

TCEQ DOCKET NO. 2025-0079-MWD

APPLICATION BY	§	BEFORE THE
THE OASIS OF TEXAS LP	§	
FOR TPDES PERMIT NO.	§	TEXAS COMMISSION ON
WQ0016436001	§	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 The Oasis of Texas LP (Applicant) for a new TPDES Permit No. WQ0016436001. The Office of the Chief Clerk received timely contested case hearing requests from the following individuals: Elizabeth Miller Grindstaff, Robert H. Miller, and Penny Clarke Evans on behalf of the Clarke family.¹

The ED recommends that the Commission grant the hearing requests Robert H. Miller. The ED recommends that the Commission deny the remaining hearing requests.

Attached for Commission consideration are the satellite maps of the area showing the locations of the facility, discharge route, and requestors.

II. FACILITY DESCRIPTION

The Applicant has submitted an application to the TCEQ for a new permit, TPDES Permit No. WQ0016436001, to authorize the discharge of treated domestic wastewater at a daily average volume not to exceed 50,000 gallons per day in the final phase. The Applicant proposes to operate The Oasis of Texas wastewater treatment facility (WWTF, Facility) as an activated sludge process plant operated in the conventional aeration mode. Treatment units include a bar screen, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. The facility has not been constructed. If this permit is issued, the proposed facility will be located at approximately 14625 U.S. Highway 59 North, in Polk County, Texas 75960. If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary, thence to Sand Creek, thence to Long King Creek, thence to the Trinity River Below Lake Livingston in Segment No. 0802 of the Trinity River Basin. The designated uses for Segment No. 0802 are primary contact recreation, public water supply, and high aquatic life use.

In accordance with 30 Texas Administrative Code §307.5 and 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 determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing

¹ Jerry C. Clark failed to submit any comments and submitted an untimely contested case hearing request on December 5, 2024. The hearing request deadline was December 4, 2024.

uses will be maintained. This review determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected.

The draft permit authorizes a discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.05 MGD.

The effluent limitations in the the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l total suspended solids (TSS), 3 mg/l NH₃-N, 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The permittee shall utilize an ultraviolet light (UV) system for disinfection purposes and shall not exceed a daily average *E. coli* limit of 126 CFU or MPN per 100 ml.

The draft permit includes a requirement for the permittee to provide nuisance odor prevention for the northern and western portions of the buffer zone not owned by the permittee in accordance with 30 TAC § 309.13(e)(2).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation. Sludge generated from the treatment facility will be hauled by a registered transporter to the City of Livingston Wastewater Treatment Facility, Permit No. WQ0010208001, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. 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.

III. PROCEDURAL BACKGROUND

TCEQ received the application for the proposed new permit on October 27, 2023, and declared it administratively complete on December 11, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Polk County Enterprise* on December 28, 2024. The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Polk County Enterprise* on July 4, 2024.

Requests for a public meeting were denied for lack of a substantial or significant degree public interest in the application pursuant to 30 TAC 55.154(c).

The comment period for this application closed on August 5, 2024. The hearing request period closed December 4, 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.²

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.³

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.⁴

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 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

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

³ 30 TAC § 55.209(e).

⁴ 30 TAC § 55.201(c).

- 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.⁵

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:
 - (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.

⁵ 30 TAC § 55.201(d).

- (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.”⁶ 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.⁷

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 Requestors Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

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

Richard H. Miller

Richard H. Miller submitted timely comments and a hearing request, which contained his name, address, and phone number pursuant to 30 TAC § 55.201(d). The address provided in Mr. Miller’s hearing request is approximately 180.26 miles away. However, Richard H. Miller is listed on the Adjacent Landowners (ALO) map and list submitted with the application as Adjacent Landowner number 5. Using the ALO map, the ED determined that Mr. Miller’s property is adjacent to the proposed WWTF and that the proposed discharge route runs through his property.

In his request, Richard H. Miller describes his concerns about the application and draft permit. These concerns range from general opposition to specific concerns related to the draft permit’s description of the discharge route, erosion, and drainage. The issue of the discharge route’s description falls within TCEQ’s jurisdiction as set forth in Chapter 26 of the Texas Water Code and is relevant and material to the Commission’s decision on the application.

⁶ 30 TAC § 50.115(b).

⁷ 30 TAC § 50.115(c).

