

TCEQ DOCKET NO. 2024-1612-MWD

**TREASURE ISLAND LAGUNA
AZURE LLC FKA CANARY ISLAND
LAGUNA AZURE LLC
FOR TPDES PERMIT NO.
WQ0016092001**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Treasure Island Laguna Azure LLC fka Canary Island Laguna Azure LLC (Applicant) for a new TPDES Permit No. WQ0016092001. The Office of the Chief Clerk received a contested case hearing request from the City of Van Alstyne, Katrina Arsenault, Jim DuBois, Janice and James Watson. The Commission also received requests for reconsideration from Nancy Jan Shaw and Stephen Campeau.

The Executive Director recommends that the Commission grant the hearing requests for the City of Van Alstyne and deny all other hearing and reconsideration requests.

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

II. FACILITY DESCRIPTION

The Applicant has applied for new TPDES permit No. WQ0016092001 to authorize a discharge of treated domestic wastewater (effluent) at a daily average flow limit in Interim I Phase of 0.20 million gallons per day (MGD), at a daily average flow limit in Interim II Phase of 0.40 MGD, and at a daily average flow limit in the Final Phase of 1.40 MGD (proposed discharge) from the Applicant's Wastewater Treatment Facility (WWTF), Treasure Island WWTP (Treasure Island facility). The draft permit requires the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, or facility that further processes sludge.

The Treasure Island facility will be located approximately 0.81 of a mile northeast of the intersection of Farmington Road and Hodgins Road, in Grayson County, Texas 75495 and will be a suspended growth activated sludge process plant operated in a single-stage nitrification mode. The treatment units in the Interim I phase will include a manual bar screen, two aeration basins, one clarifier, two multi-stage aerobic digesters, and a chlorine contact basin. The treatment units in the Interim II phase will include one elevated screening structure with a manual bar screen and flow splitting weirs, four aeration basins, two clarifiers, four multi-stage aerobic digesters, and two chlorine contact basins. The treatment units in the Final phase will include one elevated screening structure with a manual bar screen and flow splitting

weirs, three 0.46 MGD treatment trains with each train consisting of an aeration basin and secondary clarifier, two multi-stage aerobic digesters, and a chlorine contact basin.

The treated effluent will be discharged to West Prong Whites Creek, thence to Whites Creek, thence to East Fork Trinity River above Lake Lavon, thence to Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for West Prong Whites Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, 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 West Prong Whites Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected.

The proposed effluent limits for the permit are as follows: 5.0 milligrams per liter (mg/L) dissolved oxygen. 0.20 MGD phase: 10 mg/L CBOD5, 3 mg/L NH3-N, and 4.0 mg/L DO 0.40 MGD phase: 10 mg/L CBOD5, 3 mg/L NH3-N, and 6.0 mg/L DO 1.40 MGD phase: 7 mg/L CBOD5, 2 mg/L NH3-N, and 5.0 mg/L DO. In all phases of the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per month by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil. Additionally, in all phases of the proposed permit, the effluent must contain a chlorine residual of at least 1.0 mg/l and must not exceed a total chlorine residual of 4.0 mg/after a detention time of at least 20 minutes (based on peak flow) and must be monitored five time per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the ED.

III. PROCEDURAL BACKGROUND

TCEQ received the application on January 18, 2022, and declared it administratively complete on February 28, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in *The Dallas Morning News* on March 2, 2022. The ED completed the technical review of the application on April 27, 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 *The Dallas Morning News* on August 12, 2023. A public meeting was scheduled for October 9, 2023. Publication of the Notice of Public Meeting was published on August 25, 2023, in *The Dallas Morning News*. A public meeting was held on October 9, 2023, at Days Inn by Wyndham Sherman, "Dallas" Meeting Room, 3605 South US Highway 75 Sherman, Texas 75090.

The comment period for this application closed on October 9, 2023. The hearing request period closed September 16, 2024. This application was filed 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 Chapter 39, 50, and 55.

IV. THE EVALUATION PROCESS FOR 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 ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

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 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:

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 ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the time, 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

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

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

- 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) 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 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/"Affected Person" Status

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 general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), 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) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:

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 ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

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.”⁵ The Commission may not refer an issue to the State Office of Administrative Hearings (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.⁶

V. ANALYSIS OF THE REQUESTS

The ED 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.

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

1. Parties the Executive Director recommends the Commission find Affected Persons

City of Van Alstyne

- The City of Van Alstyne submitted timely comments and hearing requests which contained the City’s attorney’s name, address, and phone number pursuant to 30 TAC § 55.201(d).

Under 30 TAC § 55.203(c), the Commission shall consider multiple factors to determine whether an individual or entity is an affected person. For governmental entities such as Cities, the Commission shall specifically consider statutory authority over or interest in the issues relevant to the application when evaluating hearing request, pursuant to 30 TAC § 55.203(c)(7).

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

In the hearing request, the City specifically cites to TEX. LOC. GOV'T CODE §§ 42.001, 212.044 to support their authority over, "Various city functions and services - including water and sewer services, emergency services, and health and safety concerns." Having identified statutory authority over these interests, the City has satisfied the threshold requirements of 30 TAC § 55.203(c)(7).

