

TCEQ DOCKET NO. 2023-1594-MWD

APPLICATION BY MONTGOMERY
COUNTY MUNICIPAL UTILITY
DISTRICT NO. 125 FOR
RENEWAL OF TPDES PERMIT NO.
WQ0014989001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 Montgomery County Municipal Utility District (MUD) No. 125 (Applicant) for the renewal of TCEQ Permit No. WQ0014989001. James Jefferson White IV filed a timely, written request for a Contested Case Hearing.

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

A. Attachment A - ED's GIS Map

III. FACILITY DESCRIPTION

The Applicant has applied to TCEQ for the renewal of TPDES Permit No. WQ0014989001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.24 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.48 MGD in the Interim II phase, and a daily average flow not to exceed 0.96 MGD in the Final phase. The proposed wastewater treatment facility will serve Montgomery County MUD 125 and MUD 200. The facility has not been constructed. The Montgomery County MUD 125 Wastewater Treatment Facility (the WWTF) will be an activated sludge process plant operated in extended aeration mode in the Interim I phase and complete mix mode in the Interim II and Final phases. Treatment units in the Interim I phase will include a bar screen, one aeration basin, a final clarifier, one sludge holding tank, and a chlorine contact chamber. Treatment units in the Interim II phase will include a bar screen, six aeration basins, two final clarifiers, two sludge holding tanks, and two chlorine contact chambers. Treatment units in the Final phase will include a bar screen, two aeration basins, two final clarifiers, two sludge holding tanks, and two chlorine contact chambers.

The treated effluent will be discharged to a man-made ditch, thence to an unnamed tributary, thence to a pond, thence to an unnamed tributary, thence to Lake Creek in Segment No. 1015 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the man-made ditch and the unnamed tributaries, and limited aquatic life use for the unnamed pond. The designated uses for Segment No. 1015 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the Interim I, Interim II, and Final phases of the draft permit, based on a 30-day average, are 10 mg/L five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/L total suspended solids (TSS), 3 mg/L ammonia-nitrogen (NH₃-N), 63 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100mL, and 4.0 mg/L minimum dissolved oxygen (DO). The effluent shall

contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes based on peak flow.

IV. PROCEDURAL HISTORY

The Applicant submitted the application to renew the existing permit on June 3, 2022. The application was declared administratively complete on August 12, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 24, 2022, in the *Cypress Creek Mirror* in English and on August 25, 2022, in *El Perico* in Spanish. The technical review of the application was completed on November 17, 2022. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on March 15, 2023, in the *Cypress Creek Mirror* in English, and on March 09, 2023, in *El Perico* in Spanish. The comment period ended on April 14, 2023.

V. ACCESS TO RULES, LAWS AND RECORDS

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, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- Environmental or citizen complaints may be filed electronically at:
<https://www.tceq.texas.gov/compliance/complaints/index.html> (select “use our online form”) or by sending an email to the following address:
complaint@TCEQ.texas.gov

Commission records for the proposed facility are available for viewing and copying at TCEQ’s primary office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid.

Since publication of the NORI, the permit application was available for viewing and copying at Charles B. Stewart – West Branch Library, 202 Bessie Price Owen Drive, Montgomery, Texas. The ED verified the application, and the proposed permit, if issued, meets all statutory and regulatory requirements.

Since publication of the NAPD, ED’s preliminary decision, the final permit application, proposed permit, and statement of basis/technical summary of the ED’s Technical Review, was available for viewing and copying at the same location. The ED

determined that the proposed permit is protective of the water quality and protective of human health and the environment.

However, if individuals wish to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, complaints may be filed electronically by using the methods described above at the seventh bullet under “Access to Rules, Laws, and Records.” If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.¹

VI. 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 August 12, 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 executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests... [which 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.²

The issues described above in subparagraph A.6. are often referred to as “relevant and material fact issues.”

B. ***APPLICATIONS OFFERING NO RIGHT TO A CONTESTED CASE HEARING***

“Applications for which there is no right to a contested case hearing include . . . an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

¹ For individuals wishing to file a complaint to address potential permit violations at the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, the TCEQ’s Regional Office (Region 11) in Austin, Texas may be contacted at (512) 339-2929 or the statewide toll-free number at 1-888-777-3186.

