



**THE
LEGISLATURE
FINDS &
DECLARES ...**



**WHAT'S THE
PROBLEM?**



**HOG WILD 2023
GOVERNMENT
SEMINAR**



NEXT STEPS

**THE REGIONALIZATION
RING TOSS**

MARIS M. CHAMBERS

**POLICY
IMPLEMENTATION
BY TCEQ**



QUESTIONS?



**WHAT'S
REGIONALIZATION?**



WHAT'S REGIONALIZATION?

(And why is a ring toss?)



According to TCEQ:

- **Wastewater regionalization** is the administrative or physical combination of two or more wastewater systems for improved planning operation or management; and

-<https://www.tceq.texas.gov/permitting/wastewater/tceq-regionalization-for-wastewater>

- **Water regionalization** promotes affordable, long-term supplies of safe, quality drinking water by consolidating public water system resources into larger service providers for areas or regions.

- TCEQ Regulatory Guidance 551

Ways to Regionalize:

1. "Large-Scale Regionalization"

A system or systems capable of providing service to a large part of the population over a broad geographic area.

2. "Small-Scale Regionalization"

Systems lying outside the service area of a larger regional system forming an areawide system.

3. "Simple Regionalization"

Requesting service and connecting to a viable neighboring system.

- TCEQ Regulatory Guidance 551

"It is the policy of this state . . .

to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state;

and to require the use of all reasonable methods to implement this policy."

- Texas Water Code § 26.003

"The legislature finds and declares . . .

it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems . . . to prevent pollution and maintain and enhance the quality of the water in the state."

- Texas Water Code § 26.081

"... it being an objective of the policy ...

to **avoid the economic burden** to the people **and the impact on the quality of the water** in the state **that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities** to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided."

- Texas Water Code § 49.230

"TCEQ is . . .

(1) **"required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems . . . to prevent pollution and maintain and enhance the quality of the water in the state;"** and

(2) **"charged with the responsibility of determining the need for a permit;"** so

(3) **"in implementing regionalization, the permittee will be required to provide additional information to justify the [proposed] flow[s]."**

- TCEQ-10053ins (October 31, 2022)

For Municipally Incorporated Areas:

If a **TPDES applicant is not a city**, the **application instructions require** that such applicant "indicate if any portion of the proposed service area is located in an incorporated city."

If so, **the applicant must** identify the city and "**provide correspondence from the city concerning service for the proposed wastewater treatment facility**" (e.g., city consent or denial to provide service).

If **consent to provide service is available** from the city, the **applicant must "provide justification and a cost analysis of expenditures** that shows the cost of connecting to the city versus the cost of the proposed facility or expansion."

- TCEQ-10053ins (October 31, 2022)

For Utility CCN Areas:

TPDES applicants must "[i]ndicate if **any portion** of the proposed service area is inside another utility's sewer [CCN] area."

If so, the applicant must "provide justification and a cost analysis of expenditures that shows the cost of connecting to the CCN facilities versus the cost of the proposed facility or expansion."

- TCEQ-10053ins (October 31, 2022)

For Nearby Wastewater Treatment Facilities or Collection Systems:

"If there are **any** permitted domestic wastewater treatment facilities or sanitary sewer collection systems located within a **three-mile radius of the proposed wastewater treatment facility**," TPDES applicants must:

(1) "Identify these facilities on an area map;"

(2) "Provide copies of [the applicant's] **certified letters to these facilities**;" and

