

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 29, 2024

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

RE: Application by Vale Building Group, LLC for TPDES Permit No. WQ0016212001;
TCEQ Docket No. 2024-0132-MWD

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Kathy.humphreys@tceq.texas.gov if you have any questions. Thank you for your attention to this matter.

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. 2024-0132-MWD

**APPLICATION BY VALE
BUILDING GROUP, LLC
FOR NEW TPDES
PERMIT NO. WQ0016212001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by Vale Building Group, LLC (Applicant or Vale) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016212001. Attached for Commission consideration is the Executive Director's Satellite Map.

I. Executive Summary

The TCEQ received two Hearing Requests, both from Jonah Water Special Utility District (Jonah). After evaluating the hearing requests, the Executive Director has determined that Jonah demonstrated that it has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public, and therefore, recommends that the Commission find that Jonah is an affected person because it meets the criteria set out in 30 TAC § 55.203. According to Jonah's hearing request, the facility would be located on the boundary line of Jonah's CCN territory, and if the permit is issued, the treated effluent would flow through Jonah's district boundaries.

The Executive Director recommends the Commission grant Jonah's Hearing Request. The Executive Director also recommends referring the following issues to the State Office of Administrative Hearings:

1. Whether the draft permit is protective of nearby wells and groundwater in accordance with the Texas Surface Water Quality Standards. (RTC Comment 2)
2. Whether the draft permit includes adequate protections against algal growth and blooms. (RTC Comment 4)
3. Whether the draft permit is protective of human health. (RTC Comment 5)

4. Whether the application complies with TCEQ's regionalization policy.
(RTC Comment 6)

II. Description of the Proposed Wastewater Treatment Facility

Vale applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.322 million gallons per day (MGD). The plant site will be located approximately 1,615 feet northwest of the intersection of County Road 194 and Farm-to-Market Road 1105, in Williamson County, Texas 78626. The proposed wastewater treatment facility will serve a subdivision north of the City of Weir. The treated effluent will be discharged to an unnamed tributary, thence to Weir Branch, thence to the San Gabriel/North San Gabriel River in Segment No. 1248 of the Brazos River Basin.

If issued, the Weir Subdivision Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will include a bar screen, two aeration basins, a RAS mix basin, two final clarifiers, two aerobic sludge digesters, and two chlorine contact chambers. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.322 MGD. The effluent limitations in 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),
- 3.0 mg/l ammonia-nitrogen (NH₃-N),
- 0.5 mg/l total phosphorus (TP),
- 126 CFU or MPN of *E. coli* per 100 ml, and
- 4.0 mg/l minimum dissolved oxygen (DO)

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 unclassified receiving water uses are limited aquatic life use for the

unnamed tributary and Weir Branch. The designated uses for Segment No. 1248 are primary contact recreation, public water supply, aquifer protection, 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 Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the San Garbiel/North San Gabriel River, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and EPA only considered 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 determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Effluent limitations for the conventional effluent parameters (i.e., Five-Day Biochemical Oxygen Demand or Five-Day Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water-quality limited streams as established in the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP).

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. This technology-based approach reasonably

assures instream compliance with TSWQS criteria due to the relatively smaller discharge volumes authorized by these permits. This conservative assumption is based on TCEQ sampling conducted throughout the state which indicates that instream buffering quickly restores pH levels to ambient conditions. Similarly, this approach has been historically applied within EPA issued NPDES general permits where technology-based pH limits were established to be protective of water quality criteria.

The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).

III. Procedural Background

The TCEQ received the application on September 2, 2022, and declared it administratively complete on October 11, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 30, 2022 May 11, 2022, in the *Williamson County Sun*. The Executive Director completed the technical review of the application on February 2, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in *The Sunday Sun* on March 26, 2023. The Executive Director's Response to Public Comment (RTC) was filed on October 9, 2023, and the time for filing Requests for a Hearing or a Request for Reconsideration ended on November 15, 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. Senate Bill 709 amended the requirements for comments and contested case hearings. This application is subject to those changes in the law.

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. 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:

Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. which issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or of law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director'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. 30 TAC § 55.209(e).

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:

1. 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;
2. identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
 3. request a contested case hearing;
 4. for applications filed on or after September 1, 2015, 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
 5. provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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. Section 55.203 sets out who may be considered 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 general public does not qualify as a personal justiciable interest.
- b. 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.

