

DOCKET NO. 2025-0698-MWD

APPLICATION BY
RAINBOW'S END PARK, INC.
FOR NEW TPDES PERMIT
NO. WQ0016513001

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BEFORE THE
TEXAS COMMISSION ON
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 Rainbow's End Park, Inc. (Applicant) seeking a new TPDES Permit Number WQ0016513001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Larry Redden.

Attached for Commission consideration is a satellite map¹ of the area.

II. Description of Facility

Rainbow's End Park, Inc. applied to TCEQ for a new permit, TPDES Permit No. WQ0016513001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The Applicant proposes to operate Rainbow's End Wastewater Treatment Plant (WWTP) to serve Escapees RV Club/RV Park.

The Rainbow's End WWTP is a submerged fixed bed biofilm reactor (SFBBR) packaged plant. Treatment units in the Interim phase will include an influent fine screen, an influent pump, an aeration tank, a tube settler final settling tank, a sludge holding tank, and a chlorine contact tank. Treatment units in the Final phase will include two influent fine screens, two influent pumps, two aeration tanks, two tube settler final settling tanks, two sludge holding tanks, and two chlorine contact tanks. The facility has not been constructed.

If the draft permit is issued, the treated effluent will be discharged to a roadside ditch, thence to an unnamed tributary, thence to Copeland Creek, thence to Trinity River Below Lake Livingston in Segment No. 0802 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life for the roadside ditch, the unnamed tributary, and Copeland Creek. The designated uses for Segment No. 0802 are primary contact recreation, public water supply, and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

¹ The requestor's location on the ED's map is the location of the physical address provided by the requestor in the hearing request.

III. Procedural Background

The permit application was received on March 29, 2024, and declared administratively complete on May 3, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on May 16, 2024, in the *Polk County Enterprise*. A combined NORI and Notice of Application and Preliminary Decision (NAPD) was published on October 6, 2024, in the *Polk County Enterprise*. The public comment period ended November 5, 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. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

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

A. Response to Requests

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

Responses to hearing requests must specifically address:

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

30 TAC § 55.209(c).

B. Hearing Request Requirements

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

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

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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

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

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

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

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

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

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

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

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

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

30 TAC § 55.203.

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

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

- the analysis and opinions of the Executive Director; and

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

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

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

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

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

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

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Request Complied with Section 55.201(c) and (d).

Larry Redden submitted a hearing request. The hearing request was timely in compliance with section 55.201(c). Mr. Redden included his name, address, and telephone number in his hearing request. Additionally, he identified personal justiciable interests affected by the application, demonstrating how he believes he is affected in a manner not common to the general public.

The Executive Director concludes that Larry Redden submitted a hearing request that complies with 30 TAC § 55.201(c) and (d).

B. Whether the Requestor Meets the Affected Person Requirements

The location of the address provided by Mr. Redden is 0.7 miles from the facility. He is also listed on the adjacent landowner's list submitted by the Applicant with the application. Mr. Redden's property appears on the adjacent landowner map as #22, which shows that the discharge route crosses his property. Mr. Redden raised concerns during the comment period regarding human health, environmental impacts, surface water quality, negative impact on habitat and wildlife (eagles, deer, birds, migratory waterfowl, squirrels, rabbits, frogs, turtles, alligators), aquatic life, and livestock, wastewater system failure during heavy rainfall events, negative impact to his property and property value, and negative impact to his water well. Due to the proximity of Mr. Redden's property relative to the proposed facility and discharge route, and the issues raised, Larry Redden has demonstrated that he is affected in a manner not common to the general public and is an affected person.

The Executive Director recommends the Commission find that Larry Redden is an affected person.

C. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The following issues were raised during the public comment period:

1. Whether the draft permit is adequately protective of human health and safety in accordance with applicable regulations including the Texas Surface Water Quality Standards (RTC Response No. 2).

The issue involves a disputed mixed question of fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not adequately address human health and safety, 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 will be protective of surface water quality in accordance with the Texas Surface Water Quality Standards and protective of groundwater in the area (RTC Response Nos. 4-5).

The issue involves a disputed mixed question of fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not be protective of surface water and groundwater, 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 wildlife and livestock in the immediate vicinity of the proposed facility and discharge route. (RTC Response No. 6).

The issue involves a disputed mixed question of fact and law, was raised during the comment period, was not withdrawn, was raised by an individual who the ED recommends is affected, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit will not be protective of wildlife and livestock, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

VI. 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.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Larry Redden is an affected person and grant his hearing request.

Refer the following issues to SOAH:

Issue 1. Whether the draft permit is adequately protective of human health and safety in accordance with applicable regulations including the Texas Surface Water Quality Standards.