In addition to citing relevant statutory authority, the City articulated ways in which it will be affected. While these included health impacts and concerns about both groundwater and surface water quality, the most significant and central to their hearing request was the issue of regionalization. The City emphasized that they had the concerns about the draft permit because the applicant had chosen not to utilize Van Alstyne wastewater infrastructure. As regionalization and these associated issues are relevant and material issues to TPDES permitting decisions, the City has demonstrated they are uniquely affected.

Therefore, having substantively met the requirements of 30 TAC 30 TAC §§ 55.201 and 55.203, the ED recommends that the Commission find the City of Van Alstyne is an affected person and grant their hearing request.

2. Parties the Executive Director recommends the Commission not find Affected Persons

Katrina Lynn Arsenault and Jim DuBois

- Ms. Arsenault and Mr. DuBois each separately submitted timely comments and a hearing request which contained their names, addresses, and phone numbers pursuant to 30 TAC § 55.201(d). According to the addresses they provided, the properties identified in their requests are located 4.7 miles and 4.4 miles from the proposed wastewater treatment facility.

In their requests, they each describe their concerns about the application. These include potential impacts on groundwater, water quality, as well as odors emanating from the facility.

Under 30 TAC § 55.203(c), the Commission shall consider several factors to determine whether someone is an affected person. These include likely impacts on personal interests and whether a reasonable relationship exists between the interest claimed and the activity regulated. The properties in question are located more than 4 miles away from the proposed facility. Given this distance, it is unlikely that a reasonable relationship exists nor is it likely that the effluent would impact either Ms. Arsenault or Mr. DuBois.

The ED therefore recommends that Ms. Arsenault and Mr. DuBois should not be considered affected persons as their hearing requests have not sufficiently demonstrated they have personal justiciable interests affected by the application under 30 TAC § 55.203(c).

Janice and James Watson

- Mr. Watson submitted timely comments and a hearing request on behalf of himself and Mrs. Watson which contained their names, address, and phone number pursuant to 30 TAC § 55.201(d). According to the address they provided, the property identified in their request is located approximately 1.5 miles from the proposed wastewater treatment facility.

In their hearing request, the Watsons identified multiple concerns they had about the application. These included impacts on wildlife, the environment, access to their property, as well as liability for damage done to the receiving waters.

Pursuant to 30 TAC § 55.201(d)(4)(B), hearing requests must list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. Prior to the hearing request, Mr. Watson's only comments on the application were the potential impact on his property values. While the Watsons' hearing request identifies other issues that are relevant to the application, they are not related to the sole issue raised in Mr. Watson's original comment. Furthermore, the Commission has no jurisdiction to consider issues such as impacts to property values during the permitting process.

Therefore, the ED recommends that the Commission deny the Watson's hearing request as it did not substantially comply with the requirements of 30 TAC § 55.201(d)(4)(B).

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

1. Whether the effluent limits in the draft permit are protective of water quality. (RTC Responses 1)

The 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. If it can be shown that the effluent limits in the draft permit are not protective of water quality, 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 complies with TCEQ's regionalization policy. (RTC Response 8)

The 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. If it can be shown the draft permit does not comply with TCEQ'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.

3. Whether the draft permit is protective of human health. (RTC Response 3)

The 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. If it can be shown that the effluent limits in the draft permit are not protective of human health, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

VI. REQUESTS FOR RECONSIDERATION

Nancy Jan Shaw and Stephen Campeau

TCEQ's rules provide that the request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision and provide reasons why the decision should be reconsidered. 30 TAC § 55.201(e). The Commission received two timely requests from Nancy Jan Shaw and Stephen Campeau.

Mr. Campeau and Ms. Shaw raised concerns about property values, taxes, flooding, road infrastructure, general environmental impacts, and regionalization. The issues raised in both of the requests concerned issues that are either outside TCEQ's jurisdiction and cannot be considered as part of the wastewater permitting process or they were addressed in the ED's RTC.

Therefore, the ED recommends that the Commission deny the Requests for Reconsideration.

VII. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find the City of Van Alstyne an affected person and deny all other hearing requests.
2. The Executive Director recommends that the Commission deny all requests for reconsideration.
3. 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.
4. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
5. If referred to SOAH, refer the following issues as raised by the affected person as identified by the Executive Director:
 - **Issue A) Whether the effluent limits in the draft permit are protective of water quality.**
 - **Issue B) Whether the draft permit complies with TCEQ's regionalization policy.**
 - **Issue C) Whether the draft permit is protective of human health.**

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 25, 2024, the “Executive Director’s Response to Hearing Request” for TPDES Permit WQ0016092001 for Treasure Island Laguna Azure LLC fka Canary Island Laguna Azure LLC 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.



Harrison Cole Malley

MAILING LIST

Treasure Island Laguna Azure LLC fka Canary Island Laguna Azure LLC
TCEQ Docket No. 2024-1612-MWD; Permit No. WQ0016092001

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REQUESTER(S)/INTERESTED PERSON(S)

See Attached List.

