

DOCKET NO. 2024-0596-MWD

APPLICATION BY
THE PSALM 25:10 FOUNDATION
FOR NEW TPDES PERMIT
NO. WQ0016202001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 The Psalm 25:10 Foundation (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016202001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Richard Moore, Trennon Massengale, Glen Guthrie, Paul Hess, Ronald and Judy West, and the West Family Living Trust.

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

II. Description of Facility

The Psalm 25:10 foundation applied for new TPDES permit No. WQ0016202001 to authorize a discharge of treated domestic wastewater (effluent) at a daily average flow limit in Interim Phase of 0.10 million gallons per day (MGD) and at a daily average flow limit in the Final Phase of 0.50 MGD (proposed discharge) from the Applicant's Wastewater Treatment Facility (WWTF), Prairieview WWTP 1 (Prairieview facility). Sludge generated from the treatment facility is hauled by a registered transporter and disposed of at a TCEQ-permitted landfill, Itasca Landfill, Permit No. H0241, in Hill County, Texas. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

If this permit is ultimately issued, the Prairieview facility will be located approximately 0.50 miles northwest of the intersection of West Farm-to-Market Road 4 and Farm-to-Market Road 2331, in Johnson County, Texas 76044 and will be an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim phase will include a bar screen, an aeration basin, a final clarifier, an aerobic sludge digester, and a chlorine contact chamber. Treatment units in the Final phase will include a bar screen, two aeration basins, two final clarifiers, two aerobic sludge digesters, and two chlorine contact chambers. The discharge route for the proposed discharge is to an unnamed tributary, thence to an unnamed impoundment, thence to West Fork Nolan River, thence to Nolan River, thence to Lake Pat Cleburne in Segment No. 1228 of the Brazos River Basin (proposed discharge route).

III. Procedural Background

The TCEQ received the application on August 12, 2022, and declared it administratively complete on September 27, 2022. The Applicant published the Notice

of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Cleburne Times Review* on October 27, 2022. The ED completed the technical review of the application on January 6, 2023, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in *Cleburne Times Review* in English on March 28, 2023. The public meeting for this application was held on September 19, 2023. The public comment period ended on September 19, 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:

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;

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;

request a contested case hearing; and

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 requests to determine whether they comply with Commission rules, if the requestors qualify 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).

Richard Moore, Trennon Massengale, Glen Guthrie, Paul Hess, Ronald and Judy West, and the West Family Living Trust submitted timely hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their name, address, email address, and requested a public hearing. They identified themselves as persons who have personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided disputed issues of fact raised during the public comment period.

The Executive Director concludes that the hearing request of Richard Moore, Trennon Massengale, Glen Guthrie, Paul Hess, Ronald and Judy West, and the West Family Living Trust substantially complies with the section 55.201(c) and (d) requirements.

B. Whether the Requestor Meets the Affected Persons Requirements.

Richard Moore

According to the information provided by Richard Moore, he lives 1 mile from the proposed facility. Mr. Moore's property is listed as property #12 on the affected landowner list that the Applicant submitted with the application. His property is adjacent to the discharge route.

Mr. Moore raised the following concerns during the comment period: defective public notice; the discharge parameters and effluent limitations of the proposed permit, specifically, whether the draft permit includes appropriate provisions to maintain dissolved oxygen concentrations in the receiving waters, prevent excessive algal growth, and comply with aesthetic parameters and other requirements, such as aquatic nutrient limitations; TCEQ's QUAL-TX model including improper characterization of hydraulics and incorrect element length; failure to conduct a Tier 2 antidegradation analysis; failure to properly conduct a nutrient screen; failure to properly classify aquatic life uses; groundwater; adverse effects on human health, livestock, wildlife, and aquatic wildlife; regionalization; agricultural uses and crops; nuisance conditions including odor; household, commercial, and other chemicals; and impairment to the use and enjoyment of his property.

Mr. Moore's concerns about water quality, odor, compliance with notice requirements, human health and safety, impact on aquatic life, wildlife, livestock, and regionalization are protected by the law under which the application will be considered and are, thus, referable. Therefore, based on the location of his property in relation to the proposed facility and the concerns he raised, Mr. Moore has demonstrated that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is an affected person.

The Executive Director recommends the Commission find that Richard Moore is an affected person.

