

DOCKET NO. 2024-1260-MWD

APPLICATION BY	§	BEFORE THE
PRAIRIE CROSSING WASTEWATER,	§	
LLC	§	TEXAS COMMISSION ON
FOR MAJOR AMENDMENT TO TPDES	§	
PERMIT NO. WQ0015850001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Prairie Crossing Wastewater, LLC (Applicant) seeking a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015850001 and the Executive Director's preliminary decision. The Office of the Chief clerk received a contested case hearing request from David J. Tuckfield (initially on behalf of 05 Ranch Investments, LLC). The Chief Clerk also received a timely Request for Reconsideration (RFR) from David J. Tuckfield (initially on behalf of 05 Ranch Investments, LLC).

Attached for Commission consideration is a satellite map of the area (Attachment A). In the event that the Motion for Leave to Amend is granted, an additional map is attached (Attachment B).

II. Description of Facility

Prairie Crossing Wastewater, LLC applied for a major amendment of TPDES permit No. WQ0015850001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.99 million gallons per day (MGD) to an annual average flow not to exceed 4.5 MGD (proposed discharge) from the Applicant's Wastewater Treatment Facility (WWTF), Prairie Crossing WWTP (Prairie Crossing facility). The draft permit authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

The Prairie Crossing facility will be located approximately 5,300 feet northeast of the intersection of County Road 485 and Farm-to-Market Road 973, in Williamson County, Texas 76574 and will be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase will include a bar screen, an aeration basin, a final clarifier, a sludge holding tank, disk filter, and a chlorine contact chamber. Treatment units in the Interim II phase will include a bar screen, two 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, four aeration basins, three final clarifiers, four sludge holding tanks, and an Ultraviolet Light (UV) disinfection system. The discharge route for the proposed discharge is via pipe to Boggy Creek, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin (proposed discharge route).

III. Procedural Background

The TCEQ received the application on January 9, 2023, and declared it administratively complete on February 9, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Taylor Press* in English on February 26, 2023, and in the *El Mundo Newspaper* in Spanish on February 23, 2023. The ED completed the technical review of the application on June 2, 2023, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the combined Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) in *Taylor Press* in English on August 20, 2023, and in *El Mundo Newspaper* in Spanish on August 24, 2023. The public comment period ended on September 25, 2023.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

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

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

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

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- I. give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- II. identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- III. request a contested case hearing; and
- IV. list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;

- distance restrictions or other limitations imposed by law on the affected interest;

- whether a reasonable relationship exists between the interest claimed and the activity regulated;

- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- likely impact of the regulated activity on use of the impacted natural resource by the person;

- whether the requestor timely submitted comments on the application which were not withdrawn; and

- for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

- the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

- the analysis and opinions of the Executive Director; and

- any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

"When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

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

- was raised during the public comment period by an affected person whose hearing request is granted; and

- is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

05 Ranch Investments, Inc. submitted a timely hearing request. The request provided the entity's name, address, and email address, and requested a contested case hearing. The request identified 05 Ranch Investments as an entity with personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided disputed issues of fact. However, the Executive Director concludes that 05 Ranch Investments' hearing request did not substantially comply with the Section 55.201(c) and (d) requirements, and therefore the ED recommends denying this hearing request.

30 TAC § 55.201(c) states that a hearing request must be based only on the requestor's own timely comments. 30 TAC § 55.201(d)(4) reiterates this requirement. 05 Ranch Investments failed to submit a comment during the comment period, therefore it failed to meet the requirements of 30 TAC § 55.201(c) and (d). Thus, the ED recommends denying 05 Ranch Investments' hearing request.

Additional request:

In the event the Commissioners grant the Motion for Leave to Amend and allow the original hearing request to be replaced by the hearing request from Taylor Meadows 712, LP, the ED offers the following analysis of this request.

Taylor Meadows 712, LP (Taylor Meadows) submitted a timely hearing request in which it provided its name and email address and requested a contested case hearing. Taylor Meadows identified personal justiciable interests affected by the application and provided disputed issues of fact. However, the Executive Director concludes that Taylor Meadows' hearing request did not substantially comply with the Section 55.201(c) and (d) requirements, and therefore the ED recommends denying Taylor Meadows' hearing request.

