

**APPLICATION BY
US ECOLOGY TEXAS, INC. FOR
10-YEAR RENEWAL AND MAJOR
AMENDMENT OF
IHW PERMIT NO. 50052**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**Executive Director's Response to Requests for Reconsideration and Requests
for a Contested Case Hearing**

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Requests and Request for Reconsideration (Response) on the application of US Ecology Texas, Inc. (Applicant) for a 10-year renewal and major amendment to IHW Permit No. 50052.

The TCEQ Office of the Chief Clerk received requests for a contested case hearing from the following individuals: Kenneth Ahlrich, Virginia Ahlrich, Roberto Alaniz, Rev. Dale Brynestad, Jennifer Borrer, Devereaux Brewer, Gonzalo Caballero, Johnny Calderon Jr., Maria Calderon, Belinda P Castro, Danny Castro, Esmeralda Castro, Gilbert Castro, Javier Castro, Lucia Castro, Melissa Castro, Najaly K. Castro, Teodoro Castro, Luis R. Garcia, Alex Gaza, Carlos P. Giron Jr., Hilda Giron, William M. Gwynn, Eugene Helpert, Mary Helpert, Michele Helpert, Charlie B. Jones Jr., Russell Jungmann, Dewey Lawhon, Elibardo Leal, Maria N. Leal, Marq Lopez, Noe Lopez, Janie Medina, Danny Mallett, Jolynn Mallett, Grace Martinez, Joe Martinez, Bianca Marquez, Morris Michalk, Johnny Moffett, Melton Perez, Maria E. Pesina, Daniel T. Rodriguez III, Norma T Rodriguez, Domingo Rosales Sr., Ronaldo Rosas, Alex C. Rubio, Diane Rubio, Marie P. Sanders, William R. Schneider, Jr., Marolyn Schneider, George Silguero, Maria Angelita Silguero, Esther Svehla, Filiberto Tagle, Mary Tagle, Chrissy A. Tamez, Nikole Tamez, Wanza Treybig, Michael Winters, Gavino D. Ybarra and Monica Ybarra.

The Office of the Chief Clerk received a request for a contested case hearing from one organization Clean Economy Coalition filed by Gerald A. Sansing.

The Office of the Chief Clerk received a request for reconsideration from Clean Economy Coalition filed by Gerald A. Sansing.

Attached for Commission consideration are the following:

- Attachment A – GIS Map, generated by the Executive Director from information contained in the Application and in the Requests for Contested Hearing, depicting the approximate facility boundary and the approximate locations of the requestor's residences ;
- Attachment B – Adjacent and Affected Land Owner's Map and List from Part B of the Application [Map is provides for demonstrative purposes only and is reproduced not at scale];
- Attachment C – The Applicant's Compliance History Summaries for two five-year periods ending October 19, 2011 and July 19, 2012;
- Attachment D – Technical Summary and Executive Director's Preliminary Decision;
- Attachment E – Executive Director's Response to Public Comment; and
- Attachment F – Final Draft Permit No 50052.

II. Description of the Facility

US Ecology Texas, Inc., operates a commercial hazardous and non-hazardous industrial solid waste management facility, which is authorized to accept waste from off-site sources on a commercial basis for storage, processing and disposal. The facility is located on a 240-acre tract of land on Petronila Road, County Road 69, approximately 3.5 miles south of Robstown, Texas, in Nueces County, Texas 78380. The facility is in the drainage area of Segment 2492 of the Nueces-Rio Grande River Basin, North Latitude 27° 43' 43", West Longitude 97° 39' 28". The Application requests a 10-year renewal of Permit No. 50052 which presently authorizes commercial acceptance, treatment, storage and disposal of hazardous waste and Class 1, Class 2, and Class 3 non-hazardous industrial solid waste in the following regulated waste management units: container storage areas, stabilization buildings containing mixing tanks, tanks, and landfill cells. Additionally, the Application requests changes and revisions to the permit including updating and correcting inconsistencies in the permit and application. Specifically, the Application requests changes to: the Personnel Training Plan; the Security Plan; the Inspection Plan, including the Example Inspection Forms and Schedule; the Contingency Plan; the Waste Analysis Plan and Tables; and the Construction Quality Assurance Plan. Additionally, the Application proposes to add a new facility entrance on the western side of the facility, to add a new Landfill Operations Plan, to increase the storage capacity of permitted Uncovered Waste Storage Areas, Permit Unit No. 9, to a maximum of 4,000 cubic yards and to delete Section

IX.A, Special Permit Condition, which prohibits operation of heavy machinery and bright lights between the hours of 7:00 a.m. to 8:00 p.m. with enumerated exceptions.

Additionally, the Application requests a 10-year renewal of and major amendment to Compliance Plan No. 50057. The facility Compliance Plan is issued as part of the permit document and requires and authorizes the Applicant to monitor the concentration of hazardous constituents in groundwater and remediate groundwater quality to specified standards. The Application requests revisions to the Compliance Plan for the purpose of updating and correcting inconsistencies in the compliance plan and application. Specifically, the Application proposes to consolidate regulated units, subject to the requirements under Texas Administrative Code (Tex. Admin. Code) 335.166, and non-regulated units, subject to the requirements under 30 Tex. Admin. Code 335.167, under one Landfill Waste Management Area.

III. Procedural Background

The Application was received on June 5, 2009, and declared administratively complete on July 29, 2009. The Notice of Receipt of Application and Intent to Obtain Permit/Compliance Plan Renewal and a Major Amendment was published on August 25, 2009 in the *Corpus Christi Caller-Times*, Nueces County, Texas. TCEQ held a public meeting on the Application on August 25, 2011. The Executive Director completed the technical review of the Application and issued a preliminary decision and a draft permit on November 9, 2011. The Notice of Application and Preliminary Decision was published in the *Corpus Christi Caller-Times* on December 13, 2011. The Notice of Application and Preliminary Decision was published in Spanish in *Tejano Y Grupero News* on December 15, 2011. The public comment period for the Application closed on January 30, 2012. The period for filing a Request for Reconsideration or Contested Case Hearing ended on September 4, 2012.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999. House Bill 801 established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The Commission implemented House Bill 801 by adopting procedural rules in 30 Tex. Admin. Code, Chapters 39, 50, and 55. The Application was declared administratively complete on July 29, 2009; therefore it is subject to the procedural requirement of HB 801.