Glen Guthrie

According to the information provided by Glen Guthrie, he lives approximately 0.81 miles from the proposed facility. Further, Mr. Guthrie's property is listed as property #8 on the affected landowner list that the Applicant submitted with the

application. He raised a general concern during the comment period regarding his elderly neighbor and requested a second public meeting with notice sent by certified mail. In his hearing request, he raised additional concerns including odor, the lack of proper notice, human health, air contamination, water quality, and recreational uses. Mr. Guthrie did not raise any referable issues during the comment period. Hearing requests “must be based only on the requestor’s timely comments” pursuant to 30 TAC § 55.201(c). Thus, Mr. Guthrie failed to demonstrate how he is affected based on his location, and in a manner not common to the general public. Mr. Guthrie has not demonstrated that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application not common to members of the general public and is not an affected person.

The Executive Director recommends the Commission find that Glen Guthrie is not an affected person.

Trennon Massengale

According to the information provided by Trennon Massengale, he lives approximately 1.25 miles from the proposed facility. The address listed by Mr. Massengale in his hearing request is not listed on the affected landowner list. Mr. Massengale raised the following concerns during the comment period: defective public notice; the discharge parameters and effluent limitations of the proposed permit, specifically, whether the draft permit includes appropriate provisions to maintain dissolved oxygen concentrations in the receiving waters, prevent excessive algal growth, and comply with aesthetic parameters and other requirements, such as aquatic nutrient limitations; TCEQ’s QUAL-TX model including improper characterization of hydraulics and incorrect element length; failure to conduct a Tier 2 antidegradation analysis; failure to properly conduct a nutrient screen; failure to properly classify aquatic life uses; groundwater; adverse effects on human health, livestock, wildlife, and aquatic wildlife; regionalization; agricultural uses and crops; nuisance conditions including odor; household, commercial, and other chemicals; and impairment to the use and enjoyment of his property. Based on distance from the proposed facility and discharge route, Mr. Massengale has not demonstrated that he has a personal justiciable interest affected by this application. Mr. Massengale’s concerns are common to the general public, and he is not affected.

The Executive Director recommends the Commission find that Trennon Massengale is not an affected person.

Paul Hess

According to the information provided by Paul Hess, he lives approximately 0.84 miles from the proposed facility. Mr. Hess is not listed on the downstream landowner list. He raised the concern in his hearing request regarding who will be responsible for the proposed facility, specifically if water quality issues arise in wells and surface water. Further, Mr. Hess is concerned about who will be liable for the proposed facility as the Applicant intends to donate the facility. Based on distance from the proposed facility and discharge route, and the issue raised, Mr. Hess has not demonstrated that he has a personal justiciable interest affected by this application. Mr. Hess’ concern is common to the general public, and he is not affected.

The Executive Director recommends the Commission find that Paul Hess is not an affected person.

Ronald and Judy Raylene West (the “West”) and the West Family Living Trust (“West Trust”)

According to the information provided by the Wests and West Trust, they live 5.72 miles from the proposed facility. In the hearing request, the Wests and West Trust claim to live approximately 1.5 miles from the facility. The property address listed in the hearing request for the Wests and West Trust is not listed on the affected landowner list. Further, the Wests and West Trust failed to submit timely filed comments. In the hearing request, the Wests and West Trust raised the following concerns: whether the proposed facility is located within the 100-year floodplain; whether the proposed facility is located on or will have a negative impact on wetlands; whether the proposed facility meets the requirement to abate and control nuisance odor; whether the application violates the TCEQ’s Tier 1 and Tier 2 antidegradation requirements; whether the proposed facility is designed to minimize possible contamination of water in the state; whether the proposed discharge will adversely impact water quality and/or aquatic life; and whether the proposed facility or requested discharge volume should be denied or altered in consideration of the need for the facility. Based on their location from the proposed facility and discharge route, and the failure to submit timely filed comments, the Wests and West Trust have not demonstrated that they have a personal justiciable interest affected by this application, and they are not affected.

The Executive Director recommends the Commission find that the Wests and the West Trust are not affected persons.

C. Whether the 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 will be protective of surface water quality and preserve the designated uses and the aesthetic parameters of the discharge route in accordance with the Texas Surface Water Quality Standards and be protective of groundwater in the area. (RTC Response No. 1-5)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit will not adequately address water quality, designated uses, and aesthetic parameters, 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 adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 13)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit does not adequately address nuisance odor, 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 Applicant complied with all TCEQ notice requirements. (RTC Response No. 15-19)

The issue involves a disputed question of mixed fact, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. 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.

