

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

September 16, 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 Motiva Enterprises LLC for TPDES Permit No. WQ0003057000;
TCEQ Docket No. 2024-1229-IWD

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, reading "Kathy J. Humphreys".

Kathy Humphreys, Staff Attorney – Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2024-1229-IWD

**APPLICATION BY MOTIVA
ENTERPRISES LLC
FOR RENEWAL OF
TPDES PERMIT NO.
WQ0003057000**

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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 (the Commission or TCEQ) files this Response to Hearing Requests on the application by Motiva Enterprises LLC, (Motiva) for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003057000 to authorize the discharge of non-process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, construction stormwater, and post-first flush stormwater on an intermittent and flow-variable basis via Outfall 001, and non-process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, and construction stormwater on an intermittent and flow-variable basis via Outfall 002. Motiva operates Motiva Enterprises Port Arthur Chemicals, which is a chemical manufacture facility.

The Office of the Chief Clerk received timely contested case hearing requests from John Beard, Ricky Espree, and Gregory Richard. The Executive Director recommends that the Commission deny all hearing requests.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility and requestors.

II. FACILITY DESCRIPTION

Motiva submitted an application to the TCEQ for a renewal of TPDES Permit No. WQ0003057000 to authorize the discharge of non-process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, construction stormwater, and post-first flush stormwater on an intermittent and flow-variable basis via Outfall 001, and non-process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, and construction stormwater on an intermittent and flow-variable basis via Outfall 002. The Applicant operates Motiva Enterprises Port Arthur Chemicals, which is a chemical manufacture facility.

The wastewater system consists of process wastewater, non-process area stormwater runoff, hydrostatic test water, steam condensate, potable waterline flushing, other utility wastewaters, construction stormwater and post-first flush stormwater. Process wastewater and process area stormwater runoff are pre-treated on-site, then

routed to the Motiva Port Arthur Refinery (TPDES Permit No. WQ0000414000) for further treatment and discharge. During periods of heavy rainfall, post-first flush stormwater runoff (excess stormwater runoff) is discharged via Outfall 001. Non-process area stormwater, hydrostatic test water, steam condensate, potable water line flushing, fire water system flushing, construction stormwater runoff and other utility wastewaters are discharged via Outfalls 001 and 002 without treatment.

The effluent is discharged to Jefferson County Drainage Ditch (JCDD) No. 7 Main Outfall Canal, thence to Alligator Bayou, thence to Intracoastal Waterway Tidal in Segment No. 0702 of the Neches-Trinity Coastal Basin. The unclassified receiving water uses are intermediate aquatic life use for JCDD No. 7 Main Outfall Canal and Alligator Bayou. The designated uses for Segment No. 0702 are primary contact recreation and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

III. PROCEDURAL BACKGROUND

The permit application was received on June 19, 2023, and declared administratively complete on August 16, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on August 23, 2023, in the *Port Arthur News* and in Spanish on August 24, 2023, in the *El Perico Hispanic Newspaper*. The Notice of Application and Preliminary Decision (NAPD) was published in English on March 30, 2024, in the *Port Arthur News* and in Spanish on March 28, 2024, in the *El Perico Hispanic Newspaper*.

The Executive Director's Response to Public Comment (RTC) was filed on May 28, 2024, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on July 1, 2024. 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. This application is subject to those changes in the law.

IV. EVALUATION OF HEARING REQUESTS

HB 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:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised 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

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during

² 30 Texas Administrative Code (TAC) Section (§) 55.209(e).

³ 30 TAC § 55.201(c).

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 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.⁴

C. Requirement that Requestor be an Affected Person

To grant a contested case hearing, the Commission must determine that a requestor is an "affected person" by conducting the following analysis:

- (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.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:

⁴ 30 TAC § 55.201(d).

- (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 ED, the applicant, or hearing requestor.⁵

Under 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁶

Additionally, for applications filed on or after September 1, 2015, a hearing request by a group or association for a contested case may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

D. Referral to the State Office of Administrative Hearings

When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.⁷ The Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;

⁵ 30 TAC § 55.203(a)-(d).