REQUESTER(S)/INTERESTED PERSON(S)

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Attachment A

Treasure Island Laguna Azure LLC

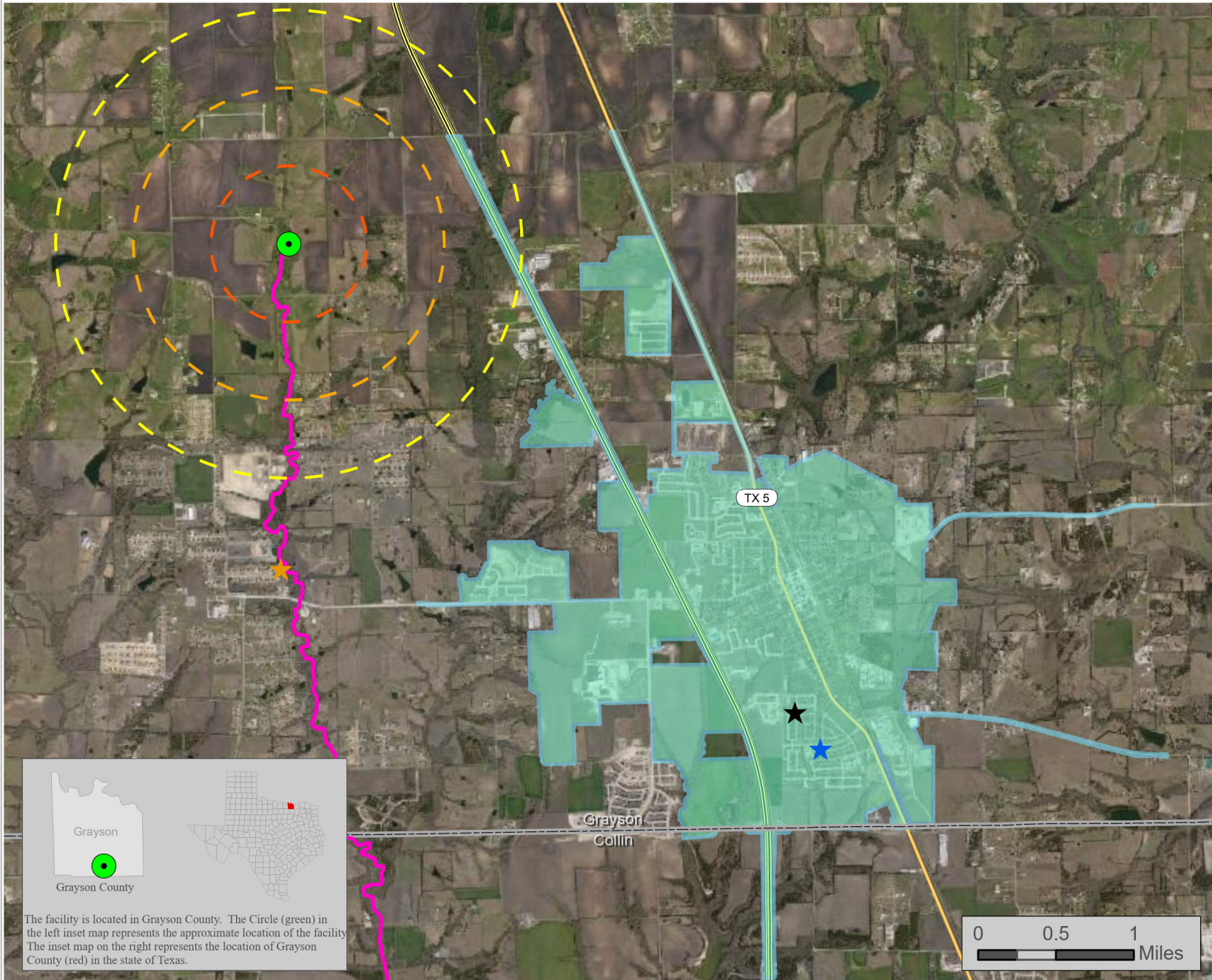
TPDES Permit No. WQ0016092001

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: 10/16/2024
CRF 0111189
Cartographer: jstalsby



- Facility
- Discharge_Route
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius

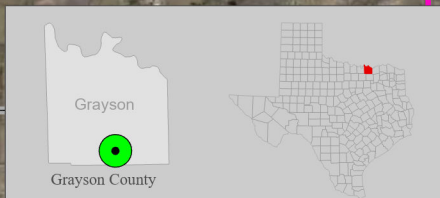
Requestors

- ★ Katrina Lynn Arsenault
- ★ Jim Dubois
- ★ Janice and James Watson
- City of Van Alstyne

Requestor Name	Distance
City of Van Alstyne	
Jim Dubois	4.4 miles
Katrina Lynn Arsenault	4.7 miles
Janice and James Watson	2.1 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 Grayson 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 Grayson County (red) in the state of Texas.