A. The Request

A request for a contested case hearing must meet the requirements of 30 Tex. Admin. Code § 55.201. A request for a contested case hearing must be in writing, must be timely filed with the chief clerk and may not be based on an issue that was 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 in accordance with 30 Tex. Admin. Code § 55.201 (a) and (c).

A request for a contested case hearing must substantially comply with the requirements of 30 Tex. Admin. Code § 55.201 (d). A Request must give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request and if 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 in accordance with 30 Tex. Admin. Code § 55.201 (d)(1).

A request for a contested case hearing must 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 matter not common to members of the general public in accordance with 30 Tex. Admin. Code § 55.201 (d)(2).

A request for a contested case hearing must request a contested case hearing in accordance with 30 Tex. Admin. Code § 55.201 (d)(3).

A request for a contested case hearing must 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 in accordance with 30 Tex. Admin. Code § 55.201 (d)(4).

A request for a contested case hearing by a group or an association must comply with 30 Tex. Admin. Code § 55.205 (a). One or more members of the group or association must have standing to request a hearing in their own right, the interests the group seeks to protect must be germane to the organization's purpose and neither the claim asserted nor the relief requests must require the participation of the individual members in the case in accordance with 30 Tex. Admin. Code § 55.205 (a).

B. Determination of Affected Person

In evaluating whether to grant a request for a contested case hearing, the Commission must determine whether a requestor is an “affected person.” 30 Tex. Admin. Code § 55.103 defines affected person and 30 Tex. Admin. Code § 55.203 enumerates factors the Commission shall consider when determining whether a requestor is 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 in accordance with in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Commission shall consider all factors including and not limited to 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 the likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person, the likely impact of the regulated activity on the use of the impacted natural resource by the person and for governmental entities, the governmental entities’ statutory authority over or interest in the issues relevant to the application in accordance with 30 Tex. Admin. Code § 55.203 (c).

Government entities with authority under state law over issues raised by the application may be considered affected persons in accordance with 30 Tex. Admin. Code § 55.201 (b).

C. Response To Hearing Requests and Requests for Reconsideration

The Executive Director, the Public Interest Counsel, and the Applicant may submit written responses to a hearing request in accordance with 30 Tex. Admin. Code § 55.209(d).

Responses to hearing requests must specifically address whether the requestor is an affected person; b) which issues raised in the hearing request are disputed, whether the dispute involve questions of fact or of law, whether the issues were raised during the public comment period, whether the request is based on issues raised solely in a public comment withdrawn by the commenter in writing prior to the filing of the Executive Director’s Response to Comments, whether the issues raised in the request are relevant and material to the decision on the application, and a maximum expected duration for the hearing in accordance with 30 Tex. Admin. Code § 55.209 (e),

Responses to requests for reconsideration should address the issues raised in the request in accordance with 30 Tex. Admin. Code § 55.209 (f).

D. Referral to the State Office of Administrative Hearings

If the Commission grants a request for a contested case hearing, it may specify the number and scope of specific factual issues to be referred to the State Office of Administrative Hearings (SOAH) in accordance with 30 Tex. Admin. Code § 50.115 (b). The Commission analyzes whether an issue should be referred to SOAH by determining whether the issue raised involves a disputed question of fact, was raised during the public comment period and is relevant and material to the decision on the application in accordance with 30 Tex. Admin. Code § 50.211(b)(A)(i).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

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

Whether Each Hearing Request Satisfies the Rule Requirements and Whether the Requestors are Affected Persons

The Executive Director has determined that issues 1 through 14 are relevant and material issues of fact that are disputed and have not been withdrawn. *See* discussion of issues below under Section VI below.

1. James Klein, Ph.D., Chair, Clean Economy Coalition, and Gerald Sansing, Ph.D., Litigation Chair, submitted a hearing request on behalf of Clean Economy Coalition that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on the Application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Clean Economy Coalition on August 31, 2012, that includes the organization's contact information in accordance with 30 Tex. Admin. Code §§ 55.201 (d)(1). The request raises issues 2, 5-9 and 14. Clean Economy Coalition is an affected person under 30 Tex. Admin. Code §§ 55.103 55.203. Its request identified its personal justiciable interest in accordance with 30 Tex. Admin. Code §§ 55.201 (d)(2) and 55.205, concerning requests for hearings by groups or associations. The request identified at least one member of the group, Kenneth Ahlrich, who would otherwise have standing to request a hearing in his own right. The Executive Director has determined that the

member identified, Kenneth Ahlrich, is an affected person under 30 Tex. Admin. Code § 55.203. See discussion immediately below. Additionally, the request purports that the interests the organization seeks to protect are germane to the organization's purpose. The request describes the organization's mission as "to support a robust quality of life in the Coastal Bend by promoting economic development that not only creates jobs but also protects public health and natural assets." Finally, the claim asserted and the relief requested do not appear to require the participation of the individual members in this case.

Clean Economy Coalition's request substantially meets the requirements of 30 Tex. Admin. Code § 55.201(d) and satisfies the criteria in 30 Tex. Admin. Code § 55.205. Therefore, the Executive Director recommends that the Commission find Clean Economy Coalition is an affected person under 30 Tex. Admin. Code §§ 55.203 and grant the request.

2. Kenneth Ahlrich submitted a request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The request was timely. The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Kenneth Ahlrich on December 20, 2011, that includes contact information, provides the location of the requestor's residence as ¼ mile east of the facility, the location of the requestor's farmland as adjacent to the facility and requests a contested case hearing. The request includes issues 1-9, 11-15, 17 and 20.

Kenneth Ahlrich is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Kenneth Ahlrich has a personal justiciable interest in the Application not common to members of the general public. The proximity of the requestor's residence and property to the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from that of the general public. The request describes the location of the requestor's residence as ¼ mile east of the facility the location of the requestor's farmland as adjacent to the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located under 1 miles from the facility boundary and the Adjacent and Affected Land Owner's map and list in the Application indicate that the requestor owns property adjacent to the facility.