- c. In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
1. whether the interest claimed is one protected by the law under which the application will be considered;
 2. distance restrictions or other limitations imposed by law on the affected interest;
 3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
 4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 5. likely impact of the regulated activity on use of the impacted natural resource by the person;
 6. whether the requestor 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.

30 TAC § 55.203(c).

In making affected person determinations, 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 executive director; and
3. any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(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:

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

30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

B. Whether the Individual Requesters Meet the Affected Person Requirements

Under 30 TAC § 55.201(d)(4)(B), requests for contested case hearings must list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period. In addition to the requirements of 30 TAC § 55.201, groups or organizations requesting a contested case hearing must meet all of the requirements set forth in 30 TAC § 55.205(b).

Jonah submitted a timely hearing request in writing, provided the required contact information, raised the issues that are the basis of its hearing request in its timely comments not withdrawn before the RTC was filed, and requested a hearing. Jonah states that it is a political subdivision of the State of Texas operating under Tex. Water Code Chapter 65 and the holder of water CCN No. 10970 in Williamson County, Texas. Jonah states that it provides water service for approximately 9,000 customers and 30,000 people in its service area and wholesale sewer service within its district

boundaries. Additionally, Jonah states it has developed a wastewater master plan for expansion of its wastewater service within its district boundary. Jonah states that it has purchased the Weir Water Works public water system, and the proposed discharge will pass within 90 feet of the well head of the PWS well used to provide water for Wier's water customers. Jonah also states that the proposed discharge will enter Lake Granger, which is the source of raw water used to serve Jonah's water customers. Jonah also contends the proposed facility does not comply with TCEQ's regionalization policy. Based on the location of the proposed facility and the concerns raised, Jonah has demonstrated that it has statutory authority over or interest in the issues relevant to the application and has demonstrated that it is an affected person.

C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. 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.¹ The issues raised for this application and the Executive Director's analysis and recommendations follow.

Issue 1. Whether the draft permit is protective of nearby wells and groundwater in accordance with the Texas Surface Water Quality Standards. (RTC Comment 2)

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 Executive Director recommends the Commission refer the issue to SOAH.

Issue 2. Whether the draft permit includes adequate protections against algal growth and blooms. (RTC Comment 4)

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 Executive Director recommends the Commission refer the issue to SOAH.

¹ Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

Issue 3. Whether the draft permit is protective of human health. (RTC Comment 5)

This 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. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 4. Whether the application complies with TCEQ's regionalization policy. (RTC Comment 6)

This 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. Therefore, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 5. Whether the TCEQ should deny the draft permit because effluent from the wastewater treatment facility may contaminate the well head during a flood event. (RTC Comment 3).

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. Therefore, the Executive Director recommends the Commission **not** refer the issue to SOAH.

VI. 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.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Jonah Water Special Utility District is an affected person.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by an affected person identified by the Executive Director:

Issue 1. Whether the draft permit is protective of nearby wells and groundwater in accordance with the Texas Surface Water Quality Standards. (RTC Comment 2)

Issue 2. Whether the draft permit includes adequate protections against algal growth and blooms. (RTC Comment 4)

Issue 3. Whether the draft permit is protective of human health. (RTC Comment 5)

Issue 4. Whether the application complies with TCEQ's regionalization policy. (RTC Comment 6)

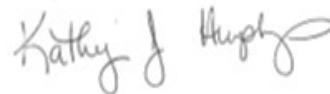
Respectfully submitted,

Texas Commission on Environmental
Quality

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

VIII. CERTIFICATE OF SERVICE

I certify that on April 29, 2024, the “Executive Director’s Response to Hearing Requests” for Vale Building Group, LLC WQ0016212001, was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the mailing list provided by the Office of the Chief Clerk via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Kathy Humphreys Staff Attorney
Environmental Law Division

MAILING LIST
Vale Building Group LLC
TCEQ Docket No. 2024-0132-MWD; Permit No. WQ0016212001

