

TCEQ DOCKET NUMBER 2023-1560-MWD

APPLICATION BY BAHAMAS LAGUNA AZURE, LLC FOR NEW TPDES PERMIT NO. WQ0016186001	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Hearing Requests on the application by Bahamas Laguna Azure, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016186001 (proposed permit), which authorizes the discharge of treated domestic wastewater (proposed discharge) at a daily average flow limit of 0.125/ 0.250/ 0.525 million gallons per day (MGD) in the Interim I, Interim II, and Final phases, respectively, from the Applicant's Wastewater Treatment Facility ((WWTF), proposed facility). The TCEQ's Office of the Chief Clerk, received Hearing Requests (HRQs) from North Texas Municipal Water District (NTMWD) and Royse City (the City).

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map

III. DESCRIPTION OF FACILITY AND RECEIVING STREAMS

If the permit is ultimately issued, the proposed facility will be located approximately two miles southeast of the intersection of Farm-to-Market Road 548 and Interstate Highway 30 in Rockwall County, Texas 75189, and will be an activated sludge process plant operated in the Complete Mix mode.

When constructed, the proposed facility will include treatment units for Interim Phase I consisting of a bar screen, a final clarifier, a chlorine contact chamber, two aeration basins, and two sludge digesters. Interim Phase II units mirror that of Interim Phase I but also include two additional aeration basins and sludge digesters. Treatment units in the Final Phase consist of a bar screen, two final clarifiers, two chlorine contact chambers, five aeration basins, and five sludge digesters. The proposed permit authorizes the disposal of sludge at any TCEQ-authorized land application site, co-disposal landfill, or a wastewater treatment facility, or facility that further processes sludge.

The route of the proposed discharge is to an unnamed tributary, then Sabine Creek, then the South Fork Sabine River, and then to Lake Tawakoni in Segment No. 0507 of the Sabine River Basin.

The designated Water Quality Uses for Segment No. 0507, as stated in the 2018 Texas Surface Water Quality Standards-Appendix A (TSWQS), are primary contact recreation, public water supply, and a "high" Aquatic Life Use (ALU) designation, with a corresponding Dissolved Oxygen (DO) criterion of 5.0 milligrams per Liter (mg/L). The Minimum Dissolved Oxygen (DO) criterion for the unnamed tributary is 2.0 mg/L DO,

whereas Sabine Creek and the South Fork Sabine River are both 3.0 mg/L DO. All three waterbodies have “limited” ALUs.

Because the proposed discharge is directly to an unclassified water body, the application was reviewed in according to the TSWQS, found in Title 30 of the Texas Administrative Code (30 TAC), sections (§§) 307.4(h) and (l), and the TCEQ's RG-194: Procedures to Implement the Texas Surface Water Quality Standards-June 2010 (IPs).

Consistent with the TSWQS (30 TAC § 307.5), and the IPs, an antidegradation review of the receiving waters was performed. The Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permitting action and that numerical and narrative criteria to protect existing uses will be maintained because the proposed permit has limits designed to maintain numerical, as well as narrative criteria, which protects existing Water Quality (WQ) uses.

Additionally, the proposed permit's WQ-related effluent limitations (limits) will maintain and protect the existing instream uses. For conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD5), and Ammonia Nitrogen (NH3-N), the limits are based on stream standards and waste load allocations for WQ-limited streams as established in the TSWQS and Texas' WQ Management Plan (WQMP).

The proposed permit's limits and conditions meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, eff. 7/22/2010), and the United States Environmental Protection Agency (USEPA)-approved portions of the TSWQS (eff. 3/6/2014). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with the TSWQS for pH when the discharge authorized is from a minor facility and the unclassified waterbodies have minimal or limited aquatic life uses. This technology-based approach reasonably assures instream compliance with TSWQS criteria due to the smaller discharge volumes authorized by these permits. This conservative approach is based on TCEQ sampling throughout Texas indicating that instream buffering quickly restores pH levels to ambient conditions.