Issue 2. Whether the draft permit will be protective of surface water quality in accordance with the Texas Surface Water Quality Standards and protective of groundwater in the area.

Issue 3. Whether the draft permit is protective of wildlife and livestock in the immediate vicinity of the proposed facility and discharge route.


Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

MAILING LIST
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TCEQ Docket No. 2025-0698-MWD; TPDES Permit No. WQ0016513001

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REQUESTER(S)

Larry Redden
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Attachment A

Rainbow's End Park, Inc. TPDES Permit No. WQ0016513001

Rainbow's End WWTP

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: 5/8/2025
CRF 0119975
Cartographer: mattoh

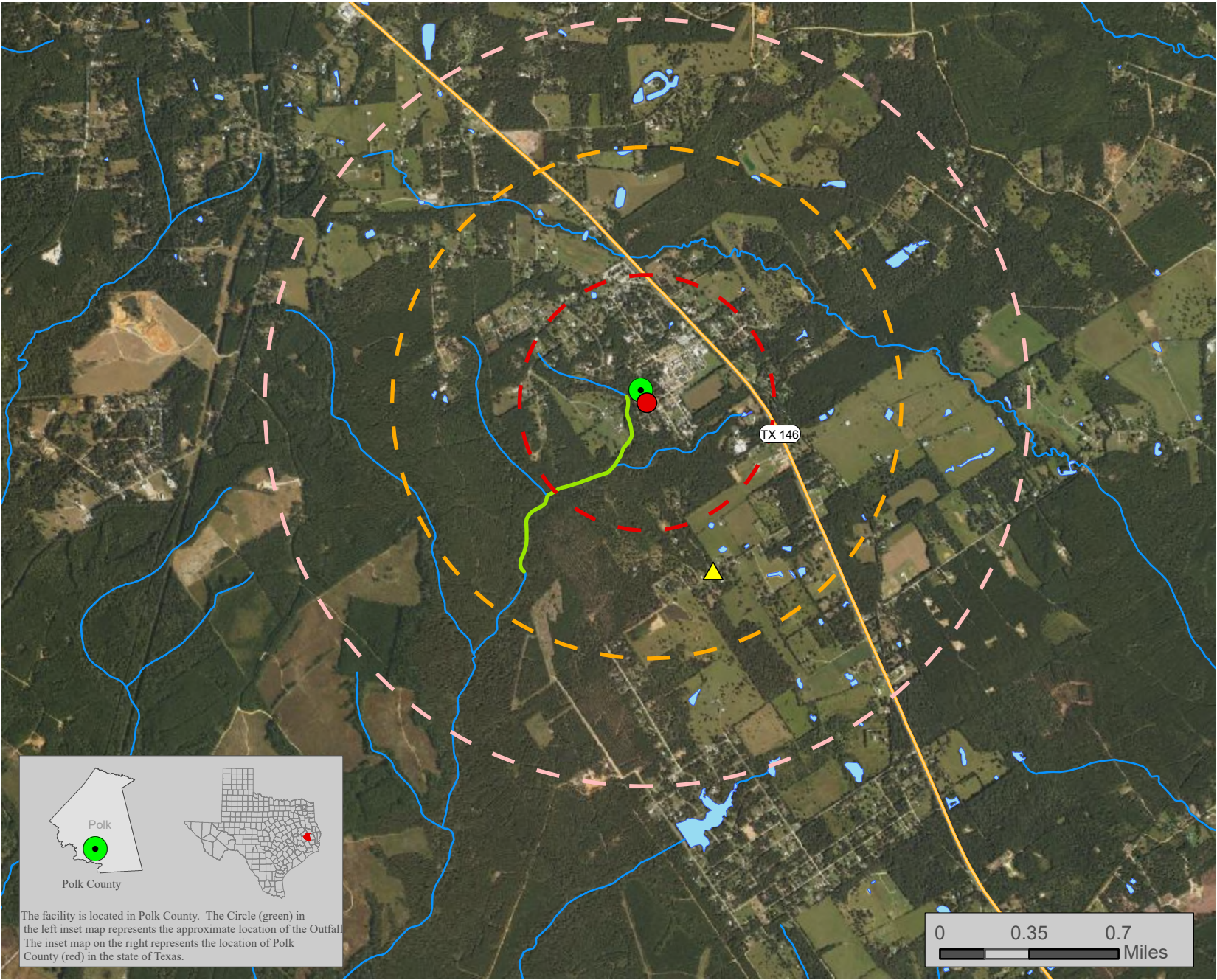


- Outfall 001
- Facility Point
- Larry Redden
- 0.5-Mile Radius From Facility Point
- 1.0-Mile Radius From Facility Point
- 1.5-Mile Radius From Facility Point
- 1.0-Mile Discharge Route

