

DOCKET NO. 2023-1591-MWD

APPLICATION BY	§	BEFORE THE
CORIX UTILITIES TEXAS, INC.	§	
FOR MAJOR AMENDMENT TO TPDES	§	TEXAS COMMISSION ON
PERMIT	§	
NO. WQ0013977001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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 Corix Utilities Texas, Inc. (Applicant) seeking a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013977001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Eric Allmon (on behalf of Environmental Stewardship) and Chapman Ambrose. The Chief Clerk also received timely Requests for Reconsideration (RFR) from Eric Allmon on behalf of Environmental Stewardship and Andrew Weir.

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

II. Description of Facility

The Corix Utilities (Texas) Inc., P.O. Box 140164, Austin, Texas 78714, has applied to the TCEQ for a major amendment to TPDES Permit No. WQ0013977001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.05 million gallons per day (MGD) to a daily average flow not to exceed 0.51 MGD. The draft permit, if issued, will authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.05 MGD in the Interim I phase, 0.25 MGD in the Interim II phase, and 0.51 MGD in the Final phase. The existing wastewater treatment facility serves the McKinney Roughs Learning Center and the Bastrop ISD Cedar Creek High School. The service area increase is intended to accommodate approximately 2,082 living unit equivalents (LUE) of mixed use residential and commercial properties.

The plant site is located approximately 1,500 feet northeast of the intersection of Hyatt Lost Pines Road and State Highway 71 West, in Bastrop County, Texas 78612. The existing McKinney Roughs Wastewater Treatment Facility is an activated sludge process plant operated in conventional mode. Treatment units in the existing phase include a bar screen, an aeration basin, a final clarifier, a sludge digester, a sludge holding tank, and a ultraviolet light (UV) disinfection channel. The proposed treatment facility will be an MBR system activated sludge process plant operated in conventional mode. Treatment units in the Interim II phase will include a primary fine screen, an equalization tank, a secondary fine screen, an anoxic tank, an aeration basin, an aeriated MBR tank, a sludge holding tank, and a UV disinfection system. Treatment units in the Final phase will include a primary fine screen, two equalization tanks, two anoxic tanks, two aeration basins, two aeriated MBR tanks, two secondary fine screens,

a sludge holding tank, and a UV disinfection system. The facility is currently operating in the existing 0.05 MGD phase. The existing 0.05 MGD phase facilities will be decommissioned and removed upon completion of the Interim II phase facilities.

The effluent limitations in the draft permit, based on a 30 day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia nitrogen (NH₃-N), 1.0 mg/l Total Phosphorous (TP), 126 colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* (E. coli) per 100 ml, and 6.0 mg/l minimum dissolved oxygen (DO). The permittee shall utilize an UV system for disinfection purposes, and shall not exceed a daily average 126 CFU or MPN of E. coli per 100 ml.

The treated effluent is discharged to an unnamed tributary, thence to the Colorado River Below Lady Bird Lake/Town Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional aquatic life use.

III. Procedural Background

The permit application for a major amendment was received on July 29, 2022, and declared administratively complete on August 31, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Austin American-Statesman* on September 13, 2022. ED staff completed the technical review of the application on December 16, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in English in *Bastrop Advertiser* on February 10, 2023. The public meeting notice was published in English in *Bastrop Advertiser* on April 26, 2023. A public meeting was held on June 1, 2023, which was the end of public comment period. The hearing request and request for reconsideration period ended on September 6, 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:

I. 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;

II. 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;

III. request a contested case hearing; and

IV. 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 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 Hearing Requests Complied with Section 55.201(c) and (d).

Chapman Ambrose and Eric Allmon on behalf of Environmental Stewardship submitted timely hearing requests. Mr. Ambrose and Environmental Stewardship included their name, address, and telephone number in their hearing request. Additionally, the Requestors identified personal justiciable interests affected by the application, stating that they have recreational interests near the facility.

The Executive Director concludes that Chapman Ambrose and Environmental Stewardship submitted hearing requests that comply with 30 TAC § 55.201(c) and (d).

B. Whether the Requestors Meets the Affected Person Requirements.

1. Environmental Stewardship

Environmental Stewardship (ES) submitted timely comments and a hearing request on Corix’s application, which stated that the organization strives to protect the use and quality of the Colorado River as an affiliate of the Waterkeeper Alliance. In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015 must meet the requirements in 30 TAC § 55.205(b). 30 TAC § 55.205(b) requires that the organization identify one or more members of the group or association would otherwise have standing to request a hearing in their own right.