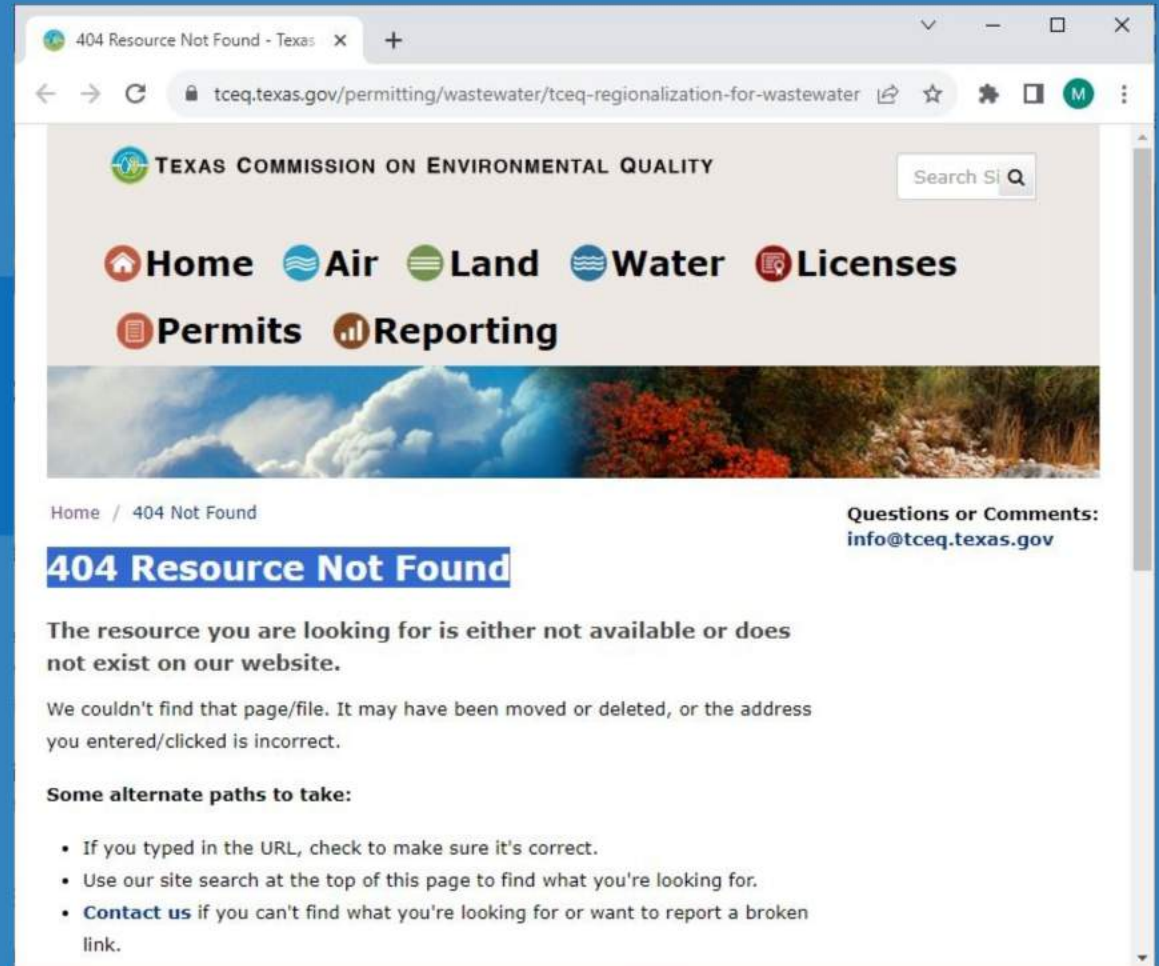
(3) Provide copies of "**response letters** concerning providing wastewater service for the proposed service area."

"If any of these **facilities agree to provide service**," the application instructions further require the applicant to "**provide justification and a cost analysis of expenditures** that shows the cost of connecting to these facilities versus the cost of the proposed facility or expansion."

- TCEQ-10053ins (October 31, 2022)

So, what's the problem?