Therefore, the Executive Director recommends that the Commission find that Kenneth Ahlrich is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

3. Virginia Ahlrich submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Virginia Ahlrich on December 20, 2011, that includes contact information, provides the location of the requestor's residence as ¼ mile east of the facility to the facility, stated that the requestor's farmland is located adjacent to the facility, and requests a contested case hearing. The request raised issues 1-4, 6-9, 11-15, 17 and 20.

Virginia Ahlrich is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Virginia Ahlrich has a personal justiciable interest in the Application not common to members of the general public. The proximity of the requestor's residence and property to the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor. The request describes the location of the requestor's residence as ¼ mile east of the facility the location of the requestor's farmland as adjacent to the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately under 1 miles from the facility boundary and the Adjacent and the Affected Land Owner's map and list in Part B of the Application indicate that the requestor's family owns property adjacent to the facility.

Therefore, the Executive Director recommends that the Commission find that Virginia Ahlrich is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

4. Roberto Alaniz submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Roberto Alaniz on August 31, 2012, that includes contact information, provides the requestor's location as "2 ½ miles from the facility," and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21. Roberto Alaniz is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103

and 55.203. The Executive Director has determined that Roberto Alaniz does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likelihood that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location as 2 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 2 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Roberto Alaniz is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

5. Jennifer Borrer submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Jennifer Borrer on January 18, 2012, that includes contact information, provides the requestor's location as 17 miles from the facility and requests a contested case hearing. The request includes 1-9, 14-15, 17 and 21.

Jennifer Borrer is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Jennifer Borrer does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likelihood that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location as 17 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 14 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Jennifer Borrer is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

6. Devereaux Brewer submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Devereaux Brewer on August 26, 2012, that includes contact information, provides the requestor's address and requests a contested case hearing. The request did not include a distance from the facility. The request raised issues 1-4, 6-9, 14-15, 17, 21 and 22.

Devereaux Brewer is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Devereaux Brewer does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likelihood that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request did not describe the distance from the requestor's residence to the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 9 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Devereaux Brewer is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203 and deny the hearing request.

7. Rev. Dale Byrnstead submitted requests that substantially comply with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a requests for a contested case hearing from Rev. Dale Byrnstead on February 1st and February 8, 2012, that includes contact information, provides the requestor's location as "7 miles due North of the facility" and requests a contested case hearing. The request raised issues 3, 7, 9, 19 and 20.

Rev. Dale Byrnstead is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Rev. Dale Byrnstead does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likelihood that the alleged impacts of the regulated activity on the health and safety and use of the property

of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the distance from the requestor's residence to the facility as 7 miles. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 9 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Rev. Dale Byrnstead is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the hearing request.

8. Gonzalo Caballero submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Gonzalo Caballero on February 1, 2012, that includes contact information, provides the requestor's location as 5 miles south of the facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 16 and 17.

Gonzalo Caballero is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Gonzalo Caballero does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location as 5 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 3 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Gonzalo Caballero is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

9. Maria Calderone submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from name on December 20, 2011, that

includes contact information, provides the requestor's location as 1 mile north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Maria Calderone is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Maria Calderone does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location 1 mile from the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 2 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Maria Calderone is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

10. Johnny Calderone Jr. submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Johnny Calderone Jr. on December 20, 2011, that includes contact information, provides the requestor's location as 1 mile north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17, 21.

Johnny Calderone Jr. is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Johnny Calderone Jr. does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is approximately 2 miles away from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Johnny Calderone Jr. is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

11. Belinda P. Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Belinda P. Castro on December 21, 2011, that includes contact information, provides the requestor's location as 1/2 mile south of the facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Belinda P. Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Belinda P. Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1/2 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Belinda P. Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

12. Danny Castro submitted two requests on behalf of himself and Melissa Castro that substantially comply with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received requests for a contested case hearing from Danny Castro on December 28, 2011, and from Danny and Melissa Castro on August 31, 2012. The requests include contact information, provide the requestors' location as 1 1/2 miles North and 3/4 of a mile North on FM 892 and request a contested case hearing. The request raised issues 1-9, 14-15, 17 and 21.

Danny Castro and Melissa Castro are affected persons in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Danny Castro and Melissa Castro have personal justiciable interests in the Application not common to members of the general public. The proximity of the requestors' to the facility supports the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The requests describe the location of the requestors' residence as 1 1/2 miles and 3/4 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestors' residence is approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Danny Castro and Melissa Castro are affected persons in accordance with 30 Tex. Admin. Code § 55.203 and grant the requests.

13. Esmeralda Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Esmeralda Castro on September 5, 2012, that includes contact information, provides the requestor's location as 1 mile from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Esmeralda Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Esmeralda Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Esmeralda Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

14. Gilbert Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Gilbert Castro on September 5, 2012, that includes contact information, provides the requestor's location as 1 mile from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 2.

Gilbert Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Gilbert Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Gilbert Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

15. Lucia Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Lucia Castro on September 5, 2012, that includes contact information, provides the requestor's location as 4 miles north of the facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Lucia Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Lucia Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's

residence as 4 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 3 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Lucia Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

16. Javier Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Javier Castro on September 5, 2012, that includes contact information, provides the requestor's location as 1 mile from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Javier Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Javier Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Javier Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

17. Najaly K. Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Najaly K. Castro on September 5, 2012, that includes contact information, provides the requestor's location as 1 mile from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Najaly K. Castro is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Najaly K. Castro does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Najaly K. Castro is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

18. Teodora Castro submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Teodora Castro on December 27, 2011, that includes contact information, provides the requestor's location as $\frac{3}{4}$ of a mile from the facility on FM 892 and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Teodora Castro is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Teodora Castro has a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as $\frac{3}{4}$ of a mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Teodora Castro is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

19. Luis R. Garcia submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Luis R. Garcia on December 20, 2012, that includes contact information, provides the requestor's location as 1 mile north of facility on CR 69 and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Luis R. Garcia is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Luis R. Garcia does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as over 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Luis R. Garcia is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

20. Alex Gaza submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Alex Gaza on December 20, 2011, that includes contact information, provides the location of the requestor's residence as 1/4 mile north of the facility and requests a contested case hearing. The request includes issues 1-4, 5-9, 14-15, 17 and 18.