In its hearing request, ES identified member Richard Martin, who lives approximately 10 miles from the facility, and whose residence is not listed on the affected landowners list. However, ES claims Mr. Martin is affected based on his recreational interests because Mr. Martin fishes approximately two or three times per month at a location approximately 1 mile downstream from the discharge

point. In the hearing request, it's noted that Mr. Martin has noticed a decline in the fish population over the last fifty years and is concerned that the proposed discharge will contain contaminants that will result in further decline of fish populations in the area, which he believes will adversely affect his ability to catch fish. Mr. Martin is also concerned that the discharge will result in further impairment of the abundance and diversity of aquatic life in downstream waters. In its hearing request, ES raised the following issues: water quality, human health, nuisance odor, regionalization, application completeness, public notice, the Applicant's compliance history, whether the location meets location standards, and erosion.

One of the mandatory factors that TCEQ considers in evaluating whether a hearing requester is an affected person under 30 TAC 55.203(c)(5) is the likely impact of the regulated activity on the impacted natural resource by the person. Thus, a recreational interest that can be distinguished from an interest common to the general public and may establish that the Requester is an affected person. To establish standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), defines the following elements: (1) an injury in fact that is concrete and actual or imminent, and (2) a causal connection between the injury and the conduct complained of, the injury has to be "fairly traceable" to the challenged action of the defendant, and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. The United States Supreme Court applied the *Lujan* test to recreational standing in *Friends of the Earth, Inc. v. Laidlaw Environmental Servs.*, 528 U.S. 555 (2000). In *Laidlaw*, a plaintiff adequately alleged injury in fact when they demonstrated that they use the affected area and are persons for whom the aesthetic and recreational values of the area would be lessened.

Mr. Martin satisfies the requirements for standing based on his recreational interests as set forth in *Lujan* and *Laidlaw*. ES has demonstrated that Mr. Martin meets the *Lujan* requirements for standing. Mr. Martin has habitually fished approximately 1 mile downstream from the discharge for 50 years and has concerns about the proposed discharge's effect on his use of downstream waters for fishing. Further, ES has shown that Mr. Martin uses the area, and the recreational value of the area might be lessened by the permitted activity. ES has demonstrated that Mr. Martin is impacted in a manner not common to the general public by his frequent use of the receiving waters, dating back 50 years. Thus, he is affected in a manner not common to members of the general public and is an affected person.

The Executive Director recommends the Commission find that Environmental Stewardship is an affected person.

2. Chapman Ambrose

According to the information provided by Chapman Ambrose, his residence is 3.36 miles from the facility. Mr. Ambrose is not listed on the downstream affected landowners list provided by the Applicant with the application. Mr. Ambrose raised issues including the downstream effect of the discharge on residents and businesses, the cumulative impact of multiple discharges along this river segment, the lack of recent river testing, and the Applicant's compliance history. The basis of Mr. Ambrose's affectedness claim is his recreational interest, specifically that his child attends a summer camp at the McKinney Roughs Park which surrounds the

facility. While recreational interest can be used to demonstrate a personal justiciable interest under 30 TAC § 55.203, the request must specifically demonstrate how the Requestor's recreational interests will be impacted by the facility or wastewater discharge in a manner not common to the general public.

The request submitted by Mr. Ambrose does not demonstrate the correlation between the proposed wastewater discharge and Mr. Ambrose's claimed recreational interest. As noted in his hearing request, Mr. Ambrose's recreational interest is in the McKinney Roughs Park generally, which spans 1,140 acres. Thus, it does not identify a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application or show how he is affected in a manner not common to the general public.

The Executive Director recommends the Commission find that Chapman Ambrose 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 protective of water quality including surface water and groundwater in accordance with the Texas Surface Water Quality Standards. (RTC Response Nos. 3-5)

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, 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 is protective of human health and residents in the immediate vicinity of the facility and the immediate discharge route. (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 provide sufficient controls to protect human health, 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 should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. (RTC Response No. 13).

The issue involves a disputed question of 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 Texas Water Code § 26.0282, 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 conditions, including odor. (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 draft permit does not provide sufficient controls to address nuisance odors, 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 Applicant complied with TCEQ's public notice requirements. (RTC Response No. 15).