First, despite alleging that it owns adjacent property, Taylor Meadows failed to provide an address for said property. However, using the address of the Cielo Ranch WWTP that was mentioned in the hearing request, the ED was able to determine that Taylor Meadows is indeed an adjacent landowner if their allegation that they own the property Cielo Ranch WWTP will be constructed on is correct. Regardless, 30 TAC § 55.201(c) states that a hearing request must be based only on the requestor's own timely comments. 30 TAC § 55.201(d)(4) reiterates this requirement. Taylor Meadows failed to submit a comment during the comment period, therefore failed to meet the requirements of 30 TAC § 55.201(c) and (d). Thus, the ED recommends denying Taylor Meadows 712, LP's hearing request.

VI. Request for Reconsideration/Rehearing

The Chief Clerk received a timely Request for Reconsideration (RFR) on behalf of 05 Ranch Investments, Inc. (05 Ranch). As required by 30 Texas Administrative Code § 55.201(e), the RFR specifically requested reconsideration of the ED's decision on the Prairie Crossing Wastewater, LLC application.

The issues raised in the RFR included antidegradation (RTC response 6 – comment withdrawn), noise and odor, and mailing list issues. However, the RFR did not provide any new information that would lead the ED to change her recommendation on the application; the ED recommends denial of the RFR. This recommendation does not change if the Motion for Leave to Amend is granted, as the same issues were raised in both requests.

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:

Deny 05 Ranch Investments' hearing request and request for reconsideration.

If the Motion for Leave to Amend is granted, the Executive Director recommends the following actions by the Commission:

Deny Taylor Meadows 712, LP's hearing request and request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental
Quality

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Allie Soileau, Staff Attorney
Environmental Law Division
State Bar No. 24137200
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239-6033
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mailing List
Prairie Crossing Wastewater LLC; TCEQ Docket No. 2024-1260-MWD

For the Applicant:

Nathan Vassar
Lloyd Gosselink
816 Congress Ave., Suite 1900
Austin, Texas 78701
512/322-5867 FAX 512/472-0532
nvassar@lglawfirm.com

For the Movant-Requester:

David J. Tuckfield
The AL Law Group, PLLC
12400 Highway 71 West, Suite 350-150
Austin, Texas 78738
512/576-2481 FAX 512/366-9949
David@allawgp.com

For the Executive Director:

Allie Soileau
TCEQ Environmental Law Division
MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606
Allie.Soileau@tceq.texas.gov

For the Office of Public Interest Counsel:

Garrett Arthur
Eli Martinez
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377
Garrett.arthur@tceq.texas.gov
Eli.martinez@tceq.texas.gov

For TCEO External Relations:

Ryan Vise
TCEQ External Relations Division
MC 118
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0010 FAX 512/239-5000
pep@tceq.texas.gov

For TCEQ Alternative Dispute Resolution:

Kyle Lucas
TCEQ Alternative Dispute Resolution
MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687 FAX 512-239-4015
Kyle.lucas@tceq.texas.gov

Individuals on the Mailing List:

Eric Allmon
Perales, Allmon & Lee
1206 San Antonio St.
Austin, Texas 78701-1834
512/469-6000 FAX 512/482-9346
eallmon@txenvirolaw.com
gwyneth@txenvirolaw.com

Danny G. Worrell
Baker Botts LLP
401 S 1st St.
Austin, Texas 78704-1209
512/322-2500 FAX 512/322-2501
austinesg@bakerbotts.com

Vijay Kasireddy, Group Tx.
8505 Freeport Pkwy.
Irving, Texas 75063-2548
vijay@mangogroup.com

Kamalakar Poonuru
2904 Shady Creek Dr.
Flower Mound, Texas 75022-5359
kamalakar@mangogroup.com

For the TCEO Office of Chief Clerk:

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311
<https://www14.tceq.texas.gov/epic/efiling/>