TCEQ Implementation and Informal Guidance:



The screenshot shows a web browser window with the address bar displaying `tceq.texas.gov/permitting/wastewater/tceq-regionalization-for-wastewater`. The page header includes the TCEQ logo and the text "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY". A search bar is located in the top right corner. The main navigation menu consists of icons and text for "Home", "Air", "Land", "Water", "Licenses", "Permits", and "Reporting". Below the navigation is a banner image of a landscape with blue sky and clouds on the left, and red flowers and greenery on the right. The breadcrumb trail reads "Home / 404 Not Found". The main heading is "404 Resource Not Found" in a blue box. The body text explains the error: "The resource you are looking for is either not available or does not exist on our website. We couldn't find that page/file. It may have been moved or deleted, or the address you entered/clicked is incorrect." A section titled "Some alternate paths to take:" provides three bullet points: "If you typed in the URL, check to make sure it's correct.", "Use our site search at the top of this page to find what you're looking for.", and "Contact us if you can't find what you're looking for or want to report a broken link." In the top right corner, there is a link for "Questions or Comments: info@tceq.texas.gov".

404 Resource Not Found - Texas

tceq.texas.gov/permitting/wastewater/tceq-regionalization-for-wastewater

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Search Site

Home Air Land Water Licenses

Permits Reporting

Home / 404 Not Found

Questions or Comments: info@tceq.texas.gov

404 Resource Not Found

The resource you are looking for is either not available or does not exist on our website.

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Some alternate paths to take:

- If you typed in the URL, check to make sure it's correct.
- Use our site search at the top of this page to find what you're looking for.
- **Contact us** if you can't find what you're looking for or want to report a broken link.

When does TCEQ assess for wastewater regionalization?

TCEQ will assess for the need and availability of regionalization for wastewater during the permitting process. The presence of a wastewater treatment facility or wastewater collection system within three miles of a proposed new wastewater treatment facility or the expansion of an existing facility is not an automatic basis to deny an application or to compel an applicant to connect to an existing facility.

TCEQ may approve new, renewal, and major amendment applications for discharges of wastewater in any of the following situations where:

- There is no wastewater treatment facility or collection system within three miles of the proposed facility.
- The applicant requested service from wastewater treatment facilities within the 3 miles, and the request was denied.
- The applicant can successfully demonstrate that an exception to regionalization should be granted based on costs, affordable rates, and/or other relevant factors.
- The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.

How has TCEQ decided on wastewater regionalization in the past?

TCEQ has not denied any wastewater permit actions based solely on regionalization, and the agency supports new applicants and existing facilities productively working together to provide quality and cost-effective service. The following concerns related to regionalization were raised during previous wastewater permit actions and subsequent legal proceedings:

- lack of timely and cost-efficient wastewater services within the surrounding area
- lack of detailed cost analysis and comparison
- lack of thorough communication with existing facilities within a three-mile radius
- discharges within the Cibolo Creek Watershed per Title 30 , Texas Administrative Code (30 TAC), Section 351.65

TCEQ has previously included agreed language between the applicant and protestants in the "Other Requirements" section of the proposed permit that contains requirements about future coordination if the existing wastewater provider is able to provide service to proposed area.

Compare:

Texas' Regionalization Policy

"It is the policy of this state . . . to encourage and promote the development and use of regional and areawide . . . systems . . . and to require the use of all reasonable methods to implement this policy."