Alex Gaza is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Alex Gaza has a personal justiciable interest in the Application. The location of the requestor's residence and property near the

facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of the requestor's residence as ¼ mile from the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Alex Gaza is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

21. Carlos P. Giron Jr. submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Carlos P. Giron Jr. on August 31, 2012, that includes contact information, provides the requestor's location as 3 miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Carlos P. Giron Jr is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Carlos P. Giron Jr does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 3 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Carlos P. Giron Jr is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

22. Hilda V. Giron submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Hilda V. Giron on August 31, 2012,

that includes contact information, provides the requestor's location as 3 miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Hilda V. Giron is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Hilda V. Giron does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 3 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Hilda V. Giron is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

23. William M. Gwynn submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from William M. Gwynn on December 20, 2011, that includes contact information, provides the requestor's location as ½ mile North on FM 892 and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

William M. Gwynn is affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that William M. Gwynn has a personal justiciable interest in the Application that is distinct from that of the general public. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from that of the general public. The request describes the location of the requestor's residence as ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that William M. Gwynn is affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

24. Eugene Helpert submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Eugene Helpert on August 29, 2012 that includes contact information, provides the requestor's location as 1 1/2 miles from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Eugene Helpert is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Eugene Helpert does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Eugene Helpert is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

25. Mary Helpert submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Mary Helpert on August 29, 2012 that includes contact information, provides the requestor's location as 1 1/2 miles from the facility and requests a contested case hearing. The request includes 1-9, 14-15, 17 and 21.

Mary Helpert is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Mary Helpert does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that

the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over two miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Mary Helpert is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

26. Charlie B. Jones Jr. submitted a Request that substantially complies with 30 TAC §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Charlie B. Jones Jr. on December 27, 2011, that includes contact information, provides the requestor's location as 3/4 miles south of the facility on CR 69 and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Charlie B. Jones Jr. is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Charlie B. Jones Jr. has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor. The request describes the location of the requestor's residence as 3/4 of a mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Charlie B. Jones Jr. is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

27. Russell Jungman submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Russell Jungman on January 3, 2012,

that includes contact information, provides the requestor's location as 1250 feet east of the facility entrance and requests a contested case hearing. The request includes issues 1-9, 14-15, 17, 18 and 21. Executive Director has determined that issues 1 through 14 are relevant and material issues of fact that are disputed and have not been withdrawn. *See* discussion of issues below under Section VI.

Russell Jungmann is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Russell Jungmann has a personal justiciable interest in the Application. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request states that the requestor and his employees farm property 1250 feet from the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 12 miles from the facility boundary. However, the Executive Director's recommendation of affectedness is based on the location of the requestor's farming activities described in the request.

Therefore, the Executive Director recommends that the Commission find that Russell Jungmann is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

28. Dewey Lawhorn submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (A), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Dewey Lawhorn on December 27, 2011, that includes contact information, provides the requestor's location as ½ of a mile South of the facility on CR 69 and requests a contested case hearing. The request raises issues 1-4, 6-9, 14-15, 17-18, 20 and 21.

Dewey Lawhorn is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Dewey Lawhorn has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of

the requestor's residence as 1/2 mile from the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 10 miles from the facility boundary. However, and the Adjacent and Affected Land Owner's map and list in Part B of the Application indicate that the requestor owns property less than one mile from the facility and the Executive Director's recommendation of affectedness is based on the location of the requestor's property and the location of the requestor's farming activities described in the request.

Therefore, the Executive Director recommends that the Commission find that Dewey Lawhorn is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

29. Elibardo Leal submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Elibardo Leal on December 20, 2011, that includes contact information, provides the requestor's location as 1/2 mile north of the facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Elibardo Leal is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Elibardo Leal has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of the requestor's residence as 1/2 mile from the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Elibardo Leal is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

30. Maria N. Leal submitted a Request that substantially complies with 30 TAC §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request

for a contested case hearing from Maria N. Leal on December 20, 2011, that includes contact information, provides the requestor's location as ½ mile north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17, 18, 21.

Maria N. Leal is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Maria N. Leal has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of the requestor's residence as ½ mile from the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Maria N. Leal is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

31. Marq Lopez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Marq Lopez on August 29, 2012, that includes contact information, provides the requestor's location as 7 ½ miles from the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17 and 21.

Marq Lopez is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Marq Lopez does not have a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request provides a distance from the requestor's residence to the facility as 7 ½ miles. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 16 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Marq Lopez is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

32. Noe Lopez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Noe Lopez on August 29, 2012, that includes contact information, provides the requestor's location as 7 1/2 miles from the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17 and 21.

Noe Lopez is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Noe Lopez does not have a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request does not provide a distance from the requestor's residence to the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 16 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Noe Lopez is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

33. Janie Medina submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Janie Medina on August 31, 2012, that includes contact information, provides the requestor's location as 1 1/2 miles from the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17, 18 and 21.

Janie Medina is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Janie Medina does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of

the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 1/2 mile from the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately more than 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Janie Medina is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

34. Danny Mallett submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Danny Mallett on August 30, 2012, that includes contact information, provides the requestor's location as 1 mile south of the facility and requests a contested case hearing. The request raises issues 9, 14-15, 17 and 21.

Danny Mallett is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Danny Mallett has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Danny Mallett is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

35. Jolynn Mallett submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Jolynn Mallett on August 29, 2012, that includes contact information, provides the requestor's location as 1 mile from the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17 and 21.

Jolynn Mallett is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Jolynn Mallett has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor are distinct from those of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Jolynn Mallett is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

36. Grace Martinez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Grace Martinez on December 21, 2011, that includes contact information, provides the requestor's location as ¼ mile east of facility and requests a contested case hearing. The request raises issues 1-4, 6-9, 14-15, 17 and 18.