² 30 TAC §§ 55.209(d) and (e) [combined].

- (1) the applicant is not applying to:
 - (i) increase significantly the quantity of waste authorized to be discharged; or
 - (ii) change materially the pattern or place of discharge;
- (2) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (3) any required opportunity for public meeting has been given;
- (4) consultation and response to all timely received and significant public comment has been given; and
- (5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit."³

C. 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.

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.⁴

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

³ 30 TAC § 55.201(i)(5).

⁴ 30 TAC § 55.201(c).

(5) provide any other information specified in the public notice of application.⁵

D. 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;
 - (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.⁶
- (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.⁷

⁵ *Id.* at § 55.201(d).

⁶ 30 TAC § 55.203(a)-(c).

⁷ *Id.* at § 55.203(d).

E. 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.”⁸ “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.”⁹

F. REQUESTS FOR RECONSIDERATION

According to 30 TAC § 55.201(e), any person may file a RFR of the ED’s decision no later than 30 days after the Chief Clerk mails the ED’s decision and RTC, if it expressly states that the person is requesting reconsideration of the ED’s decision, is in writing, and gives reasons why the decision should be reconsidered.

VII. ANALYSIS OF THE HEARING REQUESTS

The ED analyzed whether the Requests followed TCEQ rules, the requestor’s Affected Person qualifications, what issues to refer for a possible hearing, and the appropriate length of any hearing. After reviewing the Requests with the following analysis, the ED respectfully recommends denying the Request of James Jefferson White IV.

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

1. **James Jefferson White IV** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of his Request in a timely comment not withdrawn before the RTC was filed, and requested a hearing.

Mr. White’s Request complied with 30 TAC §§ 55.201(c) and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. White believes he will be affected by the application differently than the public. Mr. White’s Request stated that he owns three properties that all abut the pond described in the proposed discharge route and raised issues relevant to a decision on the application, such as harm to water quality and wildlife and harm to Mr. White’s use and enjoyment of his property along the proposed discharge route.

The ED recommends finding that James Jefferson White IV’s Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203.

1. **James Jefferson White IV** filed a Request that effectively identified a personal, justiciable interest affected by the application.

⁸ 30 TAC § 50.115(b).

⁹ *Id.* at § 55.203(d).

Mr. White's Request raised relevant and material fact issues because of proximity to the proposed facility and discharge route. Mr. White's Request stated concerns about the discharged effluent's harm to water quality and wildlife and harm to Mr. White's use and enjoyment of his property. Mr. White's Request stated that he owns three properties that abut the pond referenced in the proposed discharge route, which the GIS map prepared by the ED's staff verified. This affects the likelihood that Mr. White's properties may be affected in a way not common to the public.

Mr. White's properties' proximity to the proposed discharge route was explained in plain language in his Request. The relevant issues to a decision on the application, like harm to water quality and wildlife and harm to Mr. White's use and enjoyment of his property, raised in his request are related to the interests of the requestor. This demonstrates that a reasonable relationship exists between the interests Mr. White claimed and the activity regulated.

Because Mr. White demonstrated a personal justiciable interest related to a legal interest not in common to the public, as required by Texas Water Code § 5.115, the ED recommends the Commission find that he is an affected person.

James Jefferson White IV's hearing request adequately demonstrated that he is an Affected Person under 30 TAC § 55.203.

C. *WHETHER THE APPLICATION OFFERS THE RIGHT TO A CONTESTED CASE HEARING*

The Applicant did not ask to amend its TPDES permit by either increasing the amount of discharge or relocating the outfall. The Applicant did not ask TCEQ to change the water quality requirements outlined in the Applicant's original TPDES permit. TCEQ gave an opportunity for a public meeting, but a public meeting was not held because there was never a determination that a public meeting must or should be held. TCEQ responded to all timely comments for this application with the Response to Comment filed on September 13, 2023. The Applicant lacks a compliance history because it has not obtained any other TPDES permit and the proposed facility has not yet been built. So, there is no reason to believe that the Applicant cannot comply with the material terms of the draft permit. Thus, this application meets all five elements of 30 TAC § 55.201(i)(5), so this application is not subject to a contested case hearing.