- Texas Water Code § 26.003

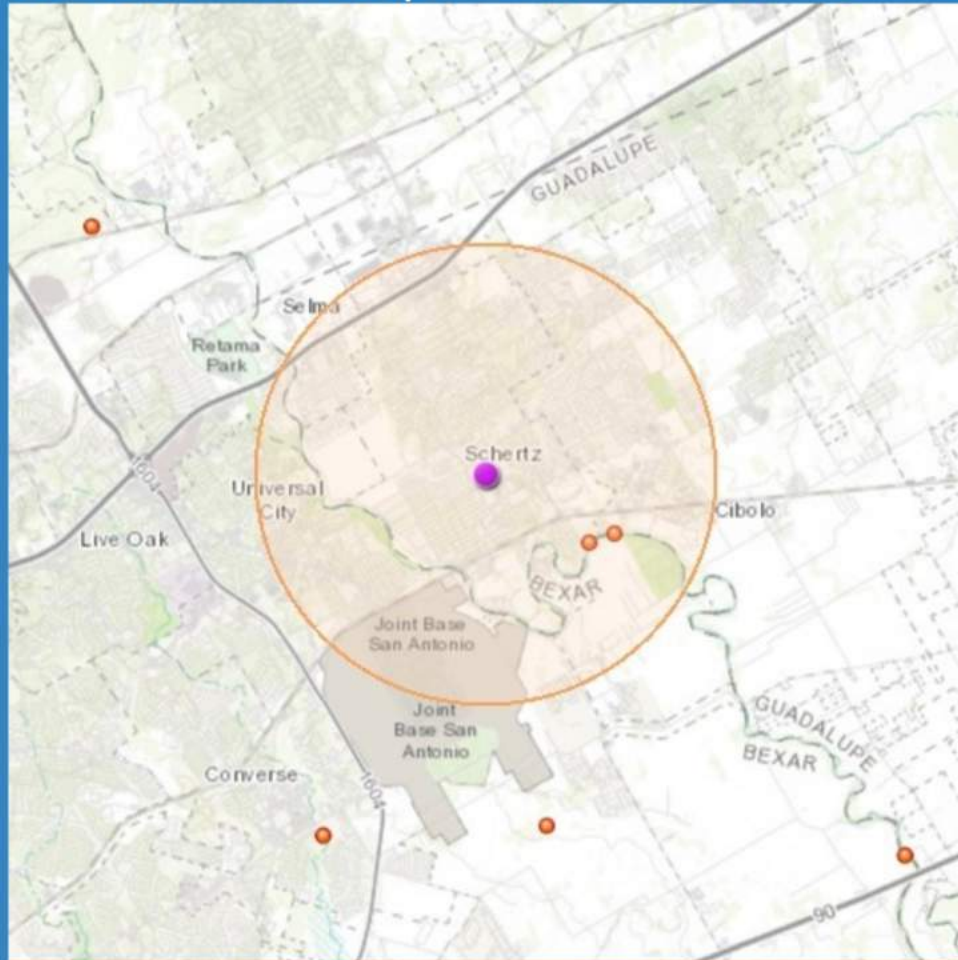
With:

TCEQ's Implementation

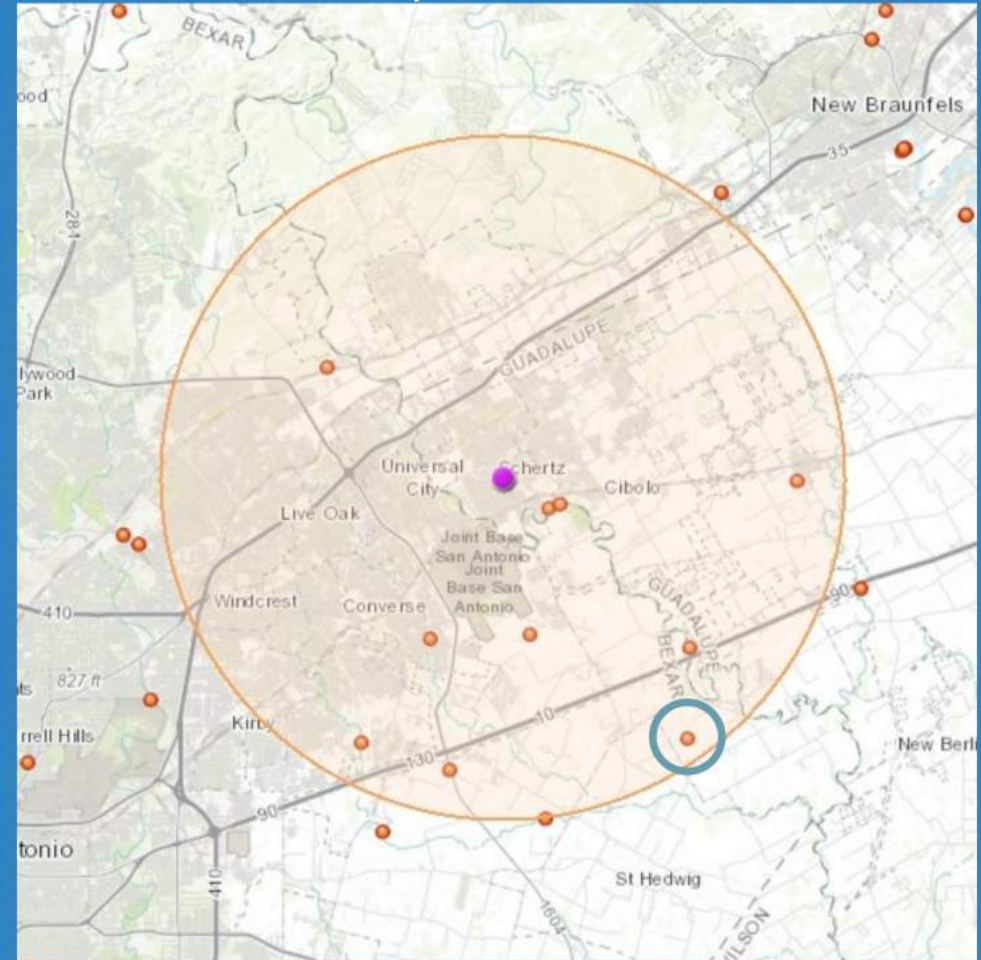
"TCEQ has not denied any wastewater