Grace Martinez is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Grace Martinez has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct of those of the general public. The request describes the location of the requestor's residence as ¼ mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Grace Martinez is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

37. Joe Martinez submitted a Request that substantially complies with 30 TAC §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Joe Martinez on December 20, 2011, that includes contact information, provides the requestor's location as ¼ mile East of plant and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Joe Martinez is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Joe Martinez has a personal justiciable interest in the Application. The proximity of the requestor's residence and property to the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from those of the general public. The request describes the location of the requestor's residence as 1/4 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Joe Martinez is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

38. Bianca Marquez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Bianca Marquez on August 29, 2012, that includes contact information, provides the requestor's location as 1 mile from facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Bianca Marquez is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Bianca Marquez does not have a personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location as 1 mile from the facility. However, the GIS map the Executive Director generated to analyze the

requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find Bianca Marquez is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

39. Morris Michalk submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Morris Michalk on December 27, 2011, that includes contact information, provides the requestor's location as adjacent to USET property on West and South sides and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Morris Michalk is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Morris Michalk has a personal justiciable interest in the Application. The location property that the requestor farms near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from that of the general public. The request states that the requestor and his employees farm property adjacent to the facility. The GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 9 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Morris Michalk is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

40. Johnny Moffett submitted a Request that substantially complies with 30 TAC §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Johnny Moffett on January 31, 2012, that includes contact information, provides the requestor's location as 13 miles from the facility and requests a contested case hearing. The request raises issues 7, 9-10 and 19.

Johnny Moffett is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Johnny Moffett does not have a

personal justiciable interest in the Application not common to members of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the requestor's location as 13 mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 13 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find Johnny Moffett is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

41. Melton Perez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Melton Perez on December 20, 2011, that includes contact information, provides the requestor's location as ¼ mile west of the facility on FM 892 and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Melton Perez is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Melton Perez has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from that of the general public. The request describes the location of the requestor's residence ¼ mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary and the Adjacent and Affected Land Owner's map and list in Part B of the Application indicate that the requestor owns property less than 1 mile from the facility.

Therefore, the Executive Director recommends that the Commission find that Melton Perez is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

42. Maria E. Pesina submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from the requestor on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Maria Pesina is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined Maria E. Pesina does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 2 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Maria Pesina is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

43. Daniel T. Rodriguez III submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Daniel T. Rodriguez III on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Daniel T. Rodriguez III is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined Daniel T. Rodriguez III does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct

from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 2 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Daniel T. Rodriguez III is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

44. Norma T. Rodriguez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Norma T. Rodriguez on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Norma T. Rodriguez is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Norma T. Rodriguez does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 2 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Norma T. Rodriguez is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

45. Domingo Rosales, Sr. submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Domingo Rosales, Sr. on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north of

the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Domingo Rosales, Sr. is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Domingo Rosales, Sr. does not have a personal justiciable interest in the Application that is distinct from that of the general public. The location of the requestor's residence and property near the facility does not support the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor. The request describes the location of the requestor's residence as 2 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Domingo Rosales, Sr. is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

46. Ronaldo Rosas submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Ronaldo Rosas on August 30, 2012, that includes contact information, provides the requestor's physical mailing address but gave no distance from the facility and raised no issues. Ronaldo Rosas requests a contested case hearing but did attach any details further identifying the requestor's justiciable interest. The OCC file includes a two page request in which the second page is identical to the first page. The request states that a description of the issues and how the requestor is affected is attached to the request. The Executive Director has no additional information regarding the apparently inadvertent submittal of two page ones of the request and failure to submit a page two.

Ronaldo Rosas is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Ronaldo Rosas has a personal justiciable interest in the Application. If the missing second page of the request in fact alleges impacts of the regulated activity on the health and safety and use of his property and/or on his use of natural resources similar to those alleged impacts raised in hearing requests received from other requestors, the location of the requestor's residence and property near the facility would support the likeliness of such a claim as distinct from the impacts, if any, to the general

public. The request does not describe the distance from the requestor's residence to the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 1 mile from the facility boundary and the Affected Land Owner's map and list in Part B of the Application indicate that the requestor owns property less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Ronaldo Rosas is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

47. Alex C. Rubio submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Alex C. Rubio on August 31, 2012 that includes contact information, provides the requestor's location as 1 1/2 miles north of the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17 and 21. See discussion of issues below under Section VI. The Executive Director has determined that issues 1 through 14 are relevant and material issues of fact that are disputed and have not been withdrawn.

Alex C. Rubio is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Alex C. Rubio does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 1 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Alex C. Rubio is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

48. Diane Rubio submitted two requests that substantially comply with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk

received a request for a contested case hearing from Diane Rubio on December 31, 2011, and August 27, 2012, that includes contact information, provides the requestor's location as 1 mile and 1 1/2 miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Diane Rubio is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Diane Rubio does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The requests describe the location of the requestor's residence as 1 mile and as 1 1/2 miles from the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Diane Rubio is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

49. Marie P. Sanders submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Marie P. Sanders on December, 20, 2011, that includes contact information, provides the requestor's location as 1 mile west of the facility, raised issues Number through Number, and requests a contested case hearing. The request includes issues 2-4, 6-9, 14 and 17.

Marie P. Sanders is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Marie P. Sanders has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from that of the general public. The request describes the location of the requestor's residence as 1 mile from the facility. Additionally, the GIS map the Executive

Director generated to analyze the requests indicates that the requestor's residence is located approximately just over 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Marie P. Sanders is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

50. Marolyn Schneider submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Marolyn Schneider on December 20, 2011, that includes contact information, provides the requestor's location as 1 ½ miles south of the facility and requests a contested case hearing. The request raises issues 1-4, 6-9, 14-15, 17 and 18.

Marolyn Schneider is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Marolyn Schneider has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct to those of the general public. The request describes the location of the requestor's residence as 1 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Marolyn Schneider is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

51. William R. Schneider, Jr. submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from William R. Schneider, Jr. on December 20, 2011 that includes contact information, provides the requestor's location as 1 ½ miles south of the facility and requests a contested case hearing. The request raises issues 1-4, 6-9, 14-15, 17 and 18.

William R. Schneider, Jr is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that William R. Schneider, Jr has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from those of the general public. The request describes the location of the requestor's residence as 1 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that William R. Schneider, Jr is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

52. George Silguero submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from George Silguero on August 31, 2012 that includes contact information, provides the requestor's location as 3 miles north of the facility and requests a contested case hearing. The request raises issues 1-9, 14-15, 17 and 21.

