, thence to an unnamed

tributary of Honey Creek, thence to Honey Creek, thence to East Fork Trinity River above Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary of Honey Creek (above SCS reservoir) and SCS Site 8f Reservoir, minimal aquatic life use for the unnamed tributary of Honey Creek (below SCS reservoir), and intermediate aquatic life use for Honey Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life use.

The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code § 307.5 and the *TCEQ's Implementation Procedures for 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 Honey Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected.

### **III. PROCEDURAL BACKGROUND**

The TCEQ received the application on May 9, 2022, and declared it administratively complete on August 25, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Dallas Morning News* on August 28, 2022. The Executive Director's staff in the Water Quality Division completed the technical review of the application on November 23, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English in the *Dallas Morning News* on January 6, 2023. The public comment period ended on February 6, 2023. The ED's Response to Public Comment (RTC) was filed on July 10, 2023, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on August 14, 2023. This application was filed on or 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 Chapters 39, 50, and 55. This application is subject to those changes in the law.

### **IV. EVALUATION OF HEARING REQUESTS**

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

## **A. Response to Requests**

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.<sup>1</sup>

Responses to hearing requests must specifically address:

- (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>2</sup>

## **B. Hearing Request Requirements**

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

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>3</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

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<sup>1</sup> 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

<sup>2</sup> 30 TAC § 55.209(e).

<sup>3</sup> 30 TAC § 55.201(c).

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) 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.<sup>4</sup>

### **C. Requirement that Requestor be an Affected Person**

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 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.

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<sup>4</sup> 30 TAC § 55.201(d).

- (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>5</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>6</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>7</sup>

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

For this permit application, the relevant public comment period ended on February 6, 2023, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on August 14, 2023. The ED's analyses determined 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), and 55.203.**

##### **North Texas Municipal Water District (NTMWD)**

NTMWD filed timely comments and a hearing 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.

In its request, NTMWD stated that it is an affected person because: (1) it was created by the Texas Legislature in 1951 to serve regional water and wastewater needs in the area north and east of Dallas; (2) it has a historic recognition and legal designation by the TCEQ's predecessor agency as the regional service provider for the

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<sup>5</sup> 30 TAC § 55.203(a)-(d).

<sup>6</sup> 30 TAC § 50.115(b).

<sup>7</sup> 30 TAC § 55.203(d).

service area at issue; and (3) its proposed and approved Sister Grove Regional Waste Resource Recovery Facility encompasses the same service area.

Specifically, NTMWD stated that Venetian 141 Swisher, LLC's proposed facility would interfere with its statutory right, privilege, and economic interest as the TCEQ-designated regional entity to collect, transport, and discharge wastewater within the Regional Area. NTMWD also claimed that the Venetian 141 Swisher, LLC's proposed facility would interfere with its existing system, including the Sister Grove Regional Waste Recovery Facility,<sup>8</sup> that collects, transports, and treats wastewater within three miles of the Applicant's proposed facility. According to information provided in its request, NTMWD claimed that the proposed collection lines from the City of Anna are within three miles of the Applicant's proposed service area.

Although NTMWD is not an exclusive regional provider under Chapter 351 of the TCEQ's rules, the ED recommends that the Commission find that NTMWD is an affected person due to its statutory authority over and interest in the issues relevant to the application.

Based on the forgoing, the Executive Director recommends that the Commission find NTMWD is an affected person and grant its hearing request.

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

The ED has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the Response to Comments. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.<sup>9</sup> The issues raised for this application and the ED's analysis and recommendations follow.

**Issue 1.** Whether the draft permit should be denied or the terms of the draft permit be changed because of the availability of NTMWD's regional system. (RTC Comment 4).<sup>10</sup>

This 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. Therefore, the ED recommends the Commission refer this issue to SOAH.

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<sup>8</sup> In its request, NTMWD stated that the Sister Grove Regional Waste Resource Recovery Facility is expected to come online in early 2024.

<sup>9</sup> Tex. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

<sup>10</sup> Due to a typographical error in the Executive Director's Response to Comments, Comment and Response 3 was inadvertently duplicated. What is referred to here as "RTC Response 4" appears in the RTC as the second "Comment 3."

**Issue 2.** Whether there is a need for the Draft Permit given the proximity of NTMWD's regional system. (RTC Comment 4).<sup>11</sup>

This 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. However, this issue is subsumed within Issue 1. Therefore, the ED recommends the Commission not refer this issue to SOAH.

**Issue 3.** Whether the Application meets the requirements of 30 Texas Administrative Code Chapters 21, 39, 281, and 305.

This issue involves a disputed question of mixed fact and law; however it is too vague to constitute a discrete issue. Therefore, the ED recommends the Commission not refer this issue to SOAH.

## **VI. 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.

## **VII. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The ED recommends the following actions by the Commission:

1. Find that North Texas Municipal Water District is an affected person under 30 TAC §§ 55.203.
2. Grant the Request of North Texas Municipal Water District.
3. Should the Commission decide to refer this case to SOAH, refer the following issue:
  - a. Whether the draft permit should be denied or the terms of the draft permit be changed because of the availability of North Texas Municipal Water District's regional system.