Based on WQ modeling results from an “uncalibrated QUAL-TX” model, for all effluent flow phases, limits set at 10.0 mg/L CBOD5, 3.0 mg/L NH3-N, and 4.0 mg/L DO are predicted to ensure that DO will be maintained above the criterion established by the Standards Implementation Team within the ED's Water Quality Division (WQD staff) for the unnamed tributary, Sabine Creek, and the South Fork Sabine River (2.0, 3.0, 3.0 mg/L DO, respectively).

Coefficients and kinetics used in the model are a combination of site specific, standardized default, and estimated values. The proposed permit requires that the discharge's pH must be in the range of 6.0 to 9.0 standard units and includes limits of 15 mg/L TSS and 126 CFU/MPN/100 ml, based on a 30-day average.

During the Interim I and II phases, the discharge must contain a total 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 with required monitoring of five times per week by grab sample. During the Final Phase, the discharge must contain a total chlorine residual of at least 1.0 mg/L after a detention time of at least 20 minutes based on peak flow and must be monitored daily by grab sample. The discharge must be dechlorinated to less than 0.1 mg/L total chlorine

residual and must be monitor daily for total chlorine residual by grab sample after the dechlorination process.

The effluent limits and conditions in the proposed permit meet requirements for secondary treatment and disinfection according to 30 TAC Chapter 309 (Subchapter A: Effluent Limits) and comply with the TSWQS (30 TAC §§ 307.1-.10, eff. 3/1/2018), and the EPA-approved portions of the TSWQS (eff. 3/6/2014). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with pH criteria in the TSWQS when the discharge authorized is from a minor facility and the unclassified waterbodies have “minimal” or “limited” ALUs. This technology-based approach reasonably assures instream compliance with TSWQS due to relatively smaller discharge volumes authorized by these permits. TCEQ sampling conducted throughout Texas indicating instream buffering quickly restores pH levels to ambient conditions, informs this conservative approach.

Segment No. 0507 is not currently listed on the CWA § 303(d) list; however, South Fork Sabine River (0507-G) is listed for bacteria in water from the confluence of Lake Tawakoni upstream to the confluence of Parker and Sabine Creeks (AU 0507G_01). The proposed facility is designed to provide adequate disinfection and, when operated properly, should not add to any bacterial impairments of the segment. Additionally, to ensure the proposed discharge meets the stream bacterial standard, the proposed permit includes an E. coli limit of 126 CFU/MPN per 100 ml.

Through the Technical Review, WQD staff provide the proper limits to maintain and protect the existing instream uses. For that reason, the ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, WQ, and human health. Considering the TCEQ's WQ control program, all determinations, reviews, or analyses related to the ED's Technical Review of the application for the proposed permit can be reexamined and subsequently modified upon receipt of newer information or information that conflicts with the bases employed in the applicable review or analysis.

The proposed discharge is not expected to impact any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat, as no priority watershed of critical concern has been identified in Segment 1808. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization for the Texas Pollutant Discharge Elimination System (September 14, 1998, October 21, 1998, update). To make this determination for TPDES permits, TCEQ and EPA only consider 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 permit does not require EPA review with respect to the presence of endangered or threatened species. This determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion.

IV. PROCEDURAL BACKGROUND

The TCEQ received the application on July 1, 2022, and declared it administratively complete on August 10, 2022. The Applicant published the NORI in Rockwall County, Texas in English in the *Herald Banner* on August 25, 2022, and in Spanish in *Al-Dia* on August 24, 2022. The ED completed the technical review of the application on November 9, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant next published a combined- Notice of Application and Preliminary Decision

(NAPD) and Notice of Public meeting (NOPM) in Rockwall County, Texas in English in the *Herald Banner* on March 10, 2023, and in Spanish in *Al-Dia* on March 8, 2023. The TCEQ's OCC held a public meeting for this application on April 13, 2023, with the public comment period ending at the close of that public meeting. The ED's Response to Comment was filed on July 14, 2023, and the period for filing an HRQ or a Request for Reconsideration (RFR) was August 16, 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, (HB 801) and the procedural requirements of and rules implementing Senate Bill 709, 84th Legislature, 2015, (SB 709) both implemented by the TCEQ in its rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings.