Attachment A

Prairie Crossing Wastewater Treatment Plant

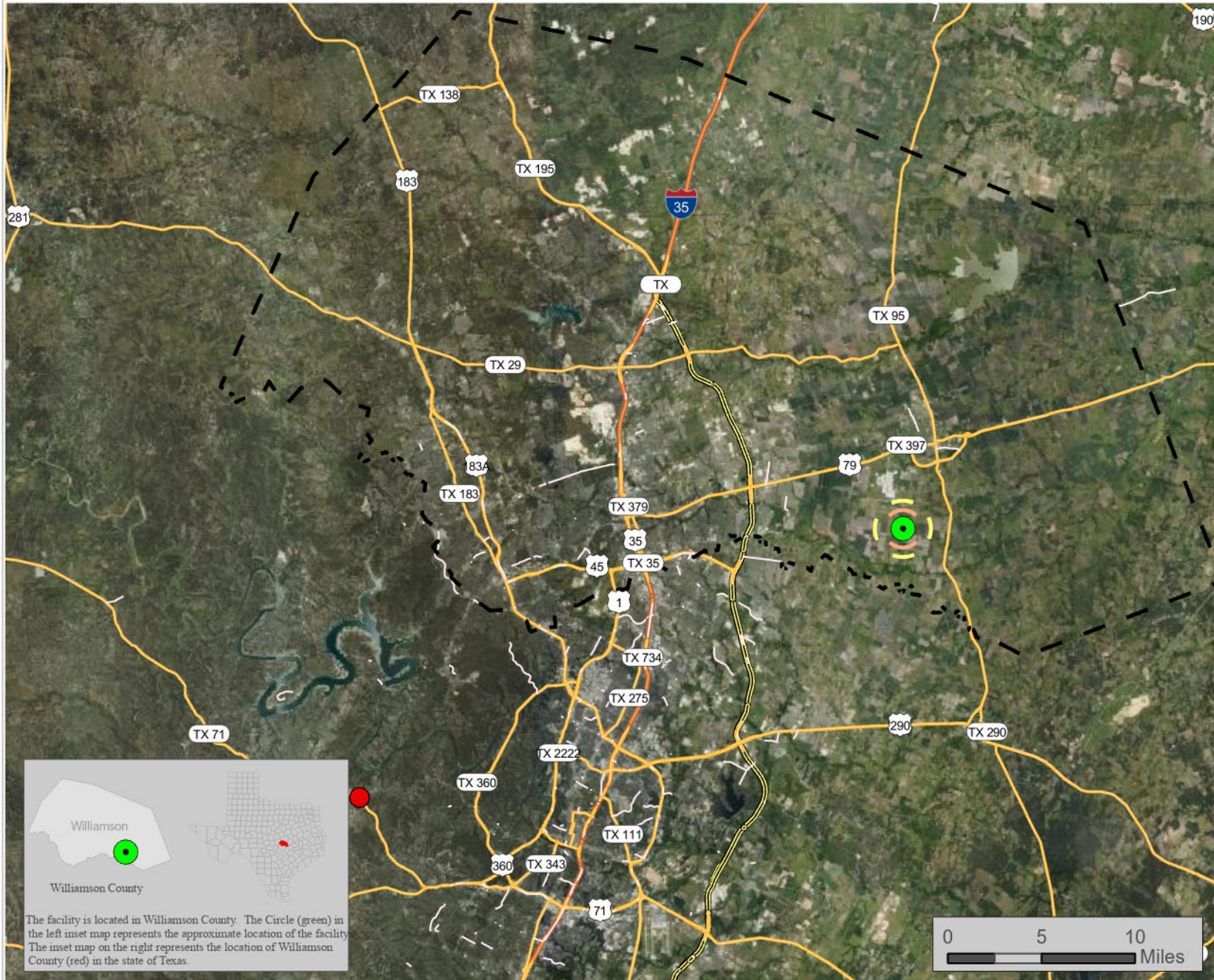
TCEQ Permit WQ0015850001

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: 3/19/2024
CRF 0102672
Cartographer: MAttoh



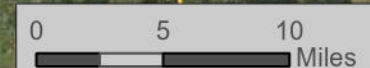
- 05 Ranch Investments
- Outfall
- ▬ 0.5 Miles From Outfall
- ▬ 1.0 Miles From Outfall
- ▬ 1.5 Miles From Outfall
- Interstate
- Toll Road
- Highway
- Intermediate Roads
- ▬ Williamson County

Distance From Outfall To Requestor:

05 Ranch Investments : 32.4 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.



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.