⁶ 30 TAC § 55.205(a)(1)-(3).

⁷ 30 TAC § 50.115(b).

- (2) was raised during the public comment period by an affected person; and
(3) is relevant and material to the decision on the application.⁸

V. ANALYSIS OF THE HEARING REQUESTS

For this permit application, the relevant public comment period ended on October 24, 2023, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on July 10, 2024. The Executive Director's analyses determined whether the Requests followed TCEQ rules, if the requestors qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

Additionally, as discussed above, Motiva applied for a renewal of its existing permit. 30 TAC § 55.201(i)(5)(B) provides that there is not a right for a contested case hearing for an application under Chapter 26 of the Texas Water Code if "the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged. . ." The compliance history for the period September 1, 2018 to August 31, 2023 indicates that Motiva has a "satisfactory" compliance history. Thus, the Executive Director recommends the Commission find there is no right to a contested case hearing on the Motiva application.

A. Whether the Request Complied with 30 TAC §§ 55.201(c) and (d), 55.203 and 55.205(b).

Persons the Executive Director recommends the Commission find to be Affected Persons

None.

Persons the Executive Director recommends the Commission find are not Affected Persons

John Beard

Mr. Beard submitted a timely hearing request with the proper identifying information; however, Mr. Beard only provided a P.O. Box address, thus he did not provide describe how he would be affected differently than the general public. Mr. Beard raised the following issues: 1) the potential impact of the facility on human health, wildlife, and the environment; 2) public notice; 3) cumulative risks; 4) compliance with the National Ambient Air Quality Standards; and 5) environmental justice.

The Executive Director recommends the Commission find that John Beard is not an affected person.

Ricky Espree

Mr. Espree submitted a timely hearing request with the proper identifying information. According to the address Mr. Espree provided, he lives in close proximity to the Motiva facility. Mr. Espree raised the following issues: 1) the potential impact of the

⁸ 30 TAC §50.115(c).

facility on human health, wildlife, and the environment; 2) public notice; 3) cumulative risks; 4) compliance with the National Ambient Air Quality Standards; and 5) environmental justice.

The Executive Director recommends the Commission find that Ricky Espree, Sr. met the requirements of 30 TAC § 55.203 for standing; however, because Motiva applied for a renewal of its existing permit, the Executive Director recommends the Commission deny his Mr. Espree's hearing request. 30 TAC § 55.201(i)(5)(B)

Gregory Richard

Mr. Richard submitted a timely hearing request with the proper identifying information. According to the address Mr. Richard, he lives in close proximity to the Motiva facility. Mr. Richard raised the following issues: 1) the potential impact of the facility on human health, wildlife, and the environment; 2) public notice; 3) cumulative risks; 4) compliance with the National Ambient Air Quality Standards; and 5) environmental justice.

The Executive Director recommends the Commission find that Gregory Richard met the requirements of 30 TAC § 55.203 for standing, however, because Motiva applied for a renewal of its existing permit, the Executive Director recommends the Commission deny Mr. Richard's hearing request. 30 TAC § 55.201(i)(5)(B)

B. Whether the Issues the Requestors Raised are Referable to the State Office of Administrative Hearings (SOAH).

The Executive Director has analyzed issues raised in accordance with the regulatory criteria.

All issues were raised by during the public comment period and addressed in the Executive Director's Response to Comments. 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.⁹ The issues raised for this application and the Executive Director's analysis and recommendations follow in the event the Commissioners grant any of the hearing requests:

Issue 1. Whether the draft permit will be protective of human health, wildlife, and the environment. (RTC Comments 4, 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, if the Commission grants any of the hearing requests, the Executive Director recommends the Commission refer the issue to SOAH.

Issue 2. Whether the public notice was adequate. (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

⁹ Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

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

If the Commission finds that there is a right to a hearing and there is an affected person, the Executive Director recommends the following issues **not** be referred to SOAH:

Issue 3. Whether the permit conditions are adequate to protect the public from cumulative risks in accordance with TWC § 5.130. (RTC Comment 2.