Upon review of the hearing request, the requestor identifies a personal justiciable interest that could be affected by the draft permit in ways uncommon to the general public. This is based on his close proximity to the wastewater outfall, as well as the interest claimed, the accuracy of the discharge route as described in the notices.

Based on the issues raised in the request and the articulation of how his interests would be affected, Richard H. Miller has substantively complied with the requirements of 30 TAC §§ 55.201 & 203.

Therefore, the ED recommends that the Commission grant Richard H. Miller's hearing request.

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

Elizabeth Miller Grindstaff

Elizabeth Miller Grindstaff submitted timely comments and a hearing request which contained her name, address, and phone number, pursuant to 30 TAC § 55.201(d). According to the address she provided, her property is located approximately 127.41 miles from the wastewater treatment facility's outfall. In her request, she expressed concerns about the ability of local roads to handle increased traffic, negative impacts on private property, the accuracy of the location provided on the GIS website in public notices, the availability of the permit at the listed local library, the accuracy of the proposed discharge route's description and capacity, the effects on the Tricolored Bat, and the quality of the effluent.

Additionally, because Ms. Grindstaff's property interest is not located in proximity to the proposed facility or discharge point, the interests that she identified are not distinguishable from those of the general public.

Ms. Grindstaff also indicates that her family owns property adjacent to the facility.⁸ Ms. Grindstaff did not provide an adequate description of her family's property as required by 30 TAC § 55.201(d).

Therefore, the Executive Director recommends that Ms. Grindstaff has not demonstrated that she has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the members of the general public, and therefore, is not an affected person as set out in 30 TAC § 55.203.

Penny Clarke Evans on behalf of the Clarke family

Penny Clarke Evans submitted timely comments and a hearing request on behalf of the Clarke family.⁹ In Ms. Evans' comments and requests, she described her concerns about the facility and the potential impacts on water quality. She states that members of her family own property near the facility, but she did not provide a sufficient description that could be accurately mapped. Without a

⁸ Ms. Grindstaff never specifically states that she is submitting a hearing request "on behalf of" her family, nor does she provide any information about her family that would comply with 30 TAC § 55.201(d).

⁹ Her comment lists the members of the Clarke family, which are: Jesse Clarke, David Clarke, Josh Clarke, Jay Clarke, Jerry Clarke, and William Barnes.

description of the property that the Executive Director can evaluate, she has not complied with the requirement of 30 TAC 55.201(d)(1).

Additionally, Ms. Evans did not provide an address and phone number of any of her family members as required by 30 TAC § 55.201(d)(1).

For these reasons, the Executive Director recommends that the Commission deny her hearing request.

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

1. Whether the discharge route in the draft permit is adequately described, in accordance with the TSWQS in Chapter 307 of TCEQ's rules. (RTC Response 4)

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 discharge route is not properly described in the draft permit, 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

TCEQ did not receive any requests for reconsideration.

VII. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Robert H. Miller an affected person and deny all other hearing requests.
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 persons as identified by the Executive Director:
 - Issue A) Whether the discharge route in the draft permit is adequately described, in accordance with the TSWQS in Chapter 307 of TCEQ's rules.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

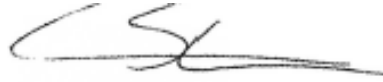


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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on February 14, 2025, the “Executive Director’s Response to Hearing Request” for TPDES Permit WQ0016436001 for The Oasis of Texas LP 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.



Caleb Shook
Staff Attorney
Environmental Law Division

MAILING LIST
The Oasis of Texas LP
TCEQ Docket No. 2025-0079-MWD; Permit No. WQ0016436001