V. 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 December 2, 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 ED may submit written responses to requests.¹ 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 [only] in a [] 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.²

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.

¹ 30 TAC § 55.209(d).

² *Id.* at § 55.209(e).

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.³

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.⁴

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;
- (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;

³ 30 TAC § 55.201(c).

⁴ *Id.* at § 55.201(d).

- (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.⁵
- (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.⁶

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.”⁷ “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.”⁸

VI. ANALYSIS OF THE HEARING REQUESTS

For this permit application the relevant dates for public participation were April 13, 2023, when the comment period ended, and August 16, 2023, when the period for filing an HRQ/RFR ended. The ED's analyses (below) determined whether the HRQs followed TCEQ rules, if NTMWD or the City qualifies as affected entities, what issues may be referred for a possible Hearing on the Merits (HOM), and the length of and HOM.

⁵ 30 TAC § 55.203(a)-(c).

⁶ *Id.* at § 55.203(d).

⁷ 30 TAC § 50.115(b).

⁸ *Id.* at § 50.115(c).

Because NTMWD and the City (collectively, Protestants) are both similarly situated entities and represented by the same legal firm, which filed six, substantially similar HRQs, the initial review for “affectedness” of the Protestants and their HRQs have been combined for brevity.

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

NTMWD & the City’s HRQs – were timely and written and provided the requisite contact information, raised issues that form the basis of the HRQs in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Protestants’ HRQs complied with 30 TAC §§ 55.201(c), and (d) because they effectively identified a personal justiciable interest in a written explanation plainly describing why the Protestants believe they will be affected by the application in a way not common to the public.

Protestants’ HRQs stated that both are governmental entities, and stated both have statutory interests, as 30 TAC § 55.203(c)(7) requires, over implementation of state law and policy within their respective jurisdictions. The City and NTMWD both have wastewater facilities near the area proposed for the proposed facility and therefore have statutory interests over issues relevant to the application because of TWC §§ 26.081 and §26.0282, related to regionalization).

Additionally, NTMWD, with the state designation as a ‘Regional Wastewater Service Provider,’ under Chapter 351 of the TCEQ’s rules, has an interest over relevant issues under TWC § 26.081. The City, as a Home Rule municipality, has statutory interests in operating and maintaining a domestic wastewater treatment system, and statutory interests in exclusively serving the wastewater needs within the service area authorized by the Public Utility Commission of Texas under Sewer Certificate of Convenience and Necessity (“CCN”) No. 20813, which implicates Chapter 13, subchapter G (CCN) of the TWC because the area proposed to be served by the proposed facility is within the City’s CCN service area, and in proximity to the corporate boundaries of the City.

The ED recommends finding that Protestants’ HRQs substantially complied with 30 TAC §§ 55.201(c) and (d).

B. WHETHER PROTESTANTS ARE AFFECTED ENTITIES UNDER 30 TAC § 55.203(c)(7).

NTMWD & the City – Both filed HRQs that effectively identified a personal, justiciable interest affected by the application. Protestants’ HRQs stated that the proposed facility will be located within Protestants’ statutorily recognized and state-regulated service areas, which increases the likelihood that Protestants will be affected in a way not common to the public.

Protestants’ HRQs raised relevant issues to a decision on the application such as, whether the proposed permit will protect water quality according to the TSWQS, and whether the proposed facility and permit comply with Texas’ regionalization policy. Those issues all relate to statutory interests granted to municipalities and wastewater treatment providers by state law.

Pursuant to the TWC, the development and use of regional and area-wide wastewater systems is encouraged and promoted (TWC § 26.081(a)). In furtherance of that goal, *the commission may deny or alter the terms and conditions of a permit based on consideration of factors, including but not limited to “Need,” and the availability of*

existing or proposed areawide or regional wastewater systems not designated by commission order pursuant to TWC § 26.081(a) (TWC § 26.0282).