George Silguero is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that George Silguero does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 3 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that George Silguero is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

53. Maria Angelita Silguero submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Maria Angelita Silguero on August 31, 2012 that includes contact information, provides the requestor's location as 3 miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Maria Angelita Silguero is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Maria Angelita Silguero does not have a personal justiciable interest in the Application that is distinct from that of the general public. The location of the requestor's residence and property near the facility does not support the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor. The request describes the location of the requestor's residence as 3 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately over 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Maria Angelita Silguero is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

54. Esther Svehla submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Esther Svehla on August 29, 2012 that includes contact information, provides the requestor's location as 2879 FM 892, Robstown, TX 78380, but gave no distance from the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Esther Svehla is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Esther Svehla has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from the impacts, if any, to the general public. The request does not

describe the distance from the requestor's residence from the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Esther Svehla is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

55. Filberto Tagle submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Filberto Tagle on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Filberto Tagle is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Filberto Tagle does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 2 ½ miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Filberto Tagle is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

56. Mary Tagle submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Mary Tagle on August 31, 2012 that includes contact information, provides the requestor's location as 2 ½ miles north and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Mary Tagle is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Mary Tagle does not have a personal justiciable interest in the Application that is distinct from that of the general public. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as 2 1/2 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Mary Tagle is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

57. Chrissy A. Tamez submitted two requests that substantially comply with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received two requests for a contested case hearing from Chrissy A. Tamez on December 28, 2011 and August 29, 2011 that include contact information, provides the requestor's location 3/4 mile north of the facility and 1 mile north, respectively and request a contested case hearing. The requests raise issues 1-9, 14-15, 17, 18 and 21.

Chrissy A. Tamez is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Chrissy A. Tamez has a personal justiciable interest in the Application. The location of the requestor's residence and property near the facility supports the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from that of the general public. The request describes the location of the requestor's residence as 3/4 of a mile from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Chrissy A. Tamez is an affected person in accordance with 30 Tex. Admin. Code § 55.203 and grant the request.

58. Nicole Tamez submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Nicole Tamez on August 29, 2012 that includes contact information, states that the requestor's location is 1 mile north of the facility, does not provide a residence address, and requests a contested case hearing. The request includes issues 1-9, 14-15, 17, 18 and 21.

Nicole Tamez is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director is unable to determine that Nicole Tamez has a personal justiciable interest in the Application not common to members of the general public. The request's representation that the location of the requestor's is within one mile of the facility, if accurate, would support the likeliness of the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor and on the use of natural resources by the requestor as distinct from those of the general public. However, the request describes the requestor's residence as approximately 1 mile from the facility but does not provide a physical address. Therefore the Executive Director is unable to determine the distance from the requestor's residence to the facility boundary.

Therefore, in the absence of a physical address of the requestor's residence, the Executive Director recommends that the Commission find that Nicole Tamez is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

59. Wanza Treybig submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Wanza Treybig on December 21, 2011, that includes contact information, provides the requestor's location as plus or minus 5 miles south of the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Wanza Treybig is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Wanza Treybig does not have a personal justiciable interest in the Application. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources

by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the location of the requestor's residence as approximately 5 miles from the facility. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately 5 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Wanza Treybig is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

60. Michael Winters submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201 (a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Michael Winters on August 29, 2012 that includes contact information, provides the requestor's physical address, does not describe the distance from the requestor's residence to the facility and requests a contested case hearing. The request includes issues 1-9, 14-15, 17 and 21.

Michael Winters is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Michael Winters has a personal justiciable interest in the Application. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request does not describe the distance from the requestor's residence to the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 1 mile from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Michael Winters is an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203.

61. Gavino D. Ybarra submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Gavino D. Ybarra on December 20, 2011 that includes contact information, provides the requestor's location as 1 1/2 miles from the

facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Gavino D. Ybarra is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Gavino D. Ybarra does not have a personal justiciable interest in the Application. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request describes the distance from the requestor's residence to the facility as 1 ½ miles. Additionally, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Gavino D. Ybarra is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

62. Monica Ybarra submitted a Request that substantially complies with 30 Tex. Admin. Code §§ 55.201(a), (c) and (d). The period for timely filing a request for a contested case hearing on this permit application ended on September 4, 2012. The Office of the Chief Clerk received a request for a contested case hearing from Monica Ybarra on December 20, 2011 that includes contact information, provides the requestor's physical address, but gave no distance from the facility and requests a contested case hearing. The request includes issues 1-4, 6-9, 14-15, 17 and 18.

Monica Ybarra is not an affected person in accordance with 30 Tex. Admin. Code §§ 55.103 and 55.203. The Executive Director has determined that Monica Ybarra does not have a personal justiciable interest in the Application. The distance of the requestor's residence from the facility does not support the likeliness that the alleged impacts of the regulated activity on the health and safety and use of the property of the requestor or on the use of natural resources by the requestor are distinct from the impacts, if any, to members of the general public. The request does not describe the distance from the requestor's residence to the facility. However, the GIS map the Executive Director generated to analyze the requests indicates that the requestor's residence is located approximately less than 2 miles from the facility boundary.

Therefore, the Executive Director recommends that the Commission find that Monica Ybarra is not an affected person in accordance with 30 Tex. Admin. Code § 55.203 and deny the request.

B. Analysis of the Request for Reconsideration

Gerald Sansing filed a timely request for reconsideration on behalf of Clean Economy Coalition, received by the OCC on August 31, 2012, raising issues of air quality and human health.

These issues were raised during the comment period and considered in the Executive Director's Response to Public Comments. The Executive Director recommended referring these issues, as applicable to this Application, to SOAH for full consideration during a contested case hearing. The Executive Director contends that the Draft permit complies with the statutory and regulatory requirements. Clean Economy Coalition did not provide additional information that has caused the Executive Director to change his preliminary determination recommending that the Commission issue the permit. Consequently, the Executive Director respectfully recommends denial of the request for reconsideration.

The Executive Director respectfully recommends that the Commission deny the request for reconsideration submitted by the Clean Economy Coalition.