Attachment B

Prairie Crossing Wastewater Treatment Plant

TCEQ Permit WQ0015850001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

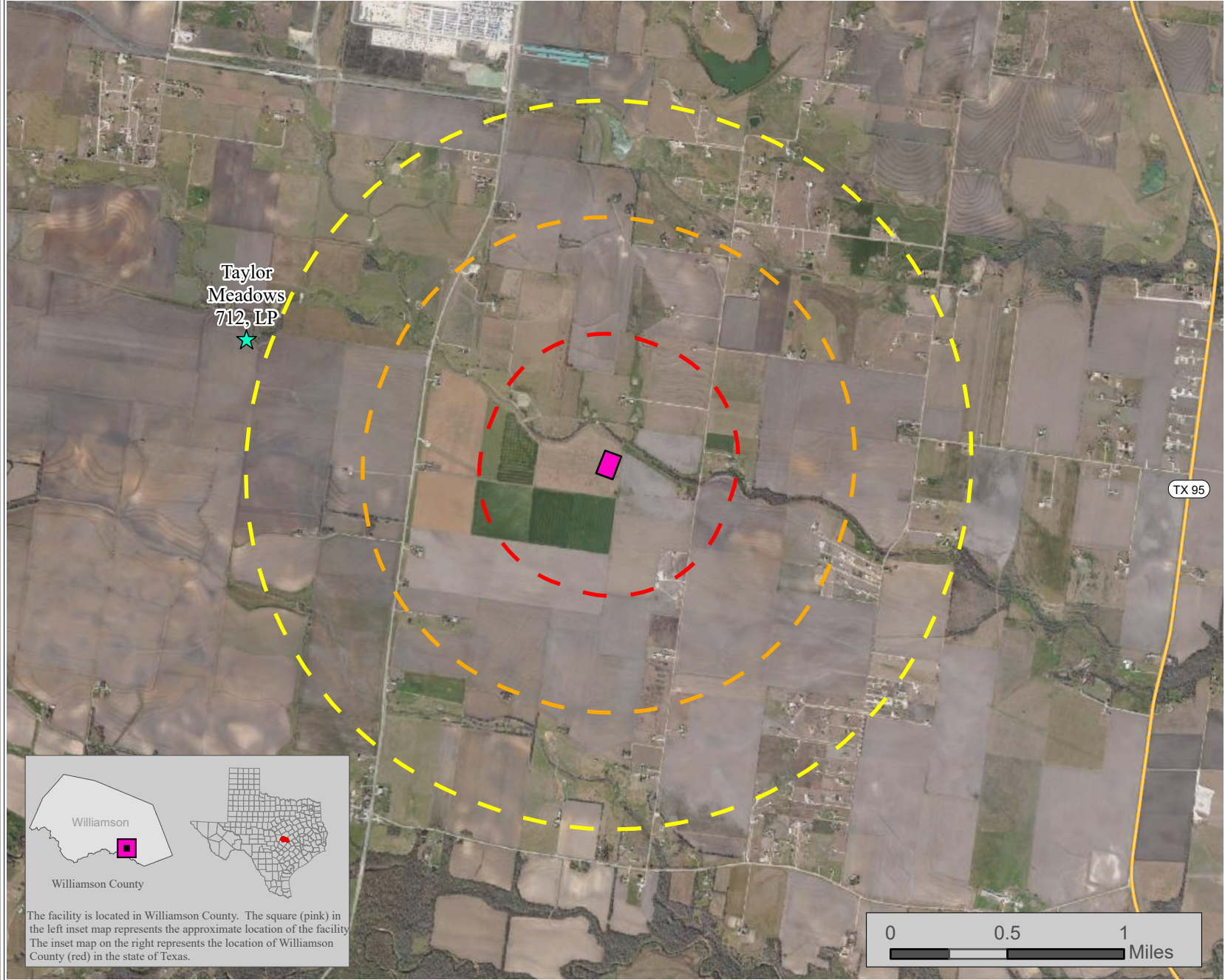
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 8/20/2024
CRF 0110091_1
Cartographer: rkukushk

- ★ Requestor
- WWTP Boundary
- 1.5 miles
- 1 mile
- 0.5 miles
- Highway

The requestor, Taylor Meadows 712, LP is 1.6 miles from the Wastewater Treatment Plant boundary

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 Williamson County. The square (pink) 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.