The ED recommends that the Commission find that the Montgomery County MUD 125 application to renew TPDES Permit WQ0014989001 is not subject to a contested case hearing.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

The ED's analysis of the issues raised in Mr. White's Request identified the following relevant and material fact issues:

1. Whether the draft permit is adequately protective of water quality, including the protection of surface water and animals in accordance with applicable regulations.

(RTC Response No. 2) This is an issue of fact. If it can be shown that the draft permit does not adequately protect water quality in accordance with applicable

regulations, then that information would be relevant and material to a decision on the application.

2. Whether the draft permit is protective of the requester's use and enjoyment of its property in accordance with the Texas Surface Water Quality Standards (TSWQS).

(RTC Response Nos. 2 and 4) This is an issue of fact. If it can be shown that the draft permit does not adequately protect the requester's use and enjoyment in accordance with TSWQS, then that information would be relevant and material to a decision on the application.

IX. 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.

X. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that the application of Montgomery County MUD 125 to renew TPDES Permit No. WQ0014989001 is not subject to a contested case hearing.
2. Deny the Request of James Jefferson White IV.
3. Should the Commission decide to refer this case to SOAH.
 - a. refer the case to Alternative Dispute Resolution for a reasonable time.
 - b. refer the identified issues in section VIII. to SOAH for a Hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, *Executive Director*

Erin Chancellor, *Director*
Office of Legal Services

Charmaine Backens, *Deputy Director*
Environmental Law Division,



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Austin, Texas 78711 3087
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

XI. CERTIFICATE OF SERVICE

I certify that on January 29, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0014989001 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.



Bradford Eckhart, *Staff Attorney*
State Bar No. 24137368

MAILING LIST/LISTA DE CORREO
Montgomery County Municipal Utility District No. 125
TCEQ Docket No./TCEQ Expediente N.º 2023-1594-MWD
Permit No./Permiso N.º WQ0014989001

FOR THE APPLICANT/PARA EL
SOLICITANTE:

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Rutika Nanivadekar, E.I.T., Engineer II
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EL DIRECTOR EJECUTIVO
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FOR PUBLIC INTEREST COUNSEL/PARA
ABOGADOS DE INTERÉS PÚBLICO
via electronic mail:

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FOR ALTERNATIVE DISPUTE
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REQUESTER(S)/SOLICITANTE(S):
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Conroe, Texas 77384

INTERESTED PERSON(S)/PERSONA(S)
INTERESADA(S):
Marc Hill
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Houston, Texas 77056