4. Whether the draft permit is protective of human health and residents in the immediate vicinity of the proposed facility and the immediate discharge route, the environment, and the use of enjoyment of property. (RTC Response No. 6)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit is not protective of human health, the environment, and the use and enjoyment of property, 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 draft permit is protective of aquatic life, wildlife, and livestock in the immediate vicinity of the proposed facility and discharge route. (RTC Response No. 10)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit is not protective of aquatic life, wildlife, and livestock, 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 Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282. (RTC Response No. 11)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit fails to comply with the state's regionalization policy, 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 properly classifies the aquatic life uses. (RTC Response Nos. 7-8)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit fails to properly classify aquatic life uses, 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 is protective of crops and agricultural uses. (RTC Response No. 12)

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, is relevant and material to the issuance of the draft permit, and was raised by a person whom the ED recommends the Commission find affected. If it can be shown the draft permit is not protective of crops and agricultural uses, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

VI. Request for Reconsideration Analysis

The Chief Clerk received timely Requests for Reconsideration (RFR) from Paul Hess, Glen Guthrie, and John Andrew Scott on behalf of Richard Moore and Trennon Massengale. As required by 30 Texas Administrative Code § 55.201, Mr. Hess, Mr. Guthrie, and Mr. Scott submitted their request in writing, and provided their name, address, and daytime telephone number. Mr. Hess, Mr. Guthrie, and Mr. Scott specifically requested reconsideration of the ED's decision on The Psalm 25:10 Foundation application.

The issues brought up by Paul Hess included water quality (RTC Response Nos. 1-5) and who is responsible for the proposed facility (RTC Response No. 21).

The issue raised by Mr. Guthrie included public notice (RTC Response Nos. 15-19), odor (RTC Response No. 13), water quality (RTC Responses Nos. 1-5), recreational uses (RTC Response Nos. 10, 12), and human health related to air quality (RTC Response No. 27).

The issues raised by Richard Moore and Trennon Massengale included public notice (RTC Response Nos. 15-19), antidegradation requirements (RTC Response Nos. 1, 7), applicable general criteria including aesthetic, toxicity, nutrient, aquatic life, and aquatic recreational parameters (RTC Response Nos. 1-2, 6, 10, 25), surface and groundwater quality (RTC Response Nos. 1, 5), design of the facility (RTC Response No. 6), effluent limitations and other parameters (RTC Response No. 2), human health (RTC Response No. 6), fish, livestock, wildlife, and other environmental receptors (RTC Response Nos. 6, 8, 10, 12), problematic algae (RTC Response No. 9), TCEQ's modeling (RTC Response No. 2), whether the proposed operator is sufficiently qualified to operate (RTC Response No. 21), whether the facility is needed (RTC Response No. 11), odor (RTC Response No. 13), whether the application is complete and truthful, whether

the draft permit complies with the TSWQS (RTC Response Nos. 1, 8, 10), and whether the draft permit meets all application requirements of 30 TAC 309 (RTC Response Nos. 13, 21).

Regarding the issue of whether the application is complete and truthful, which was an issue brought up in the combined hearing request and request for reconsideration, Mr. Moore and Mr. Massengale did not provide any specific information on this issue. The ED's practice is to rely on information in the application as complete and accurate. No information was provided to the ED to suggest that the application is not complete and truthful.

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 Richard Moore is an affected person and grant his hearing request.

Deny the hearing requests from Trennon Massengale, Glen Guthrie, Paul Hess, Ronald and Judy West, and the West Family Living Trust.

Deny the requests for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on April 29, 2024, the “Executive Director’s Response to Hearing Requests” for new Texas Pollutant Discharge Elimination System (TPDES) No. WQ0016202001 by The Psalm 25:10 Foundation 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. 2024-0596-MWD; TPDES Permit No. WQ0016202001