permit actions based solely on regionalization."

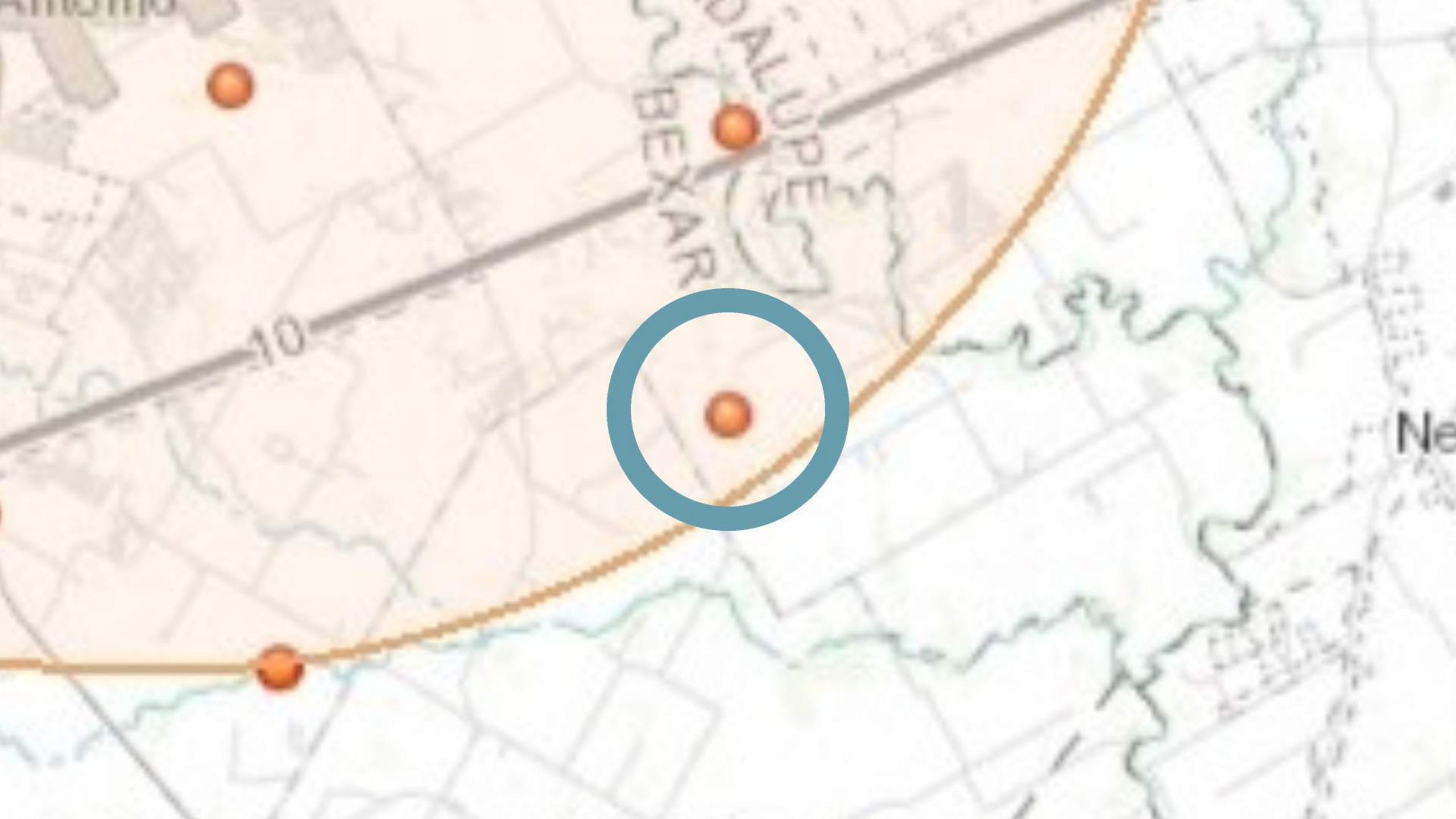
Outcome:

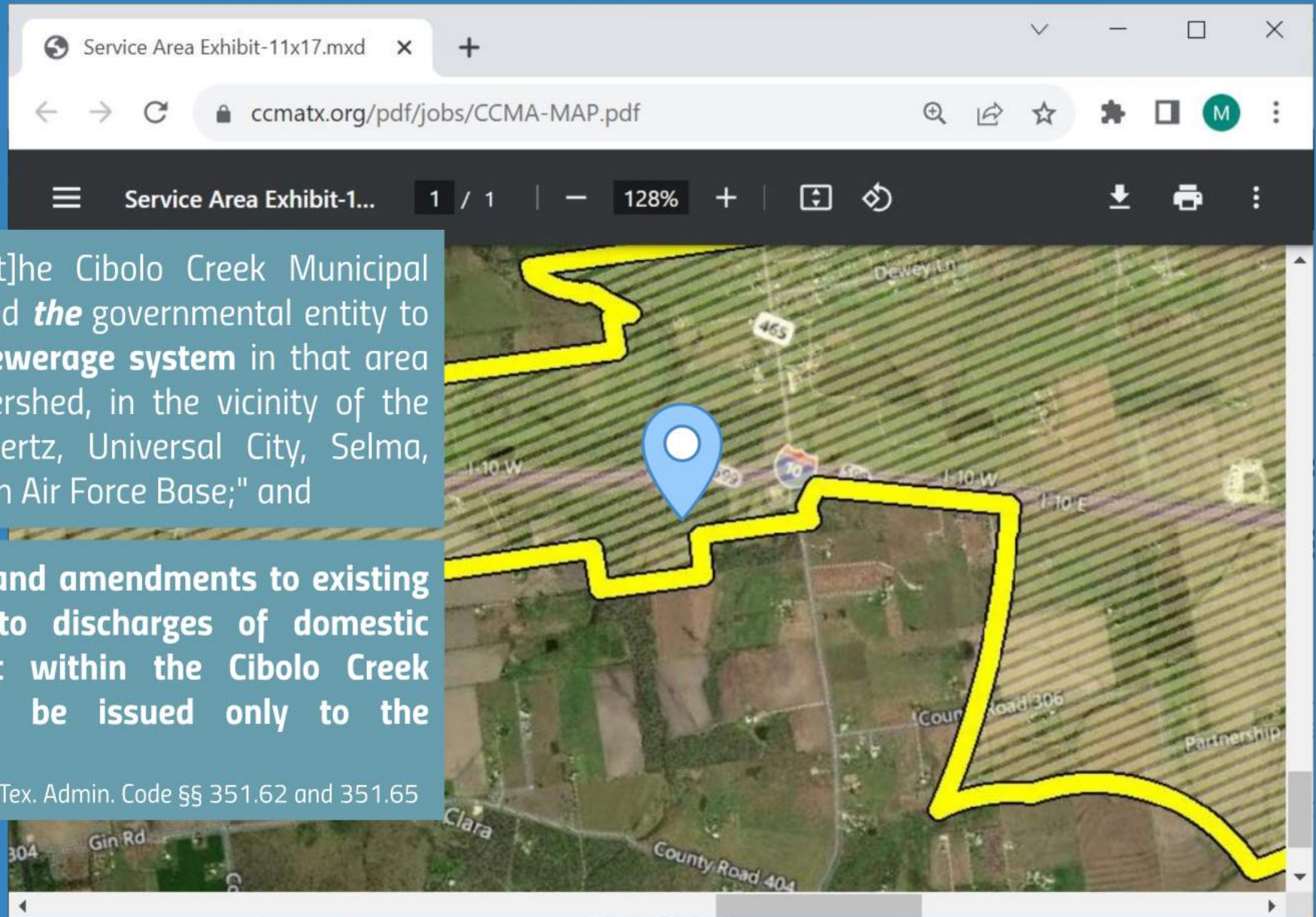
Wastewater Outfalls Within 3 Miles



Wastewater Outfalls Within 10 Miles







Per TCEQ's rules, "[t]he Cibolo Creek Municipal Authority is designated **the** governmental entity to develop a **regional sewerage system** in that area of Cibolo Creek Watershed, in the vicinity of the cities of Cibolo, Schertz, Universal City, Selma, Bracken, and Randolph Air Force Base;" and

"[a]ll future permits and amendments to existing permits pertaining to discharges of domestic wastewater effluent within the Cibolo Creek regional area shall be issued only to the authority."

- 30 Tex. Admin. Code §§ 351.62 and 351.65

What to do?

- Lobby.

- Carefully and quickly respond to letters concerning proposed TPDES applications and requests for service.

- Monitor public notices for pending TPDES applications, and, as necessary, protest such application(s) at TCEQ.

What to do?

- Monitor public notices for pending CCN applications, and intervene in any relevant proceedings at PUC.

"When applying for a new CCN or a CCN amendment for an **area that would require construction of a physically separate water or sewer system**, the applicant **must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible;**" and

"In considering whether to grant or amend a CCN, **[PUC] will also consider . . . the effect of granting or amending a CCN . . . on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area.** These effects include but are not limited to **regionalization . . .**"

-16 Tex. Admin. Code §§ 24.227(b) and (e)(3)



REMINDER: municipalities have a number of statutory interests supporting their standing to protest proposed discharges in their jurisdictions:

Tex. Loc. Gov't Code § 212.003(a) (relating to the ability of a municipality to adopt **rules governing plats and subdivisions** of land within its corporate boundaries and ETJ, including rules related to the provision of sewer service to platted areas, in order to promote the healthful development of the city and public health, safety, and general welfare);

Tex. Loc. Gov't Code § 214.013 ("A municipality may . . . require property owners to connect to [its] sewer system.");