**Distance From Requestor
To Facility Point:**
Larry Redden: 0.70 Miles

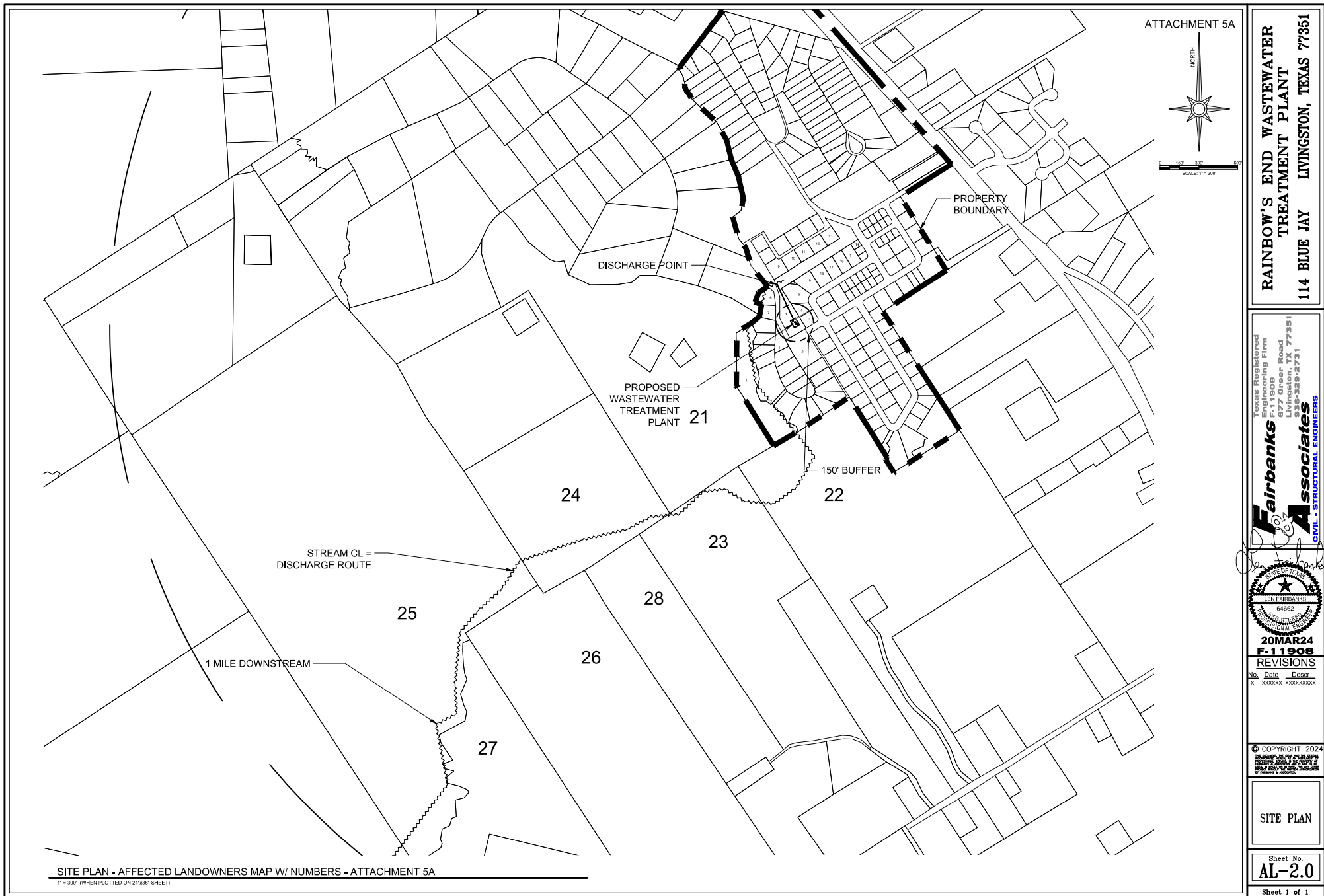
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

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.

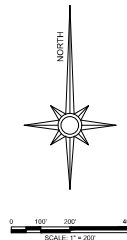


The facility is located in Polk County. The Circle (green) in the left inset map represents the approximate location of the Outfall. The inset map on the right represents the location of Polk County (red) in the state of Texas.