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.

Issue 4. Whether the proposed emissions will cause or contribute to exceedances of the National Ambient Air Quality Standards. (RTC Comment 1)

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.

Issue 5. Whether the Executive Director adequately consider the environmental justice impacts. (RTC Comment 7)

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.

VII. CONTESTED CASE HEARING DURATION

If the Commission grants a 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. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends the following actions by the Commission:

- a. Deny the Hearing Request of John Beard, Ricky Espree, and Gregory Richard.
- b. Should the Commission decide to refer this case to SOAH:
 - i. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - ii. refer the following issues to SOAH for a contested case hearing:

Issue 1. Whether the draft permit will be protective of human health, wildlife and the environment. (RTC Comments 4, 6)

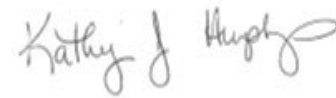
Issue 2. Whether the public notice was adequate. (RTC Comment 5)

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

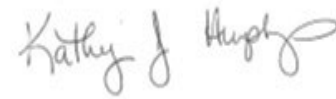
Charmaine Backens, Interim Director
Office of Legal Services
Charmaine Backens, Deputy Director
Environmental Law Division



Kathy Humphreys, Staff Attorney
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State Bar No. 24006911
P.O. Box 13087, MC 173
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Email: Kathy.humphreys@tceq.texas.gov

CERTIFICATE OF SERVICE

I certify that on September 16, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0003057000 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.



Kathy Humphreys, Staff Attorney
Environmental Law Division

MAILING LIST
Motiva Enterprises LLC
TCEQ Docket No./TCEQ Expediente N.º 2024-1229-IWD;
TPDES Permit No./TPDES Permiso N.º WQ0003057000

FOR THE APPLICANT/PARA EL SOLICITANTE

Jesse Caillier, Environmental Specialist
Motiva Enterprises LLC
P.O. Box 712
Port Arthur, Texas 77641

Kathleen Alsup, Senior Project Manager
4256 Rock Bend Drive
College Station, Texas 77845

REQUESTER(S)/SOLICITANTE(S)

John Beard Jr.
PO Box 1033
Port Arthur, Texas 77641

Ricky Espree Sr.
1400 Danny Street
Port Arthur, Texas 77640

Gregory Richard
309 47Th Street
Port Arthur, Texas 77640

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

Mrs. Frederick Dwayne Davis
6148 Roosevelt Avenue
Port Arthur, Texas 77640

FOR THE EXECUTIVE DIRECTOR/PARA EL DIRECTOR EJECUTIVO

via electronic mail/vía correo electrónico:

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FOR PUBLIC INTEREST COUNSEL/PARA ABOGADOS DE INTERÉS PÚBLICO

via electronic mail/vía correo electrónico:

Garrett T. Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
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Austin, Texas 78711

FOR ALTERNATIVE DISPUTE RESOLUTION/PARA LA RESOLUCIÓN ALTERNATIVA DE DISPUTAS

via electronic mail/vía correo electrónico:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK/PARA EL SECRETARIO OFICIAL

via eFilings:

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

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

Attachment A

Motiva Enterprises

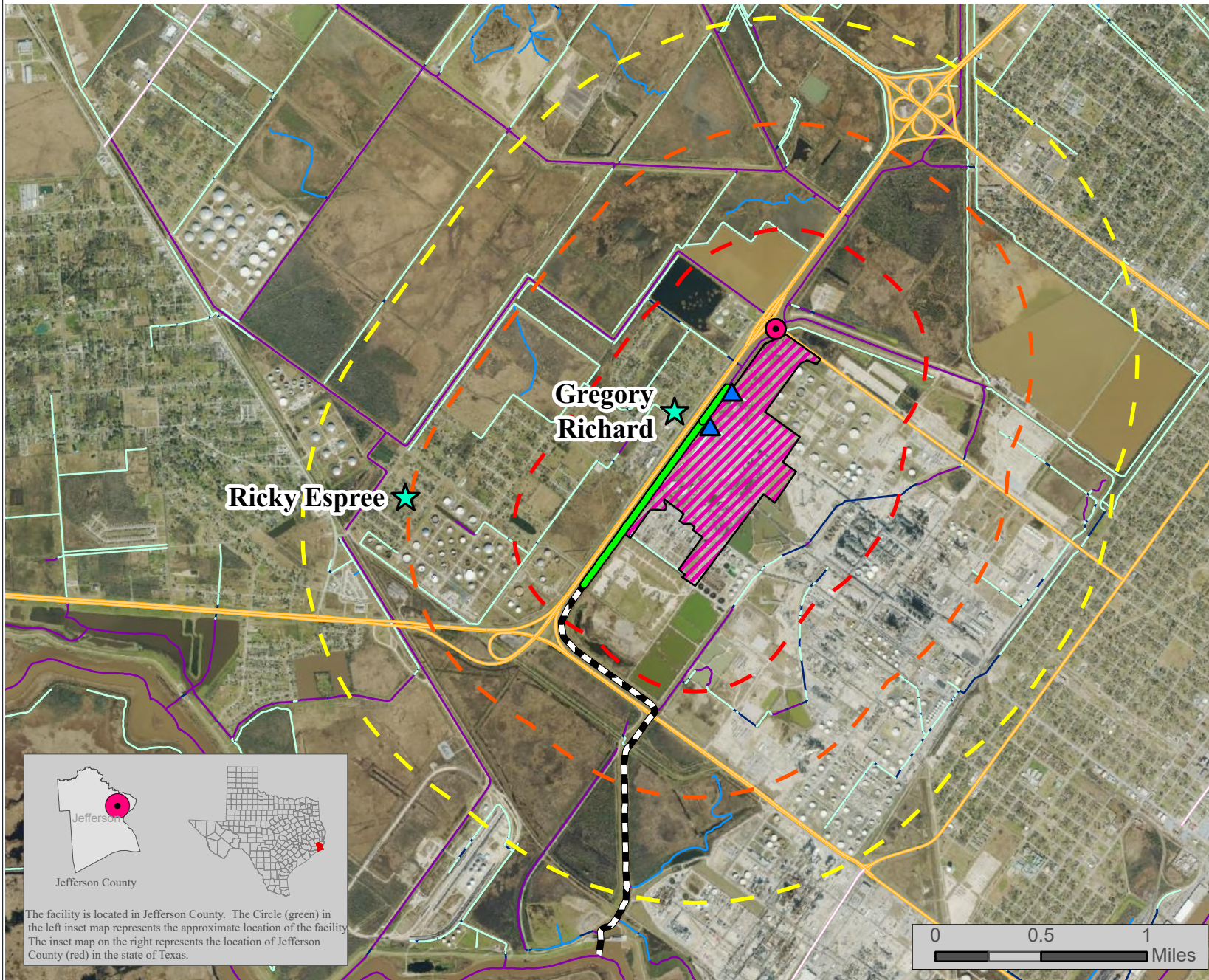
TPDES Permit No. WQ0003057000

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



*Protecting Texas by
Reducing and
Preventing Pollution*

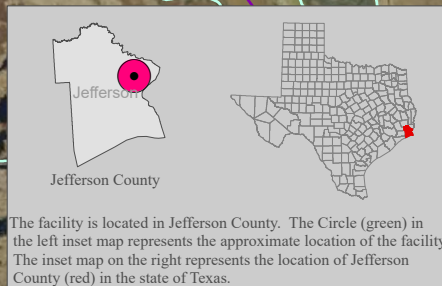
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 6/21/2024
CRF 0106500_1
Cartographer: rkukushk



- ★ Requestors
- ▲ Motiva Enterprises Outfalls
- 1 mile Discharge from Outfalls
- Discharge Route
- Facility Coordinates
- Facility Boundary
- 0.5 mile Facility Buffer
- 1 mile Facility Buffer
- 1.5 mile Facility Buffer
- Highway
- Intermediate Roads
- Connector
- Stream/River
- Artificial Path
- Canal Ditch

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

0 0.5 1 Miles