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<sup>11</sup> See Footnote 10.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

Erin Chancellor, Director  
Office of Legal Services

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 November 20, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016165001 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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Kathy Humphreys, Staff Attorney  
Environmental Law Division

MAILING LIST  
Venetian 141 Swisher, LLC  
TCEQ Docket No. 2023-1557-MWD TPDES Permit No. WQ0016165001

FOR THE APPLICANT:

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FOR THE EXECUTIVE DIRECTOR  
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FOR THE CHIEF CLERK  
via eFilings:

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Texas Commission on Environmental  
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Austin, Texas 78711  
[www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings)

REQUESTER(S)/INTERESTED PERSONS

See attached list.

REQUESTER(S)

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Lloyd Gosselink Rochelle & Townsend  
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INTERESTED PERSON(S):

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Yvette Wilkerson  
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# Attachment A

# Venetian 141 Swisher, LLC - WQ0016162001



Protecting Texas by  
Reducing and  
Preventing Pollution

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

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 10/4/2023  
CRF 0092125  
Cartographer: jstalsby



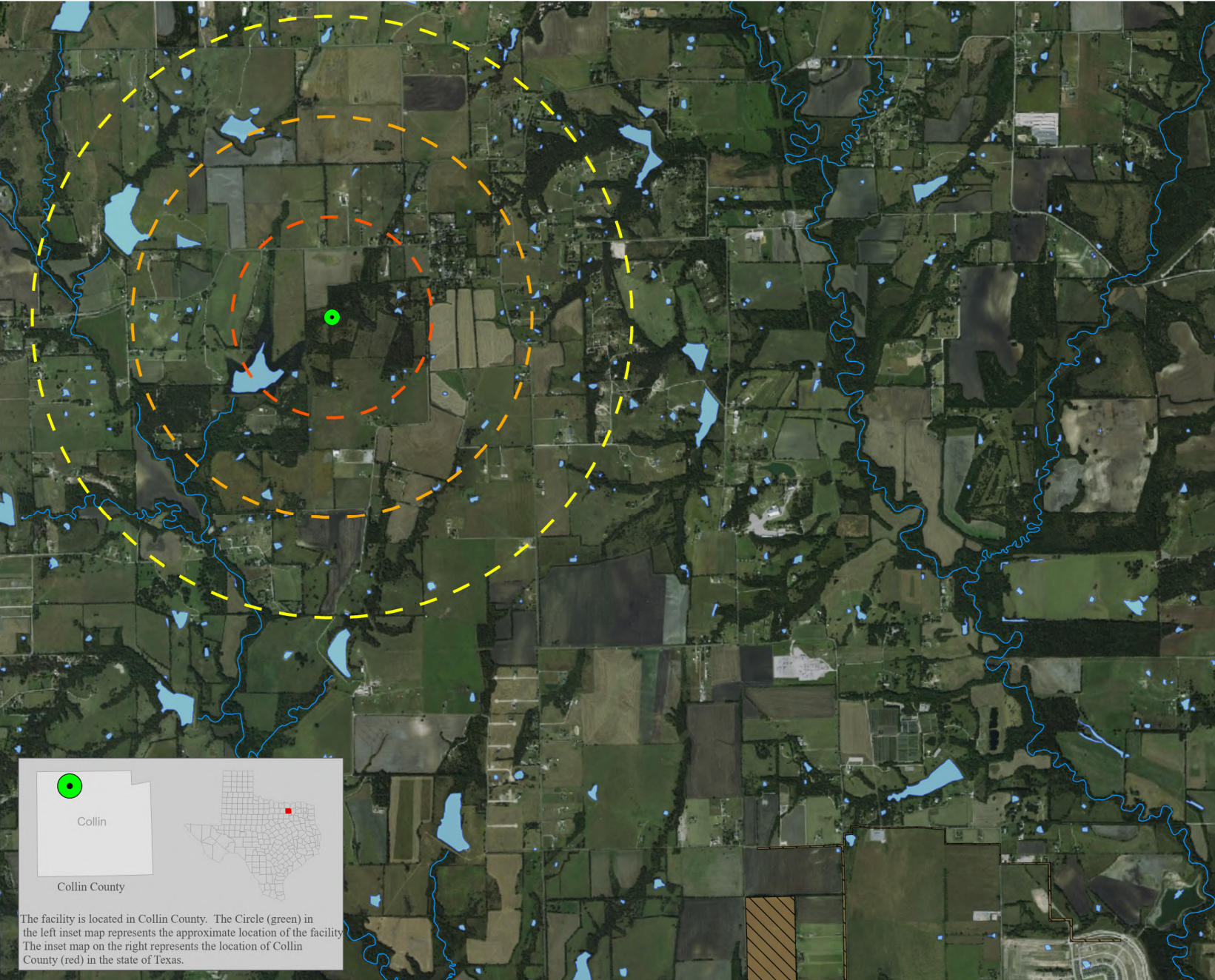
- Facility
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius
- North Texas MWD

Distance between facility  
North Texas WMD  
approximately 3.5 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.



Collin

Collin County

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