**VI. Whether the Issues Raised May be Referred to
SOAH for a Contested Case Hearing**

***The Executive Director has determined that issues 1 through 14
are appropriate for referral to SOAH.***

1. *Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed new facility entrance.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 1. The law under which the application will be considered establishes standards and requires information regarding facility and site access control and security measures and site diagrams to be included in the

Application. This issue involves a disputed question of fact that it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

2. *Whether handling, storage, processing and disposal of industrial solid waste and municipal hazardous waste in accordance with the Application and Draft Permit will prevent the creation and maintenance of a nuisance.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 1, 2, 6, 7, 12 and 13. It involves a disputed question of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

3. *Whether the applicant's compliance history supports issuance.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 4, 7, 16 and 21. It involves disputed questions of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

4. *Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed increase in capacity for the Uncovered Waste Storage Area (Permitted Unit Number 9).*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 6 and 7. It involves disputed questions of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

5. *Whether Application and Draft Permit satisfy the regulatory requirements, applicable to a commercial hazardous waste facility, to protect ground water.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 10 and 17. It involves disputed questions of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

6. *Whether design, construction, and operation facility in accordance with the Application and Draft Permit will prevent contamination of surface water.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 10. It involves a disputed question of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

7. *Whether the Application and Draft Permit satisfy the applicable air emission requirements for a hazardous waste management facility hazardous waste permit.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 11, 12, 13, 14, and 15. To the limited extent that the law under which the Application will be considered, the hazardous waste rules, impose requirements on air emissions at the facility this issue involves disputed questions of fact and it is relevant and material to the decision on this application.

Therefore, the Executive Director concludes that this issue, confined to the limited scope described above, is appropriate for referral to SOAH.

8. *Whether the Application and Draft Permit satisfy the requirements regarding dust suppression and prevention of wind dispersion of particulate matter.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 13. To the limited extent that the law under which the application will be considered imposes regulatory requirements regarding dust suppression and prevention of wind dispersion of particulate matter, this issue involves disputed questions of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue, confined to the limited scope described above, is appropriate for referral to SOAH.

9. *Whether handling, storage, processing and disposal of solid waste in accordance with the Application and Draft Permit will prevent endangerment of the public health and welfare.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 11, 12, 13, 14, and 15. It involves a disputed question of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

10. *Whether the Application and Draft Permit satisfy the regulatory requirements for buildings located on the west side of the facility.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 7, 14, and 19. It involves a disputed question of fact and it is relevant and material to the decision on this application. Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

11. *Whether the Inspection Plan in the Application and Draft Permit satisfies the regulatory requirements.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 7. It involves a disputed question of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

12. *Whether the Contingency Plan, Recordkeeping and Reporting, and Use and Management of Containers provisions in the Application and Draft Permit satisfy the regulatory requirements.*

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 6 and 7. It involves a disputed question of fact and it is relevant and material to the decision on this application. Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

13. Whether the Waste Analysis Plan in the Application and Draft Permit satisfies the regulatory requirements.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 7, 8, and 9. It involves a disputed question of fact and it is relevant and material to the decision on this application.

Therefore, Executive Director concludes that this issue is appropriate for referral to SOAH.

14. Whether Special Permit Provision XII.A which prohibits operational or construction activities requiring the use of heavy machinery or floodlights prior to 7 AM or after 8 PM, unless an enumerated exception applies and provision of notice is made, should be removed from the permit.

Special Permit Provision XII.A. prohibits operational or construction activities requiring the use of heavy machinery or floodlights prior to 7 AM or after 8 PM unless the permittee provides advance notice to the Agency and the Regional office that specifies the reasons for before- or after- hours activities and unless such activities are necessary to: remain in compliance with the terms and conditions of any permit or any applicable state, federal or local law or regulation; conduct activities delayed by force majeure events as force majeure is defined in the provision; perform construction related activities in compliance with material or equipment construction or installation specifications as set forth in the permit, permit application, or in the manufacturer's, installer's, or supplier's specifications or; accept waste from generators, if non acceptance of such waste would cause the generator and/or the permittee to be in violation of any permit, or applicable state, federal, or local law or regulation.

This provision was added to the permit, current IHW Permit No. 50052, by the Commissioners in 1994 pursuant to the Hearing Examiner's Proposal for Decision in a contested case hearing held on an application requesting a Class 3 Modification of the permit and retained in the permit issued in 1999 pursuant to an application for a 10-year renewal. Special Permit Provision XII.A. is retained in the Draft Permit.

This issue was raised during the public comment period by every commenter, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 2, and 16. It involves disputed questions of fact, and it is relevant and material to the decision on this application.

Therefore, the Executive Director concludes that this issue is appropriate for referral to SOAH.

The Executive Director has determined that issues 15 through 22 are not appropriate for referral to SOAH.

15. Whether the proposed new entrance should be denied because of danger associated with, air pollution caused by increased traffic congestion, hazards associated with an increase in traffic, or alleged interference with residents' access to their homes.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 1 and 3. Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed new facility entrance is relevant and material to the decision on this application and recommended for referral as Issue Number 1. Additionally, to a limited extent whether air emissions, dust suppression and prevention of wind dispersion of particulate matter at the facility satisfy the applicable regulatory requirements are relevant and material to the decision on the application and recommended for referral as Issues Number 2 and 3 above. However, air pollution associated with traffic, hazards associated with traffic or impacts of traffic on private property ingress and egress are not protected by the law under which the application will be considered. Accordingly, this issue is not relevant and material to the decision on the application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

16. Whether TCEQ should enforce the terms of a 1999 third party settlement agreement between the predecessor in interest to US Ecology Texas, Inc. and protestant parties.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 5. Third party contract disputes and as such the terms of the 1999 settlement agreement are not protected by the law under which the application will be considered. Accordingly, this issue is not relevant and material to the decision on this application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

17. Whether the proposed increase in Uncovered Container Storage Area capacity because of increasing risks to an increasing population in the vicinity of the facility.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 6. Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed increase in capacity for the Uncovered Waste Storage Area (Permitted Unit Number 9) is a relevant and material fact issue that is in dispute and is relevant and material to the decision on this application and recommended for referral as Issue number 5. However, whether operation of authorized industrial and a hazardous waste management unit increases risks to the public, whether the population is increasing in the vicinity of the facility and whether either of these alleged facts, if true, are exacerbated by the other are a disputed issue of fact that is not protected by the law under which the application will be considered. Accordingly, this issue is not relevant and material to the decision on this application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