Attachment B

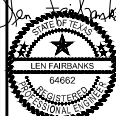


ATTACHMENT 5B



**RAINBOW'S END WASTEWATER
TREATMENT PLANT**
114 BLUE JAY LIVINGSTON, TEXAS 77351

Texas Registered
Professional Engineering Firm
Fairbanks & Associates
677 Greer Road
Livingston, TX 77351
832-329-2731
CIVIL - STRUCTURAL ENGINEERS



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REVISIONS**

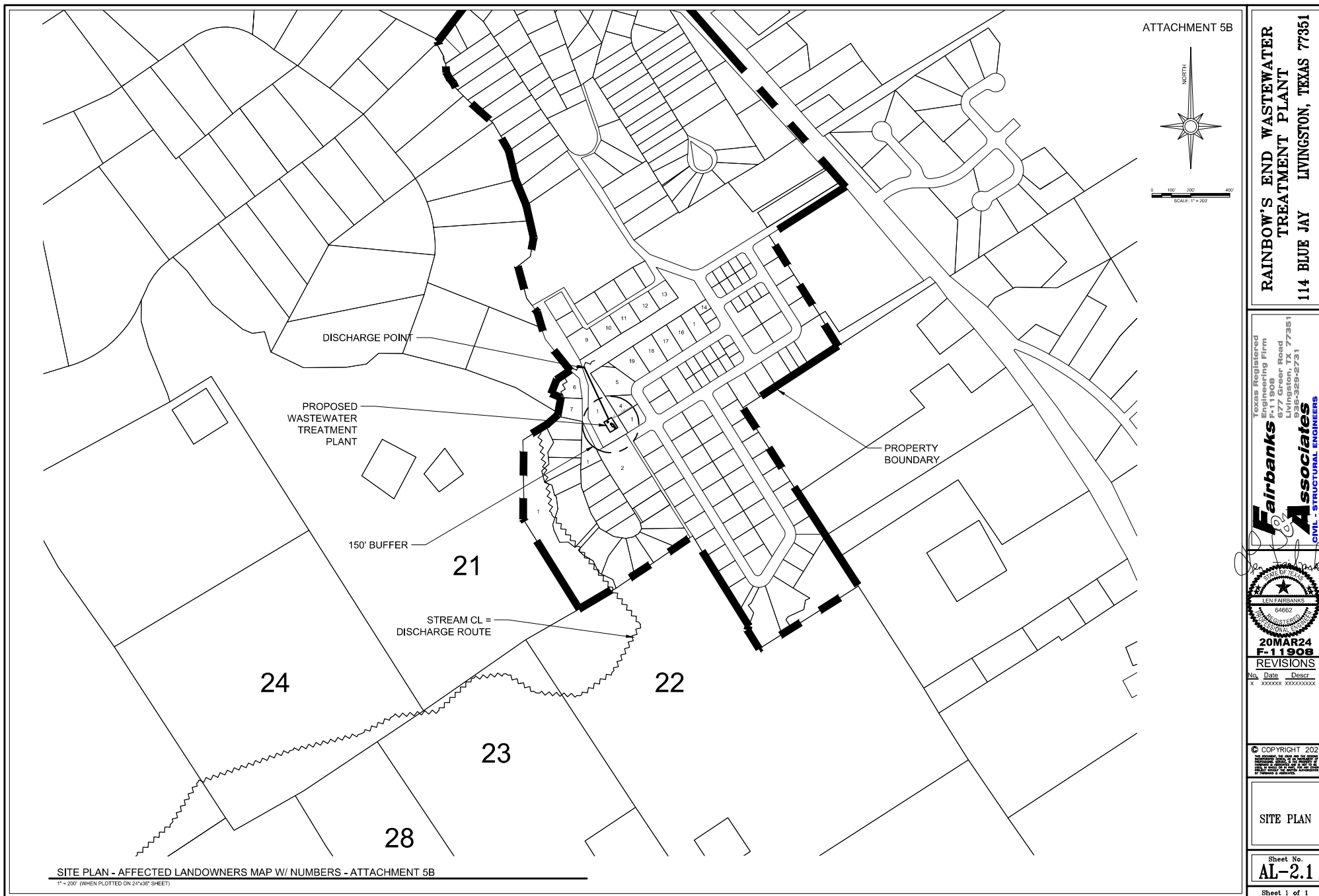
No.	Date	Descr
1	XXXXXX	XXXXXXXXXX

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SITE PLAN

Sheet No.
AL-2.1

Sheet 1 of 1



SITE PLAN - AFFECTED LANDOWNERS MAP W/ NUMBERS - ATTACHMENT 5B

1" = 200' (WHEN PLOTTED ON 24"x36" SHEET)