Protestants, as both are wastewater treatment providers, have an interest within the respective services areas in the application demonstrating that the proposed facility complies with and the correct implementation of TCEQ's Regionalization policy.

Protestants' HRQs raised relevant issues to the application, explained briefly and specifically, in plain language, their service areas relative to the proposed facility and how and why Protestants might be adversely affected by the proposed facility in a manner not common to the public.

The ED recommends that the Commission find that NTMWD and the City are Affected Governmental Entities under 30 TAC § 55.203(c)(7).

C. WHETHER THE ISSUES ARE REFERABLE TO SOAH

In addition to recommending to the Commission those persons who qualify as affected persons, the ED analyzes issues raised in accordance with regulatory criteria. Unless otherwise noted, the issues discussed below are considered relevant, disputed, and were raised during the public comment period and addressed in the ED's RTC. None of the issues were raised solely in a comment which has been 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.⁹

D. ISSUES RAISED IN THE HEARING REQUEST:

The following issues were raised in San Marcos' Requests:

1. Whether the proposed permit will protect water quality according to the TSWQS and TCEQ's Implementation Procedures for the TSWQS.

(RTC Response Nos. 2 and 4) 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 should the Commission refer this case to SOAH, the ED recommends referring this issue.

2. Whether the permit and proposed facility violate the TCEQ's regionalization policy.

(RTC Response Nos. 6) 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 should the Commission refer this case to SOAH, the ED recommends referring this issue.

VII. REQUESTS FOR RECONSIDERATION

The ED did not receive any Requests for Reconsideration on this application.

⁹ Tx. Gov'T CODE § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

VIII. 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.

IX. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that NTMWD and the City are Affected Governmental Entities under 30 TAC § 55.203(c)(7).
2. Grant the Requests of NTMWD and the City.
3. Should the Commission decide to refer this case to SOAH:
 - a. refer the case to Alternative Dispute Resolution for a reasonable time, and
 - b. refer the identified issues above in section (D)(1)-(2) to SOAH for a HOM.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Erin Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on August 5, 2024, true and correct copies of the Executive Director's Response to Hearing Requests on the application by Bahamas Laguna Axure, LLC for new TPDES Permit No. WQ0016186001, was filed with the TCEQ's Chief Clerk and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.

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

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

MAILING LIST
Bahamas Laguna Azure, LLC
TCEQ Docket No./TCEQ Expediente N.º 2023-1560-MWD;
TPDES Permit No./TPDES Permiso N.º WQ0016186001

FOR THE APPLICANT/PARA EL SOLICITANTE

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via electronic mail/vía correo electrónico:

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FOR ALTERNATIVE DISPUTE RESOLUTION/PARA LA RESOLUCIÓN ALTERNATIVA DE DISPUTAS

via electronic mail/vía correo electrónico:

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FOR THE CHIEF CLERK/PARA EL SECRETARIO OFICIAL

via eFilings:

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<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/ SOLICITANTE(S)

See attached list/Ver lista adjunta.

REQUESTER(S)/ SOLICITANTE(S)

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INTERESTED PERSON(S)/
PERSONA(S) INTERESADA(S)