Tex. Loc. Gov't Code § 552.001 ("**A municipality may [(1)] purchase, construct, or operate a utility system, including a sewer system, inside or outside the municipal boundaries;**" (2) "regulate the system in a manner that protects the interests of the municipality;" (3) "extend the lines of its utility systems outside the municipal boundaries;" (4) "sell . . . sewer . . . service to any person outside its boundaries;" (5) "prescribe the kind of . . . sewer pipes . . . that may be used inside or outside the municipality; and (6) "inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them.");

Tex. Loc. Gov't Code § 552.002(b) ("A home-rule municipality may buy, own, construct inside or outside the municipal limits, and maintain and operate a plant.").

What to do?

- Maintain detailed utility service policies.

Municipalities and other political subdivisions "**shall** serve each qualified service applicant within its certificated area," **but "a qualified service applicant" must meet "all . . . requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service[,]** including the delivery to the retail public utility of any service connection inspection certificates required by law."

-16 Tex. Admin. Code § 24.161(a)

A municipality "may not serve or connect any land with water, sewer, . . . or other utility service unless [it] has been presented with or otherwise holds a certificate . . . issued under Section 212.0115," evidencing review and approval of the associated plat.

-Tex. Loc. Gov't Code § 212.012

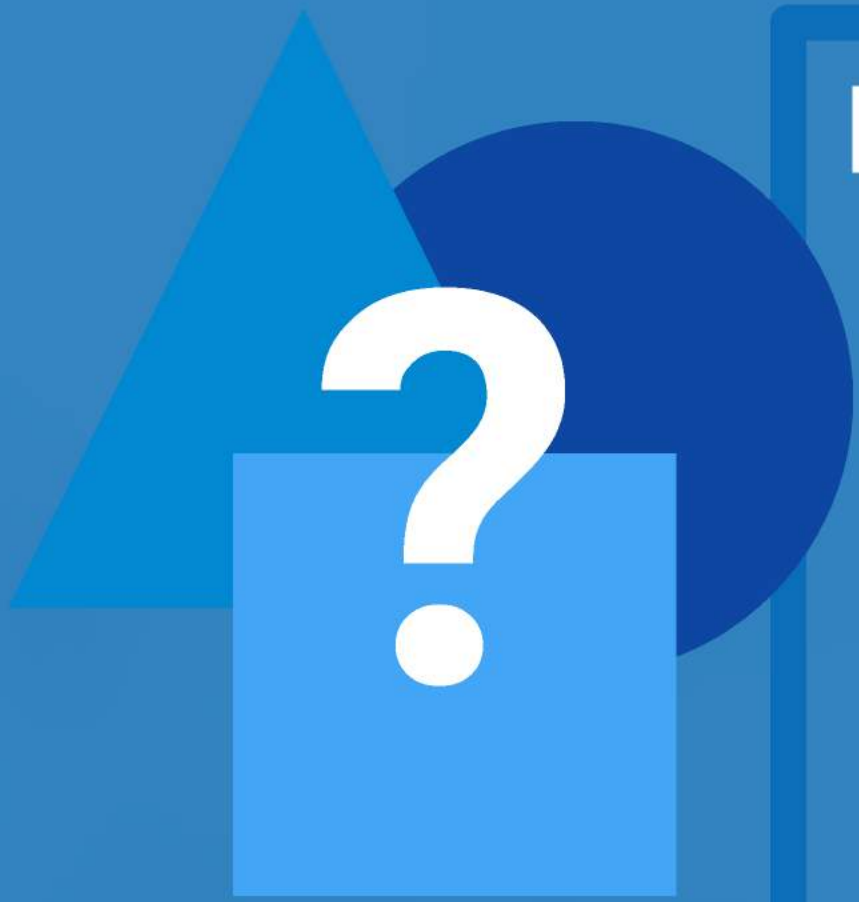
And when things go wrong . . .

- Go public, and/or



- Lawyer up!





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<https://www.spencerfane.com/>



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