18. Whether new hazardous waste streams or nuclear waste should be authorized for acceptance.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comments 9. It involves a question of fact that is not in dispute. The Application and Draft permit do not propose or include adding any new hazardous waste streams or nuclear waste. Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

19. Whether the Draft permit should include off-site air monitoring requirements.

This issue was raised during the public comment period, not withdrawn and addressed in the ED's Response to Public Comment, Comment 5. Third party contract disputes and as such the terms of the 1999 settlement agreement are not protected by the law under which the application will be considered. Additionally, to a limited extent, whether air emissions, dust suppression and prevention of wind dispersion of particulate matter at the facility satisfy the applicable regulatory requirements, recommended for referral under issues number 3 and 4 above, is protected by the law under which the application will be considered and is relevant and material to the decision on the application. However, air quality and air monitoring at the

facility are not protected by the law under which the application will be considered. Accordingly, this issue is not relevant or material to the decision on this application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

20. Whether recovery, treatment, and disposal are required to be conducted under a protective, covered area with air monitoring.

This issue was raised during the public comment period as a question, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 14. It involves a disputed question of fact that is not protected by the law under which the application will be considered. No applicable state or federal rule or law requires a commercial hazardous industrial hazardous waste facility to conduct recovery, treatment, and disposal under a protective, covered area with air monitoring. Accordingly, the issue is not relevant and material to the decision on this application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

21. Whether Underground Injection Control (UIC) disposal wells at the facility are included in the application.

This issue was raised during the public comment period, not withdrawn and addressed in the Executive Director's Response to Public Comment, Comment 20. UIC wells at the facility are not authorized by the law under which the application will be considered. Accordingly, this issue is not relevant and material to the decision on the application.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

22. Whether operation of the thermal desorption unit during the nighttime hours is a violation of Special Permit Provision XII.A.

a. This issue was not raised during the Public Comment Period.

Therefore, the Executive Director concludes that this issue is not appropriate for referral to SOAH.

VII. Duration of the Contested Case Hearing

Should the Commission decide to refer this case to SOAH, the Executive Director recommends a nine month duration for a contested case hearing from the date of the preliminary hearing to the presentation of a proposal for decision.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

a) *Deny the Request for Consideration filed on behalf of Clean Economy Coalition.*

b) *Find that the following group and individuals are affected and grant their hearing requests:*

Clean Economy Coalition, Kenneth Ahlrich, Virginia Ahlrich, Danny Castro, Melissa Castro, Alex Gaza, William M. Gwynn, Charlie B. Jones, Jr., Russell Jungmann, Dewey Lawhon, Elibardo Leal, Maria N. Leal, Danny Mallett, Jolynn Mallett, Grace Martinez, Joe Martinez, Morris Michalk, Melton Perez, Ronaldo Rosas, Marie P. Sanders, William R. Schneider, Jr., Marolyn Schneider, Esther Svehla, Chrissy A. Tamez, and Michael Winters.

c) *Find that the following individuals are not affected persons and deny their requests:*

Roberto Alaniz, Rev. Dale Brynestad, Jennifer Borrer, Devereaux Brewer, Gonzalo Caballero, Johnny Calderon Jr., Maria Calderon, Belinda P Castro, Esmeralda Castro, Gilbert Castro, Javier Castro, Lucia Castro, Najaly K. Castro, Teodoro Castro, Helpert, Marq Lopez, Noe Lopez, Janie Medina, Bianca Marquez, Johnny Moffett, Maria E. Pesina, Daniel T. Rodriguez III, Norma T Rodriguez, Domingo Rosales Sr., Alex C. Rubio, Diane Rubio, George Silguero, Maria Angelita Silguero, Filiberto Tagle, Mary Tagle, Nikole Tamez, Wanza Treybig, Gavino D. Ybarra and Monica Ybarra.

d) *If the Commission finds that any of the requestors are affected, refer the following issues SOAH for a Contested Case Hearing for a nine month duration:*

1. Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed new facility entrance.
2. Whether handling, storage, processing and disposal of industrial solid waste and municipal hazardous waste in accordance with the Application and Draft Permit will prevent the creation and maintenance of a nuisance.
3. Whether the applicant's compliance history supports issuance.

4. Whether the Application and Draft Permit satisfy the regulatory requirements for the proposed increase in capacity for the Uncovered Waste Storage Area (Permitted Unit Number 9).
5. Whether Application and Draft Permit satisfy the regulatory requirements, applicable to a commercial hazardous waste facility, to protect ground water.
6. Whether design, construction, and operation facility in accordance with the Application and Draft Permit will prevent contamination of surface water.
7. Whether the Application and Draft Permit satisfy the applicable air emission requirements for a hazardous waste management facility hazardous waste permit.
8. Whether the Application and Draft Permit satisfy the requirements regarding dust suppression and prevention of wind dispersion of particulate matter.
9. Whether handling, storage, processing and disposal of solid waste in accordance with the Application and Draft Permit will prevent endangerment of the public health and welfare.
10. Whether the Application and Draft Permit satisfy the regulatory requirements for buildings located on the west side of the facility.
11. Whether the Inspection Plan in the Application and Draft Permit satisfies the regulatory requirements.
12. Whether the Contingency Plan, Recordkeeping and Reporting, and Use and Management of Containers provisions in the Application and Draft Permit satisfy the regulatory requirements.
13. Whether the Waste Analysis Plan in the Application and Draft Permit satisfies the regulatory requirements.
14. Whether Special Permit Provision XII.A which prohibits operational or construction activities requiring the use of heavy machinery or floodlights prior to 7 AM or after 8 PM, unless an enumerated exception applies and provision of notice is made, should be removed from the permit.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 5, 2012, the original and seven (7) copies of the "Executive Director's Response to Requests for Reconsideration and Requests for Contested Case Hearing" received on an Application By US Ecology Texas, Inc. for a 10-Year Renewal and Major Amendment of Hazardous Waste Permit No. 50052, were filed with the TCEQ's Office of the Chief Clerk and a complete 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 US Mail.



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