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Attachment A

Vale Building Group, LLC

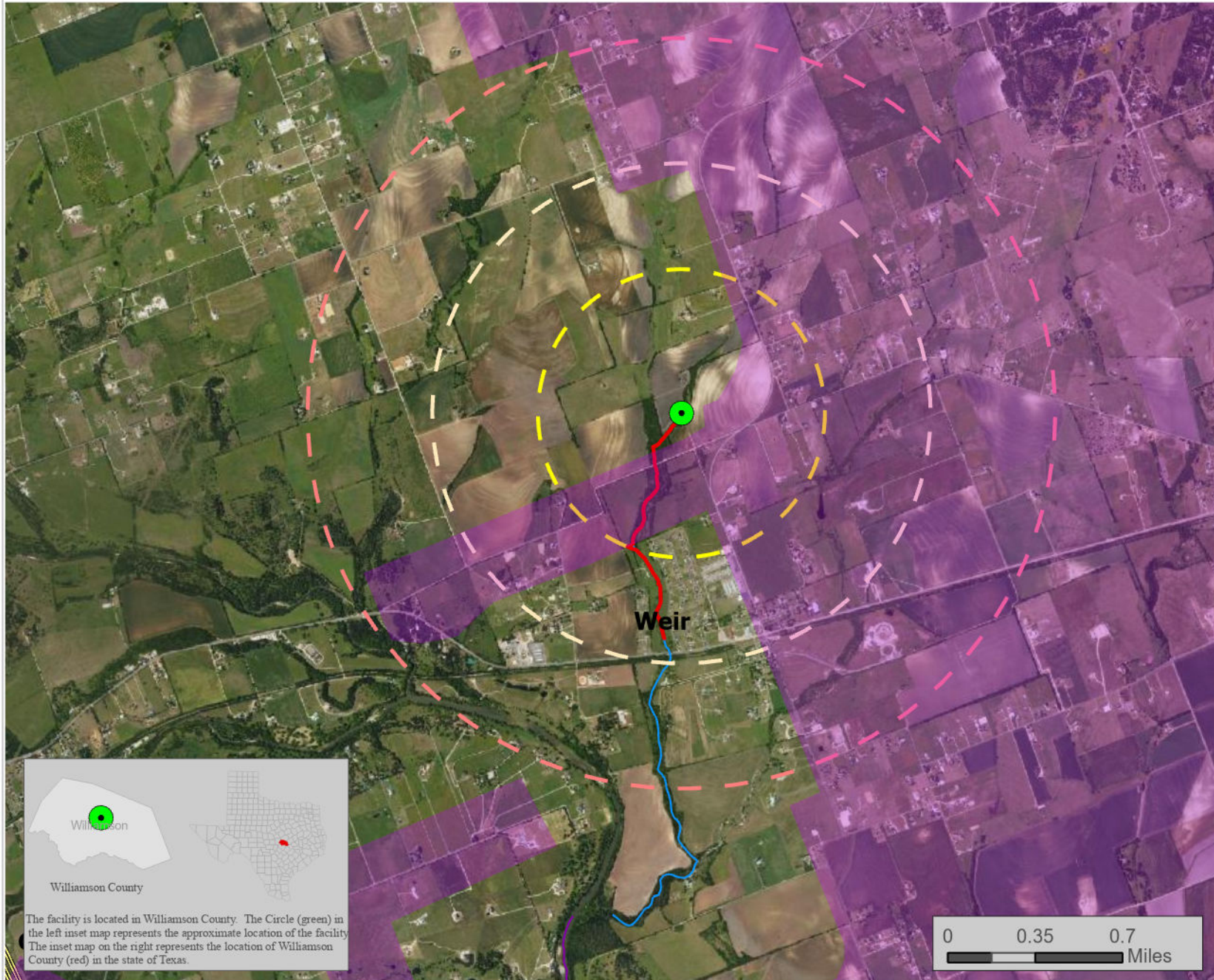
TPDES Permit No. WQ0016212001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

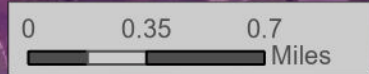
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 4/20/2024
CRF 0098678
Cartographer: MAttoh



- Proposed Facility
- Jonah Water Special Utility District Area
- 0.5 Mile From Facility Point
- 1.0 Mile From Facility Point
- 1.5 Mile From Facility Point
- Stream/River
- Artificial Path
- 1.0 Miles Discharge Route



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



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.