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Attachment A

THE OASIS OF TEXAS LP

TPDES Permit No. WQ0016436001

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



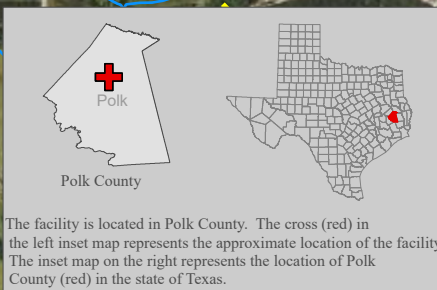
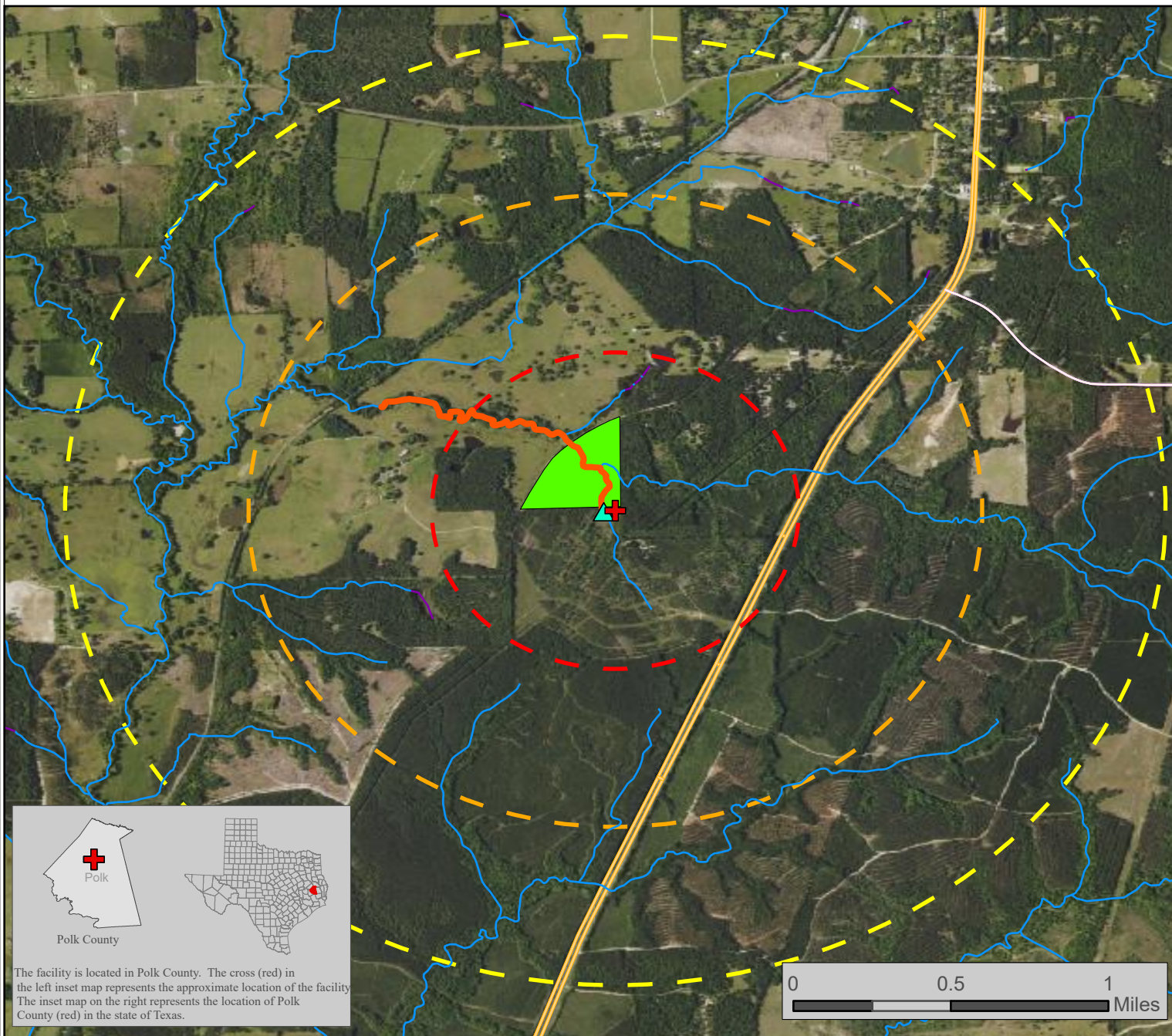
*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/6/2025
CRF 0115407
Cartographer: RKukushk

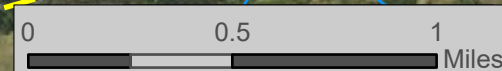
- Facility Point
- Proposed Outfall
- 1 mile Discharge
- Robert Miller Property
- Stream/River
- Artificial Path
- 0.5 miles from Facility
- 1 mile
- 1.5 miles
- Highway
- Intermediate Roads

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 Polk County. The cross (red) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Polk County (red) in the state of Texas.