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Attachment A

Psalm 25:10 Foundation

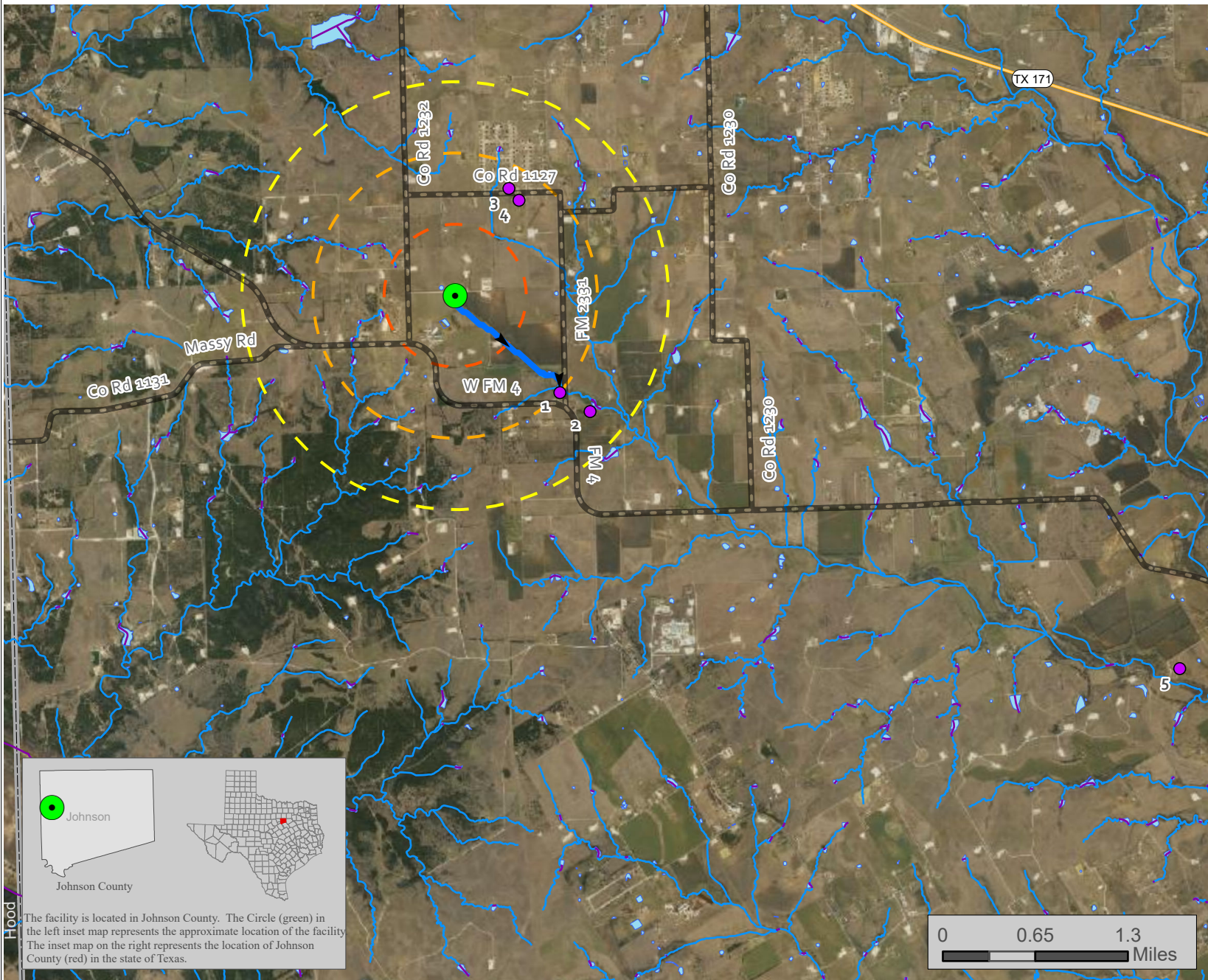
WQ0016202001

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: 1/10/2024
CRF 0099385
Cartographer: jbartlin



- Requestors
- Facility Outfall
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 1.0 Mile Discharge Route

The facility outfall is 1.0 miles away from Richard Moore (1).

The facility outfall is 1.25 miles away from Trennon Massengale (2).

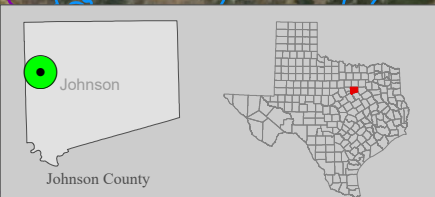
The facility outfall is 0.84 miles away from Paul Hess (3).

The facility outfall is 0.81 miles away from Glen Guthrie (4).

The facility outfall is 5.72 miles away from The Wests and the West Trust(5).

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 Johnson 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 Johnson County (red) in the state of Texas.