The issue is a disputed question of fact, 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 Applicant failed to comply with TCEQ's notice requirements, 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 representations made in the Application are complete and accurate. (RTC Response No. 14).

The issue involves a disputed question of fact, 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 that representations made in the application are 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.

7. Whether the draft permit contains all appropriate and necessary conditions in accordance with the applicable TCEQ rules. (RTC Response Nos. 22-23).

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 contain all appropriate and necessary conditions, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

8. Whether the draft permit should be modified or denied in consideration of the Applicant's compliance history. (RTC Response No. 17).

The issue involves a disputed question of fact, 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 that the draft permit should be modified or denied in consideration of the Applicant's compliance history, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

9. Whether draft permit complies with applicable siting requirements in 30 TAC § 309, including location standards. (RTC Response No. 32).

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 applicable siting requirements, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

10. Whether the Proposed discharge will cause excessive erosion. (RTC Response No. 33).

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ does not have jurisdiction to consider issues such as erosion. The Executive Director does not recommend referring this issue to SOAH.

VI. Request for Reconsideration/Rehearing

The Chief Clerk received timely Requests for Reconsideration (RFR) from Eric Allmon on behalf of Environmental Stewardship and Andrew Weir. As required by 30 Texas Administrative Code § 55.201(e), Mr. Allmon and Mr. Weir gave their request in writing, and provided their name, address, and daytime telephone number. Mr. Allmon and Mr. Weir specifically requested reconsideration of the ED's decision on the Corix Utilities Texas, Inc. application.

The issues brought up by Environmental Stewardship included water quality (RTC Response Nos. 3-5, 7, 16, 20-21, 24), human health (RTC Response No. 6), regionalization (RTC Response No. 13), nuisance odor (RTC Response No. 10), TCEQ's notice requirements (RTC Response No. 15), application completeness (RTC Response No. 14), whether the draft permit contains all appropriate and necessary conditions (RTC Response No. 22-23), Applicant's compliance history (RTC Response No. 17), and siting requirements (RTC Response No. 32). The issue raised by Mr. Weir included the lack of a water quality study conducted for Segment 1428 in the Colorado River (RTC Response No. 20).

These issues, to the extent they are within the Commission's jurisdiction to consider on a TPDES application, were considered during the ED's review of the application. The RFR did not provide any new information that would lead the ED to change his recommendation on the application; therefore, the ED recommends denial of the RFRs.

VII. 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.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Environmental Stewardship (ES) is an affected person and grant its hearing request.

Deny the hearing request of Chapman Ambrose.

Refer the following issues to SOAH:

Issue 1. Whether the draft permit is protective of water quality including surface water and groundwater in accordance with the Texas Surface Water Quality Standards.

Issue 2. Whether the draft permit is protective of human health and residents in the immediate vicinity of the facility and the immediate discharge route.

Issue 3. Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options.

Issue 4. Whether the draft permit adequately addresses nuisance conditions, including odor.

Issue 5. Whether the Applicant complied with TCEQ's public notice requirements.

Issue 6. Whether the representations made in the Application are complete and accurate.

Issue 7. Whether the draft permit contains all appropriate and necessary conditions in accordance with the applicable TCEQ rules.

Issue 8. Whether the draft permit should be modified or denied in consideration of the Applicant's compliance history.

Issue 9. Whether draft permit complies with applicable siting requirements in 30 TAC § 309, including location standards.

Respectfully submitted,

Texas Commission on Environmental
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Kelly Keel
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Erin Chancellor, Director
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
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CERTIFICATE OF SERVICE

I certify that on January 12, 2024, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0013977001 by Corix Utilities Texas, Inc 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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TCEQ Docket No./TCEQ Expediente N.º 2023-1591-MWD
Permit No./Permiso N.º WQ0013977001

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Attachment A

Corix Utilities Texas, Inc.