THE OASIS OF TEXAS LP







TPDES Permit No. WQ0016436001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

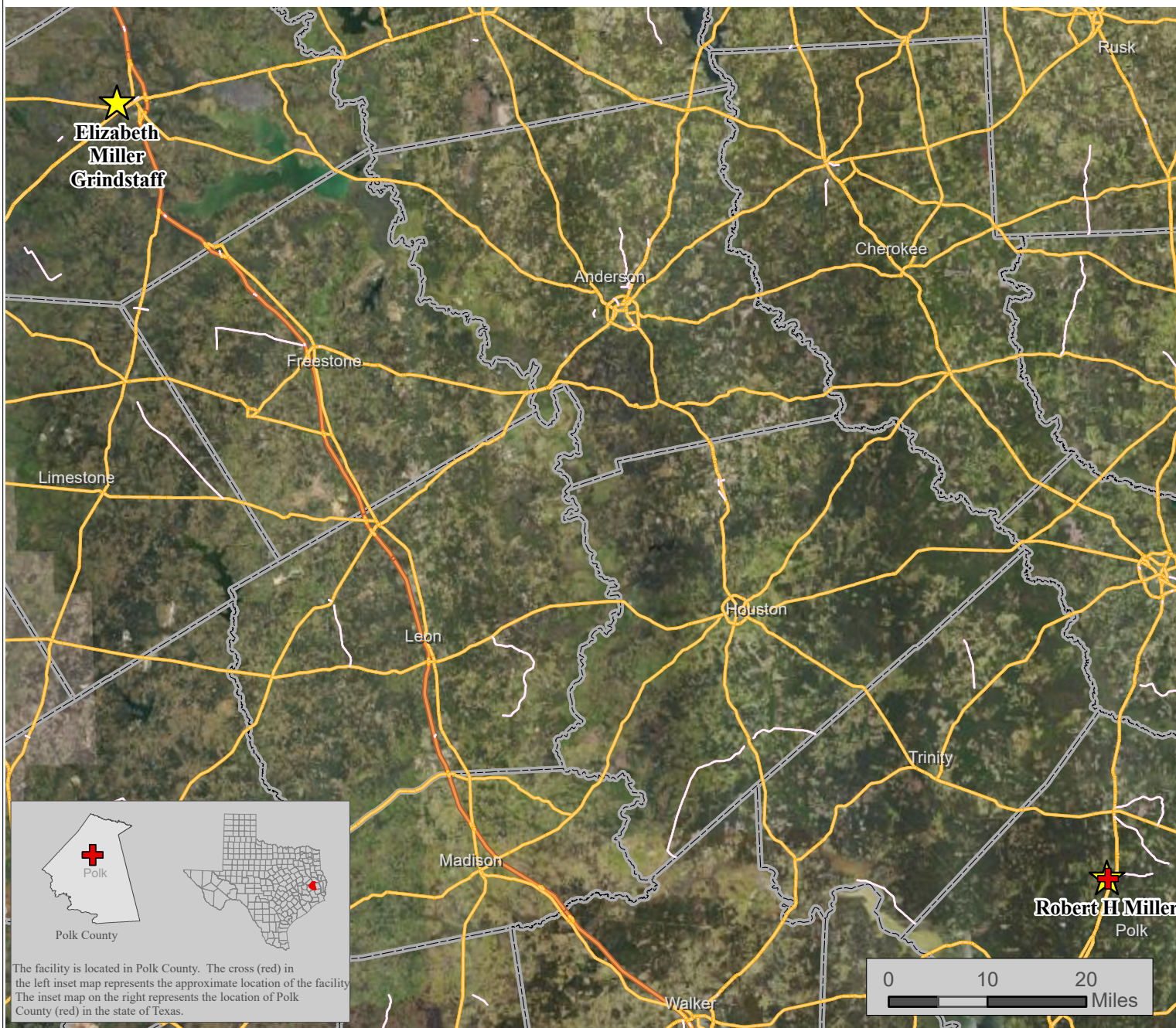
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/6/2025
CRF 0115407
Cartographer: RKukushk

-  Requestors
-  Facility Point
-  Interstate
-  Highway
-  Intermediate Roads
-  County Boundary

Elizabeth Miller Grindstaff is 127.41 miles from the Proposed Outfall and 127.44 miles from the Facility.
Robert H Miller is 0.11 miles from the Proposed Outfall and 0.13 miles from the Facility.

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.

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