Attachment A

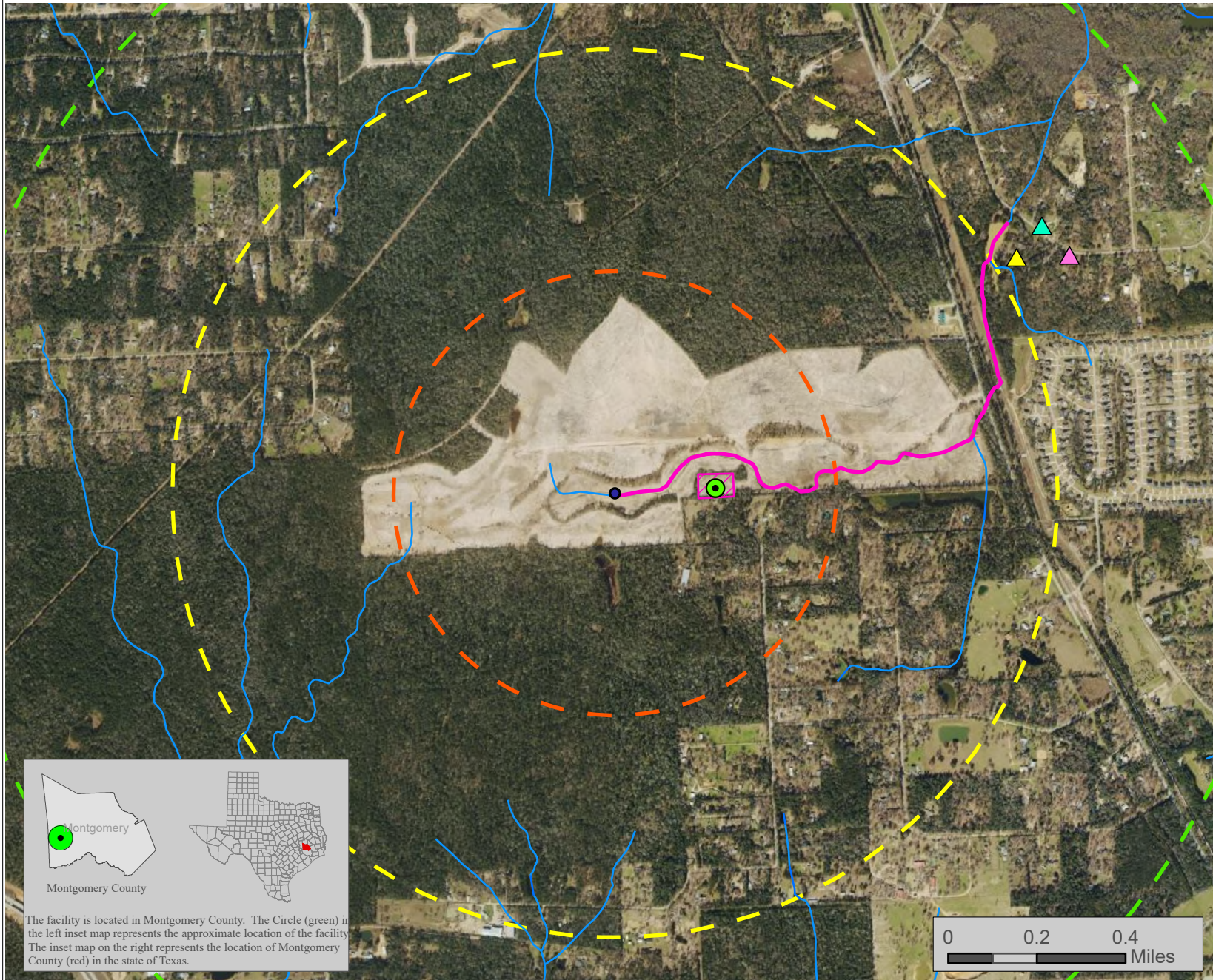
Montgomery County MUD 125 Wastewater Treatment Facility

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: 11/3/2023
CRF 0096198
Cartographer: AlOrtiz



● Facility

● Outfall 001

Requestor

▲ James J. White Property #1

▲ James J. White Property #2

▲ James J. White Property #3

— 1.5 Miles Outfall 001 Discharge Route

— Stream/River

— Artificial Path

— 0.5 Miles from Outfall 001

— 1.0 Miles from Outfall 001

— 1.5 Miles from Outfall 001

— MUD 125 WWTP Proposed Facility Boundary

— County Boundary

Distance from Outfall 001 to James
J. White Properties:

Property #1: 1.13 miles

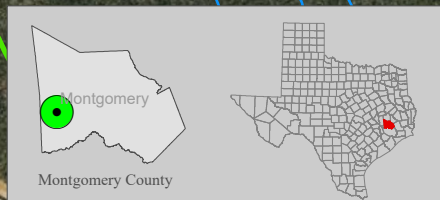
Property #2 1.05 miles

Property #3 1.15 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.

0 0.2 0.4
Miles



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

Montgomery County MUD 125 Wastewater Treatment Facility

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



*Protecting Texas by
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GIS Team (Mail Code 197)
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- Facility
- Outfall 001
- Requestor**
 - James J. White Property #1
 - James J. White Property #2
 - James J. White Property #3
- 1.5 Miles Outfall 001 Discharge Route
- Stream/River
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- 0.5 Miles from Outfall 001
- 1.0 Miles from Outfall 001
- 1.5 Miles from Outfall 001
- MUD 125 WWTP Proposed Facility Boundary
- County Boundary

Distance from Outfall 001 to James
J. White Properties:

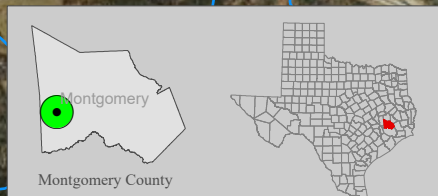
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The facility is located in Montgomery County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Montgomery County (red) in the state of Texas.

0 0.3 0.6
Miles