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



*Protecting Texas by
Reducing and
Preventing Pollution*

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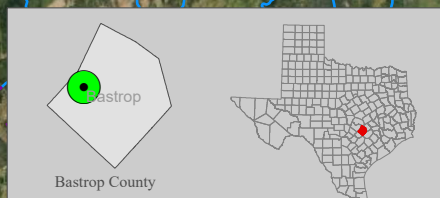
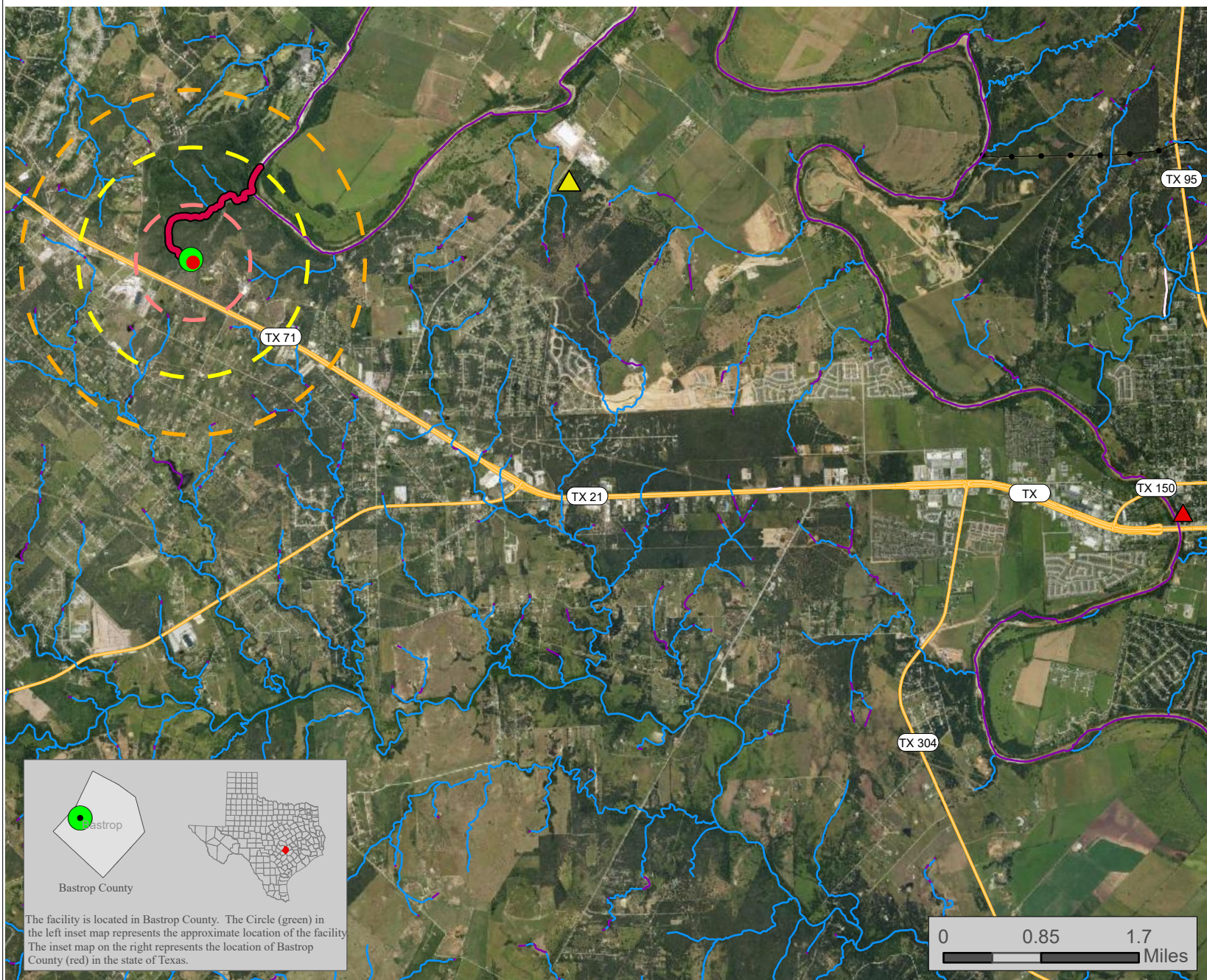
- FacilityPoint
- Outfall 001
- ▲ Chapman Ambrose
- Richard Martin
(Environmental Stewardship)
- ▲ Richard Martin (Environmental Stewardship)
- 0.5 Mile from Facility Point
- 1 Mile from Facility Point
- 1.5 Miles from Facility Point
- DischargeRoute
- Pipeline
- Stream/River
- Artificial Path

Distance From Facility Point
to:
Chapman Ambrose
3.36 Miles

Richard Martin
(Environmental Stewardship)
8.90 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.

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