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Attachment A

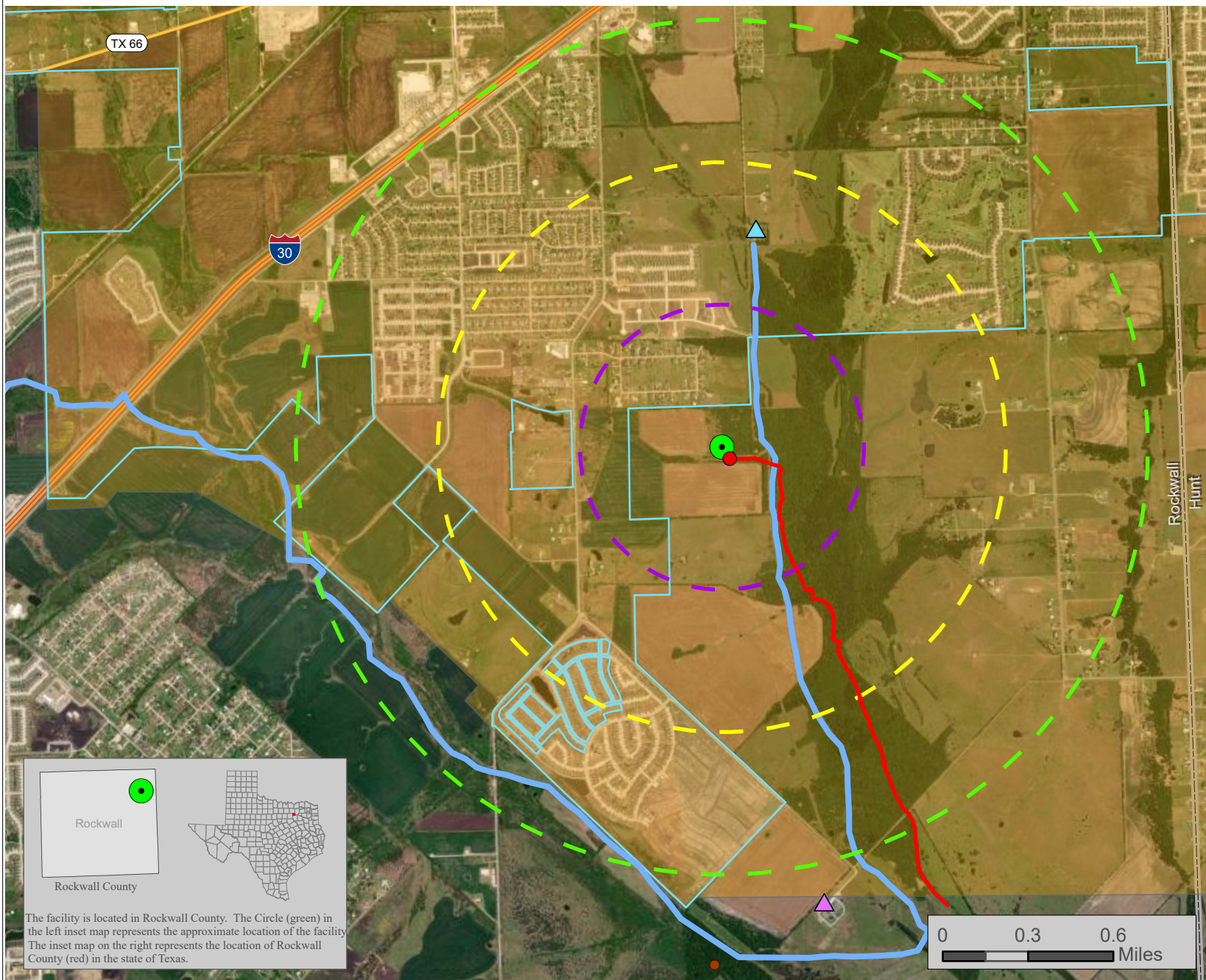
BAHAMAS LAGUNA AZURE LLC, GIS MAP



*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: 9/12/2023
CRF 0094114
Cartographer: MATtoh



- Facility Point
- Proposed Outfall
- 1.5 Miles Discharge Route
- NTMWD Waste Water Lines
- Royce City WWTP
- Sabine Creek WWTP
- 0.5 Mile from Facility
- 1 Mile from Facility
- 1.5 Miles from Facility
- Royce City Limits
- Royce City CCN
- County Boundary

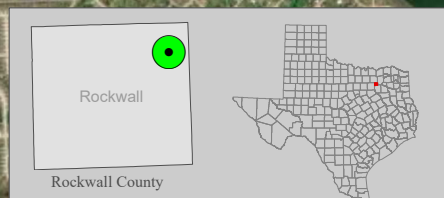
Distance from Facility Point
to:

Royce City WWTP
0.78 Miles

Sabine Creek WWTP
1.63 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 Rockwall 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 Rockwall County (red) in the state of Texas.

0 0